Affirmed and Memorandum Opinion filed May 28, 2020.

In The

Fourteenth Court of Appeals

NO. 14-18-01110-CV

ALYSSA SERRANO, Appellant

V.

FEDERAL HOME LOAN MORTGAGE CORPORATION, Appellee

On Appeal from the County Civil Court at Law No. 2
Harris County, Texas
Trial Court Cause No. 1118684

M E M O R A N D U M O P I N I O N

In this forcible-detainer action, appellant Alyssa Serrano asks us to reverse the judgment awarding appellee Federal Home Loan Mortgage Corporation possession of the real property Serrano occupied. According to Serrano, reversal is required because (1) the trial court lacked jurisdiction, (2) the trial court erroneously excluded evidence, and (3) the findings of fact and conclusions of law by the judge who presided over the trial are void because the judge's term of office expired before Serrano requested findings. We affirm.

I. BACKGROUND

Federal brought this forcible-detainer action against Serrano in a justice court. After the justice court rendered a default judgment against Serrano, she appealed by trial de novo to Harris County Civil Court at Law No. 2. The Honorable Theresa Chang presided over the trial and rendered judgment in Federal's favor before her term of office expired on December 31, 2018.

A few days after Judge Chang was succeeded by the Honorable Jim F. Kovach, Serrano timely requested findings of fact and conclusions of law, and Judge Chang complied with the request twenty days later. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 30.002(a) ("If a district or county judge's term of office expires . . . during the period prescribed for filing . . . findings of fact and conclusions of law, the judge may . . . file findings of fact and conclusions of law in the case.").

Serrano superseded the judgment and moved for a new trial. At the hearing on the motion, she asserted for the first time that there is no mailbox on the property, and thus, a statutorily required notice to vacate the property could not have been delivered. The trial court denied the motion for new trial, and Serrano appealed.

II. JURISDICTION

The existence of subject-matter jurisdiction is a question of law, which we review de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004). Serrano argues that the county court at law lacked subject-matter jurisdiction for two reasons.

First, she contends that the justice court and the county court at law lacked jurisdiction because Federal filed suit without sending a mandatory pre-suit notice to vacate. We reject this argument because proper notice is an element of forcible

detainer, not a jurisdictional prerequisite. *See, e.g.*, *Furrer v. Furrer*, No. 09-18-00360-CV, 2019 WL 5075864, at *3 (Tex. App.—Beaumont Oct. 10, 2019, pet. denied) (mem. op.) (citing TEX. PROP. CODE ANN. § 24.002(b)); *Geters v. Baytown Housing Auth.*, 430 S.W.3d 578, 584 (Tex. App.—Houston [14th Dist.] 2014, no pet.).

Second, Serrano contends that the courts below lacked jurisdiction because the courts could not decide the issue of possession without first resolving the title dispute. We disagree.

A justice court in the precinct where the real property is located has jurisdiction over forcible-detainer suits. TEX. PROP. CODE ANN. § 24.004. A forcible detainer can occur in several ways, including the refusal of a tenant at will or a tenant by sufferance to surrender possession of real property after the person seeking possession has made a statutorily sufficient notice to vacate. *Id.* § 24.002(a)(2) (describing forcible-detainer actions); *id.* § 24.005 (requiring written notice to vacate before filing suit). In contrast, a justice court lacks jurisdiction to adjudicate title. *Id.* § 27.031(b)(4). Thus, a forcible-detainer action in a justice court determines only the right to actual possession of the property; such a proceeding cannot resolve title disputes, which may be addressed in a separate suit in a court of proper jurisdiction. TEX. R. CIV. P. 510.3(e); *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.).

A party may appeal the justice court's judgment to a statutory county court. TEX. R. CIV. P. 509.8. The appeal is by trial de novo. TEX. R. CIV. P. 510.10(c). In a forcible-detainer appeal, the county court has no greater jurisdiction than the justice court had. *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 435 (Tex. App.—Houston [14th Dist.] 2008, no pet.); *Rice*, 51 S.W.3d at 708–09. Thus, like the justice court, the county court cannot adjudicate title.

But, the mere existence of a title dispute does not deprive the justice court or county court of jurisdiction. *See Gardocki v. Fed. Nat'l Mortg. Ass'n*, No. 14-12-00921-CV, 2013 WL 6568765, at*3 (Tex. App.—Houston [14th Dist.] Dec. 12, 2013, no pet.) (mem. op.) (citing *Goggins v. Leo*, 849 S.W.2d 373, 377 (Tex. App.—Houston [14th Dist.] 1993, no writ)). The title dispute must be "so integrally linked to the issue of possession that possession may not be determined without first determining title." *Id.* (quoting *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex. App.—Corpus Christi 1998, no pet.)). If the right to immediate possession can be adjudicated on a basis other than title, then the justice court (and on appeal, the county court) retains jurisdiction over the forcible-detainer action. *Id.*

