

Affirmed and Memorandum Opinion filed May 27, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00100-CV

JOHN F. HEARD JR. AND JANET F. HEARD A.K.A. J.L. FLIPPIN, Appellants

V.

MINGYI CHOWWANG, Appellee

**On Appeal from the County Court at Law No. 1
Harris County, Texas
Trial Court Cause No. 928312**

MEMORANDUM OPINION

In this forcible detainer case, the appellants assert that the trial court lacked subject-matter jurisdiction because the county court could not determine which party had the superior right to immediate possession of the premises without first resolving a title dispute. They additionally contend that the trial court erred in awarding attorneys' fees because the prevailing party did not plead for their recovery or prove the amount to be awarded. We conclude that (1) the trial court properly exercised jurisdiction without adjudicating title, (2) entitlement to attorneys' fees was tried by consent, and (3) the reasonableness of the attorneys' fees was undisputed. We therefore affirm the trial court's judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

In 1998, John and Janet Heard owned a residence at 209 Kensington Court, Houston, Texas; the residence was subject to a mortgage. In 2001 and 2004, the federal government recorded notices of tax liens against the property, and in 2006, the mortgagee began foreclosure proceedings. The foreclosure was stayed during bankruptcy proceedings, but resumed in the summer of 2007. On or about August 7, 2007, Kensington Premium Holdings, L.L.C. purchased the property for \$925,000, secured by a promissory note and deed of trust to Westfund, L.L.C. Effective August 1, 2007, Kensington leased the property to the Heards for one year and assigned the rental payments to Westfund.

On November 28, 2007, the federal government recorded a certificate of redemption. The certificate is dated October 26, 2007, and contains a recital that the United States redeemed the property by paying Kensington \$943,246. Mingyi Chowwang¹ and Ying Chai Chowwang then purchased the property from the government at a public auction on January 28, 2008 for \$1.63 million. The government conveyed the property to the Chowwangs using a quitclaim deed, which was recorded on March 10, 2008.

Mingyi Chowwang's attorney wrote to the Heards on July 23, 2008 and demanded that they vacate the property within three days if they were not current with their rental payments under a valid lease. Chowwang's attorney further informed the Heards that if they provided proof that they had been timely paying rent under a valid lease throughout the time since the foreclosure, then they would have thirty days in which to sign a contract with Chowwang or vacate the premises. The record does not show that such evidence was produced.

¹ In some documents, this name appears as "Ming Yi Chowwang."

On August 7, 2008, Chowwang filed a petition in the justice court for forcible detainer. The justice court ruled in Chowwang's favor, and the Heards appealed to the county court at law. On January 15, 2009, the county court entered judgment awarding possession and \$3,269 in attorneys' fees to Chowwang. At the Heards' request, the county court also signed findings of fact and conclusions of law. This appeal ensued.

II. ISSUES

In their first issue, the Heards argue that the trial court lacked jurisdiction over this action because it was necessary to adjudicate title in order to determine which party had a superior right to immediate possession. In their second issue, they contend that the trial court erred in awarding Chowwang attorneys' fees because such fees were neither pleaded nor proved.

III. ANALYSIS

A. Governing Law

Whether a trial court has subject-matter jurisdiction is a question of law which we review *de novo*. *Tex. Natural Res. Conservation Comm'n v. IT-Davy*, 74 S.W.3d 849, 855 (Tex. 2002). A justice court in the precinct in which the property is located has original jurisdiction in forcible detainer suits. TEX. PROP. CODE ANN. § 24.004 (Vernon 2000). It lacks jurisdiction, however, over suits to try title. TEX. GOV'T CODE ANN. § 27.031(b)(4) (Vernon 2004 & Supp. 2009); TEX. R. CIV. P. 746.

The sole issue in a forcible detainer action is which party has the right to immediate possession of the property. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). To prevail in a forcible detainer action, a plaintiff is not required to prove title, but must only present sufficient evidence of ownership to demonstrate a superior right to

immediate possession. *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 709; *Goggins v. Leo*, 849 S.W.2d 373, 377 (Tex. App.—Houston [14th Dist.] 1993, no writ). In such an action, the merits of title are not adjudicated. TEX. R. CIV. P. 746.

The justice court’s judgment may be appealed to the county court. TEX. R. CIV. P. 749. Although the appeal proceeds as a trial de novo,² the county court’s appellate jurisdiction is no greater than that of the justice court. *Rice*, 51 S.W.3d at 708–09. Thus, a county court cannot adjudicate title in an appeal from a justice court’s judgment in a forcible detainer suit. *Id.* And if a question of title is so intertwined with the issue of possession as to preclude adjudication of the right to possession without first determining title, neither the justice court nor the county court on appeal has jurisdiction. *Terra XXI, Ltd. v. AG Acceptance Corp.*, 280 S.W.3d 414, 417 (Tex. App.—Amarillo 2008, pet. denied). In most cases, however, the right to title can be determined separately from the right to immediate possession. *Rice*, 51 S.W.3d at 710.

