

FIFTH DISTRICT COURT OF APPEAL OF FLORIDA

Ella III, LLC v. Ethan Madden, Ciara J. Hare, and United Southern Bank

No. 5D2024-1198, Fifth District Court of Appeal of Florida (April 2, 2026)

SUMMARY

The Fifth District Court of Appeal of Florida reversed a summary judgment holding that Ella III, LLC's ejectment and quiet title action was barred by the four-year limitation in section 95.191, Florida Statutes. The court held that the limitation applies only when the property was adversely possessed when the tax deed was issued, and it found conflicting evidence concerning when adverse possession began. The case was remanded for further proceedings.

CASE DETAILS

COURT	Fifth District Court of Appeal of Florida
WRITING FOR THE COURT	Harris, J.; Jay, C.J.; Soud, J.
JURISDICTION	Florida Fifth District Court of Appeal
DECIDED	April 2, 2026
DOCKET	5D2024-1198
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appellant appealed a summary judgment entered in favor of appellees in an action for ejectment and quiet title.
STANDARD OF REVIEW	De novo review of summary judgment.
PRECEDENTIAL VALUE	Published Florida district court of appeal opinion; precedential unless otherwise limited by subsequent authority.
PARTIES	Ella III, LLC v. Ethan Madden, Ciara J. Hare, United Southern Bank

TOPICS

- ejectment
- quiet title
- adverse possession
- summary judgment
- statutory interpretation

PRACTICE AREAS

- real estate law
- civil procedure
- appellate procedure

QUESTIONS PRESENTED

1. Whether Florida Statutes section 95.191 bars a tax-deed holder's ejectment and quiet-title action only when the property was adversely possessed when the tax deed was issued.
2. Whether summary judgment was proper when the evidence conflicted regarding when adverse possession began.

HOLDINGS

1. The four-year limitation in section 95.191 applies only when the property is adversely possessed at the time the tax deed is issued.
2. Summary judgment was improper because significant conflicting evidence existed regarding whether and when the property was adversely possessed.
3. The appellant's argument that interests conveyed after issuance of the tax deed did not survive was waived because it was not raised in the appeal.

KEY QUOTATIONS

““When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed.”” (at 3)

“Thus, we conclude that the four-year limitation applies only where there is adverse possession at the time the tax deed is issued.” (at 3)

FACTUAL BACKGROUND

Ella III, LLC alleged that it acquired the Lake County property through a tax deed recorded on October 20, 2009. A warranty deed conveying the property to Ethan Madden and Ciara J. Hare was recorded on January 20, 2023. The appellees claimed that the property had been adversely possessed and that the appellant had failed to assert its claim, take possession, or pay taxes within four years, while the appellant submitted affidavits and tax receipts indicating that its servicer paid property taxes from 2009 through 2012.

PROCEDURAL HISTORY

Ella III, LLC filed an ejectment and quiet-title action after acquiring the property through a tax deed. The appellees moved for summary judgment, arguing that Florida Statutes section 95.191 barred the action because the appellant waited more than four years and the appellees had adversely possessed the property. The circuit court granted summary judgment, and the Fifth District Court of Appeal reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remanded for further proceedings consistent with the opinion.

CASES CITED

- Rosier v. State, 276 So. 3d 403, 406 (Fla. 1st DCA 2019)
- Salls v. Martin, 24 So. 2d 41 (Fla. 1945)

OPINION

PER CURIAM.

FIFTH DISTRICT COURT OF APPEAL STATE OF FLORIDA
_____ Case No. 5D2024-1198 LT Case No. 2023-CA-003015-A
_____ ELLA III, LLC, Appellant, v. ETHAN MADDEN, CIARA J.
HARE, and UNITED SOUTHERN BANK, Appellees. _____ On
appeal from the Circuit Court for Lake County. Lawrence James Semento, Judge.

Deborah Marks, of Deborah Marks, PLLC, Miami, for Appellant. Benjamin C. Iseman, of Maynard Nexsen PC, Winter Park, for Appellees, Ethan Madden and Ciara J. Hare. No Appearance for Remaining Appellee. April 2, 2026 HARRIS, J. Appellant, Ella III, LLC, appeals the summary judgment entered below, finding that Appellant's complaint seeking ejectment and quiet title concerning real property was time- barred.