Where, as here, the lien documents provide that the mortgagor becomes a tenant at sufferance by failing to surrender possession of the property to the purchaser at a foreclosure sale, the trial court can decide the issue of possession without addressing the title dispute. *See id.* (citing *Salaymeh*, 264 S.W.3d at 435). Such tenant-at-sufferance clauses separate the issue of possession from the issue of title. *Maxwell v. U.S. Bank Nat'l Ass'n*, No. 14-12-00209-CV, 2013 WL 3580621, at *3 (Tex. App.—Houston [14th Dist.] July 11, 2013, pet. dism'd w.o.j.) (mem. op.). And, because a grantor cannot convey more than the grantor possesses, a grantor who is subject to a tenant-at-sufferance clause cannot convey an interest in the property free of the clause. *Pinnacle Premier Props., Inc. v. Breton*, 447 S.W.3d 558, 564 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (sub. op.). Thus, "a deed of trust's tenant-at-sufferance clause binds subsequent occupants whose interests are junior to the deed of trust." *Id*. As a result, the alleged landlord-tenant relationship provides a basis for a forcible-detainer action independent of the title dispute. *See Gardocki*, 2013 WL 6568765, at*3. The forcible-detainer suit can be prosecuted concurrently with the title dispute, even if the title dispute could result in a different

party having a superior right to possession. *Trotter v. Bank of N.Y. Mellon*, No. 14-12-00431-CV, 2013 WL 1928776, at *2 (Tex. App.—Houston [14th Dist.] May 9, 2013, no pet.) (mem. op.) (citing *Salaymeh*, 264 S.W.3d at 436, and *Rice*, 51 S.W.3d at 710); *see also Bittinger v. Wells Fargo, N.A.,* No. 14-10-00698-CV, 2011 WL 4793828, at *2–3 (Tex. App.—Houston [14th Dist.] Oct. 11, 2011, no pet.) (justice court and county court at law had subject-matter jurisdiction to decide possession in forcible-detainer action despite occupant's allegations that the foreclosure sale was wrongful).

Here, the 2008 security instrument contained a tenant-at-sufferance clause, which provided that if the property was sold at a non-judicial foreclosure sale, then borrowers Bill and Duane Hogan, "or any person holding possession of the Property through Borrower[s] shall immediately surrender possession of the Property to the purchaser at that sale." The clause further stated, "If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding." The justice court (and on appeal, the county court at law) accordingly could decide the immediate right to possession based on the tenant-at-sufferance clause independently of the title dispute.

Serrano asserts that possession could not be adjudicated independently of title because she has alleged, in a case pending in a federal district court, that the corporate charter of the original lender, More House Mortgage Inc., was forfeited in 2009, and that all of More House's claims under the deed of trust were extinguished three years later. *See* TEX. BUS. ORGS. CODE ANN. § 11.359. Citing *Yarto v. Gilliland*, Serrano contends that that her allegations are specific evidence of a title dispute so intertwined with possession as to preclude the justice court and the county court at law from exercising jurisdiction over the forcible-detainer action. *Yarto v. Gilliland*, 287 S.W.3d 83, 93 (Tex. App.—Corpus Christi–Edinburg 2009, no pet.)

("the various assertions that comprise a party's title claim" are "specific evidence" of a title dispute if those assertions constitute "a basis for title ownership that is not patently ineffective under the law and is intertwined with the issue of immediate possession"). We disagree.

A justice court or county court at law is not deprived of jurisdiction over a forcible-detainer action merely because the person occupying the property characterizes the security instrument or deed of trust as void. The loan documents establish that the issues of title and possession were separated by the tenant-at-sufferance clause in 2008, and Serrano does not contend that the provision was void *ab initio*. *Cf. Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 283 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (claim that deed of trust is void due to forgery raises a genuine issue of title so intertwined with possession that title must be determined first); *1st Coppell Bank v. Smith*, 742 S.W.2d 454, 457 (Tex. App.—Dallas 1987, no writ) (forged deed of trust is void), *disapproved on other grounds*, *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 678 (Tex. 2000). She also has not cited, and we have not found, any authority that subsequent forfeiture of the original lender's charter reverses that separation.

Because title and possession were separated in 2008, they can be adjudicated separately. The courts below had jurisdiction to determine which party had the superior right to immediate possession on a landlord/tenant basis even though the federal district court has not yet decided the title dispute. *See Trotter*, 2013 WL 1928776, at *2. To prevail in this forcible-detainer action, it was sufficient for Federal to prove that Serrano was a tenant at sufferance who refused to surrender possession upon proper demand. *See* TEX. PROP. CODE ANN. § 24.002(a)(2), (b). For the purpose of this suit, Federal, who purchased the property at a foreclosure sale, was the putative landlord, while Serrano, who acquired her interest in the property

from the Hogans, assumed the position of a tenant at sufferance. Federal was not required to prove title, *see Rice*, 51 S.W.3d at 709, and the trial court was not required to consider defects, if any, in the foreclosure and sale of the property. *Bittinger v. Wells Fargo, N.A.*, No. 14-10-00698-CV, 2011 WL 4793828, at *2 (Tex. App.—Houston [14th Dist.] Oct. 11, 2011, no pet.) (mem. op.).

