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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-665

ROSEMARIE CLAMPITT APPELLANT V. JAMES P. GEURIN AND MARILYNN GUERIN APPELLEES	**Opinion Delivered** September 1, 2010 APPEAL FROM THE GARLAND COUNTY CIRCUIT COURT [NO. CV 2006-117] HONORABLE ROBIN L. MAYS, JUDGE AFFIRMED

JOSEPHINE LINKER HART, Judge

Rosemarie Clampitt brings this pro se appeal from the Garland County Circuit Court's February 25, 2009 order finding her in civil contempt. This litigation began in February 2006 when appellant's next-door neighbors, appellees James Geurin and his wife Marilynn, filed a complaint to quiet title to a strip of land and to enforce the subdivision's bill of assurance. Appellees alleged that appellant had left metal siding stacked on her property for so long that it had become a nuisance. After a trial in December 2006, the circuit court entered an order quieting title to the strip of land in appellees (through acquiescence); finding appellant in violation of the bill of assurance; and ordering appellant to immediately remove the siding. The circuit court also dismissed appellant's counterclaim. Appellant then took an appeal to this court, which dismissed because her brief was untimely.

In the meantime, appellant did not remove the metal siding from her property. In

August 2007, appellees asked the circuit court to hold her in contempt. On February 11, 2009, the court held a hearing, at which appellant made a special appearance to object to the court's subject-matter jurisdiction, which she had raised before the trial in 2006. After the court again rejected that argument, she left the courtroom. Appellees testified that appellant had not yet removed the metal from her yard. The court granted appellees' motion for contempt. On February 25, 2009, the court directed appellant to remove the metal siding within ten days or go to jail. She did not comply but filed a notice of appeal from that order and all previous orders. On April 13, 2009, James Geurin filed an affidavit stating that appellant had not removed the metal siding. The same day, the court entered an order remanding appellant into the custody of the sheriff until she did so. Appellant did not appeal from that order and remained in jail for twenty-nine days. After Lonnie Harris filed an affidavit on May 13, 2009, stating that he had removed the siding at appellant's request, she was released.

Appellant raises little argument about the order finding her in contempt; instead, she primarily challenges the merits of the earlier decrees quieting title, ordering her to remove the metal, and dismissing her counterclaim, which were entered before she brought her first appeal. Appellant asserts that appellees and their attorney committed a fraud on the court and fabricated their claim that her "well-groomed" yard was a nuisance. She argues that they had unclean hands in pursuing a frivolous lawsuit for the purpose of harassing her and obtaining her property. She asserts that the trial court erred in finding that the metal "yard art" constituted a nuisance and violated the bill of assurance. As before, she also argues that she was

denied her constitutional right to a jury trial; that appellees did not prove acquiescence; that the trial court was biased; that it erred in dismissing her counterclaim; and that it erred in failing to dismiss this lawsuit because of appellees' behavior during pretrial discovery. Appellant raised these arguments in her first appeal, and they are now barred by res judicata. The doctrine of res judicata prohibits a court from reconsidering issues of law and fact that have already been decided in a prior appeal. *Redden v. Arkansas State Bd. of Law Exam'rs*, 371 Ark. 584, 269 S.W.3d 359 (2007). The decision and findings of the trial court are also not subject to collateral attack when the appellant failed to perfect an appeal from the original order. *Id.* On a second appeal, the decision of the first appeal is not only conclusive of every question of law or fact decided in the former appeal, but also of those that could have been, but were not, presented. *May v. May*, 267 Ark. 27, 589 S.W.2d 8 (1979).

As before, appellant also argues that, because other necessary parties were not part of this action, the circuit court lacked subject-matter jurisdiction to render the original decree quieting title and finding that appellant violated the bill of assurance. It is true that the record title owners of land must be given notice of and made parties to a quiet-title action, as provided by Arkansas Code Annotated sections 18-60-502 and 18-60-503 (Repl. 2003 and Supp. 2009); otherwise, the trial court lacks subject-matter jurisdiction to adjudicate the rights to the land. *Koonce v. Mitchell*, 341 Ark. 716, 19 S.W.3d 603 (2000); *see also Parkerson v. Brown*, 2010 Ark. App. 505, 379 S.W.3d 485. In this case, however, appellant has failed to demonstrate that all current record owners of the land affected by the quiet-title decree were not before the court. As established by the record, the trial court did not lack subject-matter jurisdiction.

Appellant further contends that appellees and their attorney pursued the contempt motion to have her jailed, for the purpose of hindering her ability to pursue this appeal.[1] There is no dispute, however, that appellant has purged herself of contempt. Generally, where the terms of a contempt order have been fulfilled, the issue of the propriety of the contempt order is moot. *Swindle v. State*, 373 Ark. 518, 285 S.W.3d 200 (2008), *cert. denied*, 556 U.S. 1127 (2009). Although we may elect to settle an issue when a case involves issues that are moot but are capable of repetition, yet evade review, *id.*, this is not such a case.

Affirmed.

GLOVER AND HENRY, JJ., agree.

[1]Appellant also asserts that appellees engaged in improper ex parte communications with the court; that she was not advised of her *Miranda* rights when she was arrested; and that she was treated badly in jail. As there has been no ruling by the circuit court on these matters, we need not address them. *Stills v. Stills*, 2010 Ark. 132, 361 S.W.3d 823.