Because the action was not time-barred, and because evidence of when adverse possession began was conflicting, we reverse. On November 6, 2023, Appellant filed an action seeking ejectment and quiet title concerning real property located in Lake County, Florida. Appellant alleged that it acquired the property via tax deed recorded on October 20, 2009. Included in the attachment to the complaint were a warranty deed in the names of Ethan Madden and Ciara Hare (Appellees) recorded on January 20, 2023 and a Tax Deed in Appellant's name recorded on October 20, 2009.

After answering the complaint, Appellees moved for summary judgment, arguing that the action was time barred because Appellant failed to assert its claim, take possession of the property, or pay taxes within four years of the issuance of the tax deed, and that they have adversely possessed the subject property.

Thus, Appellees argued, the action was time barred pursuant to section 95.191, Florida Statute (2023). Appellant responded to the motion for summary judgment arguing, inter alia, that pursuant to section 95.191, Appellees must show that the property was adversely possessed at the time of the recording of the tax deed in 2009, which they did not. Appellant further argued that contrary to Appellees' assertion, it did pay taxes on the property from 2009 to 2012, attaching affidavits and receipts from the tax collector showing that Appellant's servicer paid the taxes from 2009 through 2012.

Following a hearing, the trial court granted Appellees' motion, finding that the record evidence demonstrated that Appellant took no action to secure possession of the property during the four

years after the issuance of the tax deed.

The court also found that Appellees were in adverse possession prior to this action being filed and thus pursuant to section 95.191, Appellant's claim was barred. This appeal followed. In this appeal we first consider whether Appellant's lawsuit was time-barred under section 95.191. Appellant maintains that the bar to a tax deed holder seeking a quiet title action applies only where the property is adversely possessed when the tax deed is recorded.

Appellant further argues that Appellees failed to present sufficient evidence that for the four years after the recording of the 2009 tax deed, the property was adversely possessed and thus the statute of limitations in section 95.191 did not apply. Appellees respond that the plain language of section 95.191 does not require that the property be adversely possessed when the tax deed is recorded.

Appellees further assert that the evidence shows that Appellant waited more than four years after the date of the tax deed to file its claim for ejectment and quiet title after failing to take actual possession at any time or pay taxes for the previous ten years. Appellant correctly argued below that under section 197.552, Florida Statute (2023), any interest in the property subsequently conveyed to Appellees did not survive the issuance of the tax deed.

Because Appellees therefore have no valid interest in the property, summary judgment in their favor was error. The trial court should have ruled in Appellant's favor on this issue. However, because this argument was not raised in the appeal, it is deemed waived. See *Rosier v. State*, 276 So. 3d 403, 406 (Fla. 1st DCA 2019) (holding issues not raised in the initial brief are considered waived or abandoned).

Nonetheless, we agree with Appellant that the court erred in applying section 95.191, which provides in relevant part: "When the real property is adversely possessed by any person, no action shall be brought by the tax deed holder unless the action is begun within 4 years from the date of the deed." (Emphasis supplied). This language presumes that the property is already being adversely possessed at the time of the tax deed.

See *Salls v. Martin*, 24 So. 2d 41 (Fla. 1945) ("[T]he prohibiting part of the statute is available only where there is in law an 'adverse possession', and from what we have held above there was no adverse possession in law... Section 196.061 is a bar within four years only where there is adverse possession.").

Thus, we conclude that the four-year¹ same statute at issue in this case, but subsequently renumbered.³ limitation applies only where there is adverse possession at the time the tax deed is issued. Appellant further argues that the evidence was conflicting on whether the property was adversely possessed.

We agree that Appellant presented significant evidence contradicting Appellees' claim that the property was adversely possessed beginning in 2012. Accordingly, because there was significant conflicting evidence that the property was adversely possessed beginning in 2012, summary judgment was not proper.

We reverse the summary judgment entered below and remand for further proceedings consistent with this opinion. REVERSED and REMANDED for further proceedings. JAY, C.J., and SOUD, J., concur. _____ Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _____ 4