We overrule this issue.

III. EXCLUSION OF EVIDENCE

Although not identified as a separate issue, Serrano next contends that the trial court erred in excluding three items of evidence that would have supported her request for dismissal for lack of jurisdiction. We review the trial court's exclusion of evidence for abuse of discretion. *Sw. Energy Prod. Co. v. Berry-Helfand*, 491 S.W.3d 699, 727 (Tex. 2016). A trial court abuses its discretion when it acts without reference to guiding rules and principles so that its ruling is arbitrary or unreasonable. *See Low v. Henry*, 221 S.W.3d 609, 614 (Tex. 2007). Even if the trial court abused its discretion in excluding evidence in a civil case, the error is not reversible unless it "probably caused the rendition of an improper judgment." *JBS Carriers, Inc. v. Washington*, 564 S.W.3d 830, 836 (Tex. 2018); TEX. R. APP. P. 44.1(a)(1). With exceptions inapplicable here, the erroneous exclusion of evidence that is "crucial to a key issue" is likely harmful. *JBS Carriers*, 564 S.W.3d at 836 (quoting *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 870 (Tex. 2009) (sub. op.)).

According to Serrano, the first two items that the trial court erroneously excluded were copies of Serrano's live pleadings in her title-dispute case and the warranty deed transferring the property at issue from the Hogans to Bill and Alyssa Serrano; however, both of these exhibits actually were admitted. We therefore address only the third exhibit Serrano offered: a certified copy of a document

showing that the corporate charter or certificate of the Hogans' original lender was forfeited on August 7, 2009. Serrano asserts that the exclusion of this evidence was harmful because the ruling deprived her of self-authenticating factual support for her request for dismissal for want of jurisdiction.

We conclude that the trial court did not reversibly err in sustaining Federal's relevancy objection to this evidence. Evidence is relevant only if it has a tendency to make a fact that is of consequence in determining the action more or less probable. TEX. R. EVID. 401. The courts below had jurisdiction over the forcible-detainer action unless a genuine title dispute was so intertwined with the issue of possession that title had to be determined first. But as explained above, the tenant-at-sufferance cause separated the issues of title and possession so that the courts below could adjudicate the superior right to immediate possession without resolving the title dispute. Because title and possession were separated in 2008, evidence that More House Mortgage's corporate charter was forfeited in 2009 was not relevant to Federal's forcible-detainer action, and the exclusion of that evidence was not harmful.[1]

IV. SUFFICIENCY OF NOTICE

If a tenant at sufferance occupies the premises at issue, then the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible-detainer suit. *See* TEX. PROP. CODE ANN. § 24.005(b). "Notice by mail may be by regular mail, by registered mail, or by certified mail, return receipt requested, to the premises in question." *Id.* § 24.005(f). Subsection (f) of the notice provision requires notice to be given "to the premises in question," but the statute "does not require receipt by any particular person." *Mendoza v. Bazan*, 574 S.W.3d

[1] Because title was not litigated in this case, we express no opinion about whether the excluded evidence would have been relevant to that issue.

594, 607 (Tex. App.—El Paso 2019, pet. denied); *Trimble v. Fed. Nat'l Mortg. Ass'n*, 516 S.W.3d 24, 31 (Tex. App.—Houston [1st Dist.] 2016, pet. denied) (same).

As proof of notice, Federal relied on the business-records affidavit of Joshua Akun and the affidavit's accompanying authenticated documents. This evidence shows that notices to vacate were mailed from the offices of Federal's attorneys on April 23, 2018, to "Bill Hogan, Duane Hogan, and/or all occupants of 188 S. 10th St., Highlands, TX 77562." The notices were sent to that address both by certified mail, return receipt requested, and by postage-prepaid first-class mail. The notice sent via certified mail was stamped, "REFUSED" and "UNABLE TO FORWARD" and was returned to the sender, but Akuna attested that the notice sent by postage-prepaid first-class mail was not returned.

This evidence creates a presumption that the notice sent by first-class mail was delivered. *See Parks v. HSBC Bank USA, Nat'l Ass'n*, No. 14-18-00982-CV, 2020 WL 1025656, at *4 (Tex. App.—Houston [14th Dist.] Mar. 3, 2020, no pet. h.) (mem. op.); *Schor v. U.S. Bank NA*, No. 07-17-00397-CV, 2018 WL 3799880, at *3 (Tex. App.—Amarillo Aug. 9, 2018, no pet.) (mem. op.). Serrano offered no controverting evidence at trial, in her post-trial brief, or even in her motion for new trial.

