



COURT OF APPEALS
EIGHTH DISTRICT OF TEXAS
EL PASO, TEXAS

GEORGE MOLINAR,	§	No. 08-14-00299-CV
	§	
Appellant,	§	Appeal from the
	§	
v.	§	County Court at Law No. 3
	§	
MOHD REFAEI,	§	of El Paso County, Texas
	§	
Appellee.	§	(TC# 2013-CCV02705)
	§	

MEMORANDUM OPINION

George A. Molinar, *pro se*, appeals from a judgment granting Mohd Refaei a writ of possession in a forcible detainer action. We affirm.

FACTUAL SUMMARY

On May 26, 2011, the City of El Paso was awarded judgment in the amount of \$31,165.06 for delinquent taxes on real property located in El Paso County, and the County Court at Law No. 5 entered an order of sale.¹ Mohd Refaei purchased the property for \$65,000 at a tax sale, and on February 20, 2013, Richard Wiles executed a sheriff's tax deed to Refaei. When Molinar failed to vacate the premises after Refaei made demand on him to do so, Refaei filed a forcible detainer suit in the Justice of the Peace Court. On June 4, 2013, the Justice of the Peace entered judgment granting Refaei possession of the premises and ordered Molinar to

¹ The suit was styled *City of El Paso v. George Molinar* (cause number 2008TX354).

vacate no later than June 10, 2013. Molinar did not vacate and a writ of possession issued. Molinar appealed to the county court at law. The trial court conducted a bench trial on June 17, 2014, and it entered judgment in Refaei's favor on June 23, 2014. The trial court withdrew its judgment, and on July 30, 2014, the court entered a new judgment in Refaei's favor finding that he had not received any income from Molinar for the premises and Refaei had the right of possession to the premises. The judgment also granted a writ of possession. Molinar filed notice of appeal, and the trial court set the supersedeas bond at \$1,000. Molinar deposited \$1,000 cash in lieu of a supersedeas bond.

SUPERSEDEAS BOND

In Issues One and Six, Molinar contends the trial court abused its discretion by setting an arbitrary and excessive supersedeas bond in the amount of \$1,000. We have already determined the trial court did not abuse its discretion in setting a \$1,000 supersedeas bond. As permitted by Rule 24.4, Molinar challenged the supersedeas bond by filing a motion in this Court. *See* TEX.R.APP.P. 24.4(a). We reviewed the motion and determined that the trial court did not abuse its discretion by setting the supersedeas bond in the amount of \$1,000. *See Molinar v. Refaei*, No. 08-14-00299-CV, 2015 WL 3777280, at *2 (Tex.App. – El Paso June 16, 2015, mem. op. on motion). Issues One and Six are overruled.

SUBJECT MATTER JURISDICTION

In Issue Two, Molinar contends that the County Court at Law No. 3 lacked subject matter jurisdiction because Refaei failed to show he had a greater right to possession of the property. Subject matter jurisdiction “involves a court’s power to hear a case.” *Tellez v. City of Socorro*, 226 S.W.3d 413, 413 (Tex. 2007). The justice courts are granted original jurisdiction over forcible detainer actions. TEX.GOV’T CODE ANN. § 27.031(a)(2)(West Supp. 2016). It is well

settled that issues of title are not adjudicated in a forcible detainer suit and the only issue to be decided is the right to immediate possession of the property. *Marshall v. Housing Auth. of the City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006); *Mekeel v. U.S. Bank Nat. Ass'n*, 355 S.W.3d 349, 352-53 (Tex.App. – El Paso 2011, pet. dismiss'd); *Williams v. Bank of New York Mellon*, 315 S.W.3d 925, 927 (Tex.App. – Dallas 2010, no pet.); *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex.App. – Dallas 2001, no pet.); see TEX.R.CIV.P. 510.3(e) (in an eviction case, the “court must adjudicate the right to actual possession and not title”). Forcible detainer judgments may be appealed to the county courts for a *de novo* hearing on the issue of possession. *Rice*, 51 S.W.3d at 708. When a county court at law sits as an appellate court, as in this case, the court’s jurisdiction is limited to that of the justice court. *Id.* In other words, where a county court hears an appeal from a justice court on a forcible detainer action, the court’s review is limited to the issue of possession, and it cannot review the issue of title. *Murray v. U.S. Bank Nat’l Assoc.*, 411 S.W.3d 926, 929 (Tex.App. – El Paso 2013, no pet.).

