

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

NO. 03-19-00271-CV

Darla Goulla, Appellant

v.

Randy Gool, Gary Gool, Evan Gool and George McAlpine, Appellees

**FROM THE COUNTY COURT AT LAW NO. 1 OF WILLIAMSON COUNTY
NO. 18-2095-CC, THE HONORABLE BRANDY HALLFORD, JUDGE PRESIDING**

MEMORANDUM OPINION

Darla Goulla appeals the county court at law's judgment awarding appellees possession of a mobile home and the land on which it is located (collectively, "the Property") in Williamson County. Appellees assert that because Goulla is no longer in possession of the Property and has no right to current possession, this appeal of the forcible-detainer action is moot. We agree.

BACKGROUND

Goulla is a former owner of the Property. She asserts that at least the mobile home remains hers, even after foreclosure. On May 3, 1999, Goulla executed a Texas Home Equity Deed of Trust to secure a Note. The Deed of Trust shows Green Tree Financial Servicing Corporation as the lender and states that Goulla has conveyed the Property, including "all

existing and future improvements, structures, fixtures and replacements that may now, or at any time in the future, be part of the real estate” to secure the Note. At some point, Wells Fargo Bank, N.A., became the owner and holder of the Note and Deed of Trust, and, according to the magistrate’s report in a related federal court suit in which Goulla challenged the foreclosure, “Wells Fargo appears to have foreclosed on the Property.” In December 2016, appellees purchased the property at a foreclosure sale conducted pursuant to the Texas Home Equity Deed of Trust. A Substitute Trustee’s Deed conveying legal title to the Property to appellees was executed and recorded in Williamson County’s property records. Appellees initiated eviction proceedings against Goulla and obtained a final judgment in October 2017 that awarded appellees possession of the Property. Appellees took possession of the Property pursuant to a writ of possession.

After being evicted, Goulla returned to the Property without permission, so appellees initiated a second eviction proceeding. In April 2019, the trial court rendered another judgment awarding appellees possession of the Property. Goulla did not file a supersedeas bond to suspend the judgment. Appellees again took possession of the Property pursuant to another writ of possession.

ANALYSIS

A forcible-detainer action is a procedure to determine the right to immediate possession of real property when there is not unlawful entry. *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926 (Tex. App.—Dallas 2010, no pet.). To prevail in a forcible-detainer action, a plaintiff need not prove title. Tex. R. Civ. P. 510.3(e) (“The court must adjudicate the right to actual possession and not title.”); *Dormady v. Dinero Land & Cattle Co.*, 61 S.W.3d 555, 557

(Tex. App.—San Antonio 2001, pet. dism'd w.o.j.). Instead, the plaintiff need only present evidence of ownership sufficient to demonstrate a superior right to immediate possession. *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 433 (Tex. App.—Houston [1st Dist.] 2007, no pet.). Failure to supersede a forcible-detainer judgment does not divest the appellant of the right to appeal, but the judgment may be enforced, including the issuance of a writ of possession evicting the tenant from the premises. *Bowser v. Rice Capital, LLC Series 23*, No. 03-18-00679-CV, 2019 Tex. App. LEXIS 4547, at*3 (Tex. App.—Austin June 4, 2019, pet. filed) (mem. op.) (citing *Marshall v. Housing Auth. of the City of San Antonio*, 198 S.W.3d 782, 786-87 (Tex. 2006); *Wilder v. MWS Capital, LLC*, No. 03-18-00195-CV, 2018 Tex. App. LEXIS 9498, at *4-5 (Tex. App.—Austin Nov. 21, 2018, no pet.) (mem. op.)). An appeal from a forcible-detainer action becomes moot if the appellant is no longer in possession of the property, unless the appellant holds and asserts “a potentially meritorious claim of right to current, actual possession.” *Marshall*, 198 S.W.3d at 787.

Goulla did not supersede the judgment, and appellees took possession of the Property when the writ of possession was executed. To hold that Goulla’s claim is not moot, this Court would have to determine that she has asserted a potentially meritorious claim of right to possession. Goulla makes a variety of assertions that do not bear on her right to possession of the Property.¹ As it relates to possession, Goulla argues that the mobile home is rightfully hers. However, in addition to the language of the signed Deed of Trust, which declares that the

¹ Goulla’s brief begins by referring to the “failure of public servants to secure the Goulla’s right to life, liberty and the pursuit of happiness,” followed by a citation to *Mason’s Manual of Legislative Procedure*. She discusses the “National Stolen Property Act.” She complains about some of the entities involved in the federal foreclosure action. She also seems to assert that some of the entities forged documents, but she provides no evidence for these assertions.

Property includes “all existing and future improvements, structures, fixtures and replacements that may now, or at any time in the future, be part of the real estate,” the record also contains a copy of a 1996 “Statement of Ownership” for the mobile home in which Goulla declares the mobile home to be “real property.” *See* Tex. Occ. Code §§ 1201.2055 (providing that an “owner may elect to treat a manufactured home as real property only if the home is attached to . . . real property that is owned by the owner of the home”), .2076 (prohibiting statement of ownership converting real property to personal property unless the Department of Housing and Community Affairs has determined that each lien is released by the lienholder). Goulla has neither presented evidence that the mobile home was not attached to the land at issue in this appeal nor has she filed a reporter’s record. *See Nicholson v. Fifth Third Bank*, 226 S.W.3d 581, 583 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (stating that if a reporter’s record is not filed, we assume the trial court’s decision was supported by sufficient evidence). Under the circumstances, Goulla has not asserted a potentially meritorious claim of right to current, actual possession. Consequently, no live controversy exists for this Court to decide any issue of possession.

CONCLUSION

We dismiss Goulla’s appeal as moot.

Gisela D. Triana, Justice

Before Chief Justice Rose, Justices Baker and Triana

Dismissed as Moot

Filed: May 28, 2019