At the hearing on her motion for new trial, Serrano asserted for the first time, "the property, since I have been there, has never had a mailbox." Her appellate brief contains the same assertion, which we construe as a challenge to the trial court's failure to grant a new trial on that basis. We review the refusal to grant a motion for new trial under the abuse-of-discretion standard. *Dolgencorp of Tex., Inc. v. Lerma*, 288 S.W.3d 922, 926 (Tex. 2009) (per curiam).

We find no abuse of discretion here. Serrano offered no evidence at trial that mail could not be delivered to the property, and a party seeking a new trial based on

new evidence bears the burden to show that (a) the evidence was discovered post-trial, (b) the failure to discover the evidence sooner was not due to a lack of diligence, (c) the new evidence is not cumulative, and (d) the new evidence is so material that it would probably produce a different result if a new trial were granted. *See Tex-On Motor Ctr. v. Transouth Fin. Corp.*, No. 14-04-00366-CV, 2006 WL 664161, at *3 (Tex. App.—Houston [14th Dist.] Mar. 16, 2006, no pet.) (mem. op.) (citing *Jackson v. Van Winkle*, 660 S.W.2d 807, 809 (Tex. 1983), *overruled on other grounds by Moritz v. Preiss*, 121 S.W.3d 715 (Tex. 2003)). Serrano neither represented that the alleged absence of a mailbox was newly discovered evidence nor explained her failure to offer evidence at trial of the alleged lack of notice. Because Serrano failed to meet her burden as the movant for a new trial, the trial court did not abuse its discretion in denying the motion.

We overrule this issue.

V. VALIDITY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW

In her last issue, Serrano contends that because she timely requested findings of fact and conclusions of law after the term of the judge who presided over the trial ended, the judge's findings of fact and conclusions of law are void. She argues that neither that judge nor the judge's successor is authorized to sign findings of fact and conclusions of law on these facts, so she is entitled to a new trial because her timely request for findings cannot be fulfilled.[2] We need not decide whether the findings in

[2] The Honorable Theresa Chang presided over the trial de novo in the Harris County Civil Court at Law No. 2 and signed a final judgment in this case on December 17, 2018. Judge Chang's term ended on December 31, 2018, and she was succeeded by the Honorable Jim F. Kovach on January 1, 2019. Serrano timely requested findings of fact and conclusions of law on January 4, 2019, and Judge Chang signed findings of fact and conclusions of law twenty days later. Citing Texas Civil Practice and Remedies Code section 30.002, Serrano contends that Judge Change could make findings after leaving office only if Serrano requested the findings before Judge Chang's term of office expired, and that Judge Kovach cannot file factual findings in the case at all.

this case are void, because even assuming, without deciding, that they are, the resulting absence of findings would be harmless.

If a party timely complies with the rules governing requests for findings of fact and conclusions of law,[3] the trial court's failure to file findings is presumed harmful. *Ad Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 135 (Tex. 2017) (per curiam) "Harm" in this context means that the absence of findings "probably prevented the appellant from properly presenting the case to the court of appeals." *See* TEX. R. APP. P. 44.1(a)(2).

But the presumption of harm is rebutted when "the record before the appellate court affirmatively shows that the complaining party suffered no injury." *Ad Villarai, LLC v. Chan Il Pak*, 519 S.W.3d 132, 135 (Tex. 2017) (per curiam) (quoting *Cherne Indus., Inc. v. Magallanes*, 763 S.W.2d 768, 772 (Tex. 1989)). The controlling issue generally is whether the circumstances of the case would require the appellant to guess at the reasons for the trial court's decision. *Nicholas v. Envtl. Sys. (Int'l) Ltd.*, 499 S.W.3d 888, 894 (Tex. App.—Houston [14th Dist.] 2016, pet. denied) (citing *Elliott v. Kraft Foods N. Am., Inc.*, 118 S.W.3d 50, 54–55 (Tex. App.–Houston [14th Dist.] 2003, no pet.)).

Serrano was not left to guess at the reasons for the judgment. This was a straightforward trial on a single theory of recovery, resulting in a transcript that is only eleven pages long. Because the appellate record affirmatively establishes that Serrano was not harmed by the alleged invalidity of the findings of fact and conclusions of law, we overrule this issue.

[3] *See* TEX. R. CIV. P. 296, 297, and 298.

VI. CONCLUSION

Because the county court at law had jurisdiction over the case and no reversible error has been shown, we affirm the judgment.

/s/ Tracy Christopher
Tracy Christopher
Justice

Panel consists of Justices Christopher, Bourliot, and Hassan.