A forcible detainer action is intended to be a speedy, simple, and inexpensive means to obtain possession without resort to an action on the title. *Mekeel*, 355 S.W.3d at 352; *Williams*, 315 S.W.3d at 926-27. To prevail in a forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Rice*, 51 S.W.3d at 709. The plaintiff meets its evidentiary burden by presenting a substitute trustee’s deed, a deed of trust, and notice to residents of the property to vacate. See *Murray*, 411 S.W.3d at 929; *Mekeel*, 355 S.W.3d at 357; *Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 471 (Tex.App. – Dallas 2010, pet. dismiss'd w.o.j.); *Williams*, 315 S.W.3d at 927.

Molinar’s assertion that Refaei failed to meet his burden of establishing a greater right to

possession, even if true, does not deprive the trial court of subject matter jurisdiction. We have liberally construed Molinar's brief and find that this argument challenges the legal sufficiency of the evidence to establish this finding. In a legal sufficiency review, we credit evidence favorable to the finding if a reasonable fact finder could, disregard contrary evidence unless a reasonable fact finder could not, and reverse the fact finder's determination only if the evidence presented would not enable a reasonable and fair-minded person to reach the judgment under review. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We will sustain the legal sufficiency challenge if the record reveals: (1) the complete absence of evidence supporting the finding; (2) the court is barred by rules of law or of evidence from giving weight to the only evidence offered to support the finding; (3) the evidence offered to prove the finding is no more than a mere scintilla; or (4) the evidence conclusively establishes the opposite of the finding. *Id.* at 810-11. More than a scintilla of evidence exists when the evidence presented rises to a level that would enable reasonable and fair-minded people to differ in their conclusions. *Ford Motor Co. v. Ridgway*, 135 S.W.3d 598, 601 (Tex. 2004). Refaei introduced into evidence the order of sale and the sheriff's tax deed conveying the property to him. Having reviewed all of the evidence under the legal sufficiency standard of review, we conclude that it is sufficient to demonstrate that Refaei has a superior right of possession by virtue of his ownership of the property. Issue Two is overruled.

DENIAL OF MOTION FOR CONTINUANCE

In Issues Three and Nine, Molinar asserts that the trial court abused its discretion by not permitting him to introduce evidence and by denying his motion for continuance. We understand Molinar to argue that because the trial court did not grant his motion for continuance, he was unable to obtain and introduce into evidence a survey that might have raised a question

whether the structure in which he lives was not located within the boundaries of the property sold at the tax sale. Given that Molinar did not attempt to introduce this evidence, we have construed his argument as raising a complaint about the trial court's denial of his motion for continuance rather than the exclusion of evidence.²

We review the denial of a motion for continuance under an abuse of discretion standard. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004). A court abuses its discretion when it acts without reference to any guiding rules or principles; in other words, when the act is arbitrary or unreasonable. *Worford v. Stamper*, 801 S.W.2d 108, 109 (Tex. 1990).

Molinar filed a motion for continuance on May 16, 2014,³ and on the day of trial, June 17, 2014, Molinar argued his motion for continuance. Molinar asserted that he needed additional time to find qualified counsel to represent him, but the trial court had granted a continuance in March 2014 for the same reason. The trial court denied the motion and proceeded with the bench trial. At the time Molinar filed his third motion for continuance, the case had been pending for approximately eleven months, and the trial court had already granted two continuances. The forcible detainer action was created to provide a speedy, simple, and inexpensive means for resolving the question of the right to possession of real property. *Rice*, 51 S.W.3d at 709. Given that the trial court had granted Molinar a continuance three months earlier for the purpose of retaining counsel, we conclude the trial court did not abuse its discretion by denying the third motion for continuance based on the same ground. Issues Three and Nine are overruled.

MOTION TO RECUSE

In Issues Four and Five, Molinar argues the trial court erred by proceeding with the trial

² Molinar introduced into evidence a 1979 survey of the property, and he cross-examined Refaei about the survey.

³ The trial court had previously granted two other continuances at Molinar's request.

and entering judgment after Molinar made his oral motion to recuse. During trial and after evidence had been offered, Molinar made an oral motion to recuse the Honorable Javier Alvarez, Judge of the County Court at Law No. 3. The stated basis for the motion to recuse was the trial court's refusal to rule on Molinar's pending motions on June 6, 2014, and the court's rulings made at the beginning of the trial. Judge Alvarez denied the motion, proceeded with the trial, and entered final judgment on July 30, 2014. On August 6, 2014, Molinar filed two unverified motions to recuse Judge Alvarez specifying the grounds for recusal. Molinar referred to these as his first motion to recuse and second motion to recuse. The second motion to recuse included the same grounds as his first motion to recuse. Many of the grounds set forth in the motions existed ten or more days prior to the date of trial. When Molinar filed the written motions to recuse on August 6, 2014, Judge Alvarez immediately referred the recusal motions to the Regional Presiding Judge, the Honorable Stephen Ables, as required by Rule 18a(f)(1)(B). Judge Ables denied the second motion to recuse which encompassed the grounds set out in the first motion to recuse.

A motion to recuse must be verified, must assert one or more of the grounds listed in Rule 18b, and must not be based solely on the judge's rulings in the case. *See* TEX.R.CIV.P. 18a(a)(1), (2), (3). An oral motion to recuse is not valid under Rule 18a. *See Barron v. State Attorney General*, 108 S.W.3d 379, 382 (Tex.App. – Tyler 2003, no pet.). Even if Molinar had filed a verified motion during trial, Judge Alvarez would not have been required to stop the trial because Molinar raised the recusal issue after evidence was offered. *See* TEX.R.CIV.P. 18a(f)(2)(B). Further, Judge Alvarez was not prohibited from entering judgment on July 30, 2014, because Molinar filed his written motion to recuse after judgment was entered. Issues Four and Five are overruled.

MOTION FOR NEW TRIAL

In Issues Seven and Eight, Molinar asserts that the trial court failed to grant his motion for new trial and motion to modify the judgment based on the presentation of newly discovered evidence. In the body of Issue Seven, Molinar includes several other arguments.

Standard of Review

A trial court's ruling on a motion for new trial is reviewed under the abuse of discretion standard. *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010). The test for abuse of that discretion is whether the trial court acted arbitrarily or without reference to guiding legal principles. *Cire v. Cummings*, 134 S.W.3d 835, 838-39 (Tex. 2004). We view the evidence submitted to the trial court in the light most favorable to the court's ruling, draw all legitimate inferences from the evidence, and defer to the trial court's resolution of conflicting evidence. *Alanis v. U.S. Bank National Association*, 489 S.W.3d 485, 510 (Tex.App. – Houston [1st Dist.] 2015, pet. denied).

Newly Discovered Evidence

Molinar alleged in his motion for new trial that he had discovered new evidence. A party seeking a new trial on grounds of newly discovered evidence must demonstrate to the trial court that (1) the evidence has come to its knowledge since the trial, (2) its failure to discover the evidence sooner was not due to lack of diligence, (3) the evidence is not cumulative, and (4) the evidence is so material it would probably produce a different result if a new trial were granted. *Waffle House*, 313 S.W.3d at 813. In his affidavit attached to the motion, Molinar identified the following as newly discovered evidence: (1) a survey which purportedly shows that the residence in which he resides on the property is not within the boundaries of the property purchased by Refaei; and (2) letters from the Department of the Interior indicating that “they own part of the

land upon which the homestead exists.”

We begin with the argument related to the survey. Molinar introduced a survey from 1979 into evidence during trial and cross-examined Refaei about it. During his case-in-chief, Molinar asked to see a survey which had been performed at Refaei’s request and that was allegedly in Refaei’s possession. Molinar represented that Refaei’s counsel had promised to provide him a copy of the survey when the case was set for jury trial on March 5, 2014. Both parties appeared for trial with counsel. Molinar had previously been self-represented. The trial court permitted the parties to engage in settlement negotiations for a few minutes while the jury waited, but no agreement was reached. The parties announced to the court that both parties waived their right to a jury, and they would request a non-jury setting if the case could not be settled. Refaei also agreed to provide Molinar with a copy of a survey. Molinar’s counsel represented to the court that he believed Refaei was in possession, or would soon be in possession, of a survey that would be material to Molinar’s defense. The non-jury trial occurred more than three months later, on June 17, 2014. Thus, Molinar was aware of the existence of the survey prior to the non-jury trial, but he did not present any evidence that would show he exercised diligence in attempting to obtain a copy of the survey prior to the non-jury trial.

Molinar failed to establish that his failure to discover the letters from the Department of Interior sooner was not due to a lack of diligence. Molinar stated in his motion for new trial affidavit that the letters from the Department of Interior were in his possession, but he had forgotten about them.⁴ The trial court could have found that Molinar did not show he had exercised diligence with respect to the discovery of this evidence. The trial court did not abuse its discretion by denying Molinar’s motion for new trial based on newly discovered evidence.

Jurisdiction

⁴ Molinar said that he found these letters in an “old forgotten stack of papers.”

Molinar next argues that the Justice Court and County Court at Law No. 3 lacked jurisdiction because there is a dispute regarding title. A forcible detainer action is not exclusive, but cumulative of any other remedy that a party may have in the courts of this state. *Bruce v. Federal National Mortgage Association*, 352 S.W.3d 891, 893 (Tex.App. – Dallas 2011, pet. denied); see *Rice*, 51 S.W.3d at 709. The displaced party is entitled to bring a separate suit in the district court to determine the question of title. *Bruce*, 352 S.W.3d at 893; *Rice*, 51 S.W.3d at 709. The mere existence of a title dispute does not deprive a justice court or county court at law of jurisdiction. *Bruce*, 352 S.W.3d at 893. These courts are deprived of jurisdiction only if “the right to immediate possession necessarily requires the resolution of a title dispute.” *Bruce*, 352 S.W.3d at 893 (quoting *Rice*, 51 S.W.3d at 713). There is no evidence that Molinar filed suit in the district court to determine title. Consequently, Molinar has failed to establish that the Justice Court and County Court at Law lacked jurisdiction. The trial court did not abuse its discretion by denying Molinar’s motion for new trial on this ground.

Right to a Jury Trial

Finally, Molinar argues that he was deprived of his right to a jury trial. We review a trial court’s denial of a jury demand for an abuse of discretion. *Mercedes-Benz Credit Corp. v. Rhyne*, 925 S.W.2d 664, 666 (Tex. 1996). On October 2, 2013, Molinar made a jury demand and paid the required fee. The case was set for a jury trial on March 5, 2014. On that date, Molinar, who was represented by counsel, waived his right to a jury while a jury was waiting. The trial judge made clear that if the parties wished to have a jury trial, this was their opportunity because the jury was present and waiting. She added that if the parties wished to waive a jury trial, then the jury would be waived, but she would not allow the parties to file another jury demand. With this knowledge, both parties waived their right to a jury. Prior to the June 17, 2014 non-jury trial

setting, Molinar filed a pro se motion to vacate his waiver of the right to jury trial because his attorney had not provided him competent representation. Molinar also argued at the hearing that he waived his right to a jury trial in exchange for obtaining a copy of the survey from Refaei, but Refaei failed to give the document to him prior to trial. The trial court denied the motion. Molinar did not present any evidence at the new trial hearing to support his claim that his waiver of the right to a jury trial was invalid. We conclude that no abuse of discretion is shown. Issues Seven and Eight are overruled. Having overruled each issue presented, we affirm the judgment of the trial court.

STEVEN L. HUGHES, Justice

September 21, 2016

Before McClure, C.J., Rodriguez, and Hughes, JJ.