

Affirmed and Memorandum Opinion filed August 3, 2010.



In The

Fourteenth Court of Appeals

NO. 14-09-00134-CV

SHELTON ROBERT MODELIST, Appellant

V.

**DEUTSCHE BANK NATIONAL TRUST COMPANY, F/K/A BANKERS TRUST
OF CALIFORNIA, AS TRUSTEE FOR AAMES FUNDING CORPORATION
MT2001-4, Appellee**

**On Appeal from the County Civil Court at Law No. 3
Harris County, Texas
Trial Court Cause No. 926,859**

MEMORANDUM OPINION

Shelton Robert Modelist appeals from a judgment in favor of appellee, Deutsche Bank National Trust Company, F/K/A Bankers Trust of California, As Trustee For Aames Funding Corporation MT2001-4, in its forcible-detainer action. In three issues presented in his brief and two issues in a supplemental brief, Modelist contends the trial court lacked subject-matter jurisdiction, abused its discretion by allowing appellee's attorney to testify as its representative, and violated Modelist's due-process rights. We affirm.

I. BACKGROUND

Appellee, as Modelist's mortgagee, foreclosed on certain real property pursuant to a Texas Home Equity Security Instrument executed by Modelist. Appellee purchased the property at the foreclosure sale conducted on June 3, 2008. The property was conveyed to appellee via a Substitute Trustee's Deed. The security instrument provided that, in the event of such a sale, Modelist or any person holding possession "shall immediately surrender possession of the Property to the purchaser at that sale . . ." and "[i]f possession is not surrendered, [Modelist] or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding." On June 13, 2008, appellee sent Modelist and all occupants a notice to vacate the premises. *See* Tex. Prop. Code Ann. § 24.005 (Vernon Supp. 2009) (prescribing rules for providing notice to vacate before filing eviction suit). Modelist refused to vacate the premises.

Appellee then filed a forcible-detainer action against Modelist in a justice court. *See* Tex. Prop. Code Ann. § 24.002(a)(2) (Vernon 2000) ("A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person . . . is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease."). In accordance with a jury finding, the justice court signed a judgment awarding appellee possession of the premises. Modelist, who has appeared *pro se* throughout much of this proceeding, then filed in the underlying county court a pleading entitled, "Appellant's First Amended Answer; Motion to Vacate Justice Court Judgment and Motion to Dismiss For Lack of Jurisdiction." We construe this pleading as an appeal of the justice-court judgment as well as a challenge to the subject-matter jurisdiction of the justice court and county court over the forcible-detainer action. On November 12, 2008, following a bench trial, the county court signed a judgment awarding appellee possession of the property and setting a supersedeas bond.

II. SUBJECT-MATTER JURISDICTION

In the first issues of his brief and supplemental brief, Modelist contends the county court lacked subject-matter jurisdiction over this forcible-detainer action because determination of the right to possession of the property involved a title dispute and the action was barred by the statute of limitations.¹

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, 226 (Tex. 2004). Jurisdiction of forcible-detainer actions is expressly given to the justice court of the precinct where the property is located and, on appeal, to county courts for trial *de novo*. *See* Tex. Prop. Code Ann. § 24.004 (Vernon 2000); Tex. Gov't Code Ann. § 27.031(a)(2) (Vernon Supp. 2009); Tex. R. Civ. P. 749; *Rice v. Pinney*, 51 S.W.3d 705, 708 (Tex. App.—Dallas 2001, no pet.). However, a justice court is expressly deprived of jurisdiction to determine or adjudicate title to land. *See* Tex. Gov't Code Ann. § 27.031(b)(4) (Vernon Supp. 2009); *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. The appellate jurisdiction of the county court is confined to the jurisdictional limits of the justice court. *Salaymeh*, 264 S.W.3d at 435; *Rice*, 51 S.W.3d at 708. Therefore, notwithstanding the grant of general jurisdiction to a county court, it has no jurisdiction to adjudicate title to real property in a *de novo* trial on appeal of a forcible-detainer action from justice court. *Salaymeh*, 264 S.W.3d at 435; *Rice*, 51 S.W.3d at 708–09.

A forcible-detainer action is intended to provide a speedy, summary, and inexpensive determination of the right to immediate possession of real property. *Scott v.*

¹ Modelist also refers to the purported lack of “personal” jurisdiction, but we presume he is referring to “subject-matter jurisdiction” because his argument is confined to that contention. He has waived any contention regarding “personal” jurisdiction by failing to advance any analysis or cite authority; although he briefly suggests this contention is based on the fact that appellee allegedly “does not exist,” he provides no supporting argument or authority. *See* Tex. R. App. P. 38.1(h) (providing appellant’s brief must contain clear and concise argument for the contentions made, with appropriate citations to authorities and record); *Sunnyside Feedyard, L.C. v. Metro. Life Ins. Co.*, 106 S.W.3d 169, 173 (Tex. App.—Amarillo 2003, no pet.) (recognizing