B. Right to Possession

The Heards contend that the county court lacked subject-matter jurisdiction because the adjudication of the detainer action necessarily required it to resolve the title dispute. We addressed an analogous issue in *Goggins v. Leo*, *supra*. There, Leo purchased property at a tax sale and brought a forcible detainer action against the former owner’s tenant. *Goggins*, 849 S.W.2d at 375. The tenant appealed the adverse judgment and argued, *inter alia*, that Leo failed to prove up title. *Id.* at 377. We explained that one who purchases a property at a tax sale “need not prove up title, but need only show sufficient evidence of ownership to demonstrate a superior right to immediate possession.” *Id.*

² TEX. R. CIV. P. 751.

Contrary to the Heards' argument, it was not necessary for the trial court to resolve a title dispute, because Chowwang could demonstrate a superior right to immediate possession by producing evidence that (1) Chowwang is the owner; (2) the Heards were tenants at will or by sufferance,³ which includes a person who occupies real property "at the time of foreclosure of a lien superior to the tenant's lease";⁴ (3) the foreclosure was of a lien superior to the Heards' lease;⁵ (4) Chowwang demanded possession; and (5) the Heards refused to leave. *See Goggins*, 849 S.W.2d at 377. Chowwang did produce such evidence, and the Heards do not challenge its legal or factual sufficiency but argue that their lease was superior to Chowwang's deed.

The federal tax liens were recorded in 2001 and 2004. Kensington did not purchase the property until 2007. Kensington took the property subject to those tax liens. The lease with the Heards was therefore subject to the tax liens also. *See* 26 U.S.C. §§ 6321–6323 (2006) (providing that, with exceptions inapplicable here, a federal tax lien arises when the tax is assessed and upon recordation, has priority over all subsequent liens). Chowwang acquired the IRS's superior interest in the property, through the redemption process and quitclaim deed. Therefore, Chowwang's interest is superior to Kensington's interest and the Heards' lease. *See United States v. Bess*, 357 U.S. 51, 57, 78 S. Ct. 1054, 1058, 2 L. Ed. 2d 1135 (1958) (the transfer of property after the attachment of the lien does not affect the lien).⁶

³ A tenant at sufferance "is merely an occupant in naked possession after his right to possession has ceased." *Id.* (citing BLACK'S LAW DICTIONARY 1314 (5th ed. 1979)).

⁴ TEX. PROP. CODE ANN. § 24.002(a)(2).

⁵ *See Rankin v. Scott*, 25 U.S. 177, 179, 6 L. Ed. 592 (1827) ("The principle is believed to be universal, that a prior lien gives a prior claim, which is entitled to prior satisfaction, out of the subject it binds, unless the lien be intrinsically defective, or be displaced by some act of the party holding it . . ."); *World Help v. Leisure Lifestyles, Inc.*, 977 S.W.2d 662, 668 (Tex. App.—Fort Worth 1998, pet. denied) ("In a contest over rights or interests in property, ordinarily the party that is first in time is first in right.").

⁶ Moreover, the lease expired before Chowwang filed suit, and under the terms of the lease, the Heards were "considered to be occupying the premises on a month-to-month tenancy."

The Heards also argue that “title is still in Kensington” because (1) Kensington gave Westfund a deed of trust, (2) the government did not pay Westfund, and (3) the government conveyed title to Chowwang using a quitclaim deed. The IRS redemption from Kensington and its deed to Chowwang establish Chowwang’s superior right to possession. As the Heards previously pointed out, the justice court lacked jurisdiction to adjudicate title, and the county court’s appellate jurisdiction was no greater than that of the justice court. If Kensington wishes to contest the IRS redemption, it can do so in another court proceeding. This lawsuit only determined the right to possession. We therefore overrule the Heards’ first issue.

C. Attorneys’ Fees

In their second issue, the Heards correctly point out that all claims for relief must be pleaded,⁷ and Chowwang did not plead for attorneys’ fees. We note, however, that when this case was submitted for nonjury trial, the trial court stated on the record that Chowwang was “asking for attorney’s fees.” *See* TEX. PROP. CODE ANN. § 24.006(a), (b) (in a forcible detainer action, a landlord who complies with statutory notice provisions is eligible to recover attorneys’ fees). The court then asked Chowwang’s counsel, “How much are you asking for in attorney’s fees?” Chowwang’s attorney responded, “\$3,269.” The trial court subsequently asked the Heards’ trial counsel, “[D]o you contest that in the event that you do not prevail, but the other side prevails, that \$3,269 would be a reasonable attorney’s fees?” *See* TEX. R. CIV. P. 301 (“The judgment of the court shall conform to the pleadings, the nature of the case proved and the verdict, if any, and shall be so framed as to give the party all the relief to which he may be entitled either in law or equity.”). The Heards’ attorney answered, “I do not.”

⁷ *See* TEX. R. CIV. P. 47.

Based on this record, we conclude that the issue was tried by consent and that the Heards waived any complaint about the amount of fees. *See* TEX. R. CIV. P. 67 (“When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings.”). We overrule the Heards’ second issue.

IV. CONCLUSION

Because the county court acted within its jurisdiction in awarding Chowwang possession of the property and its award of attorneys’ fees is supported by the record, we affirm the trial court’s judgment.

/s/ Tracy Christopher
Justice

Panel consists of Chief Justice Hedges and Justices Anderson and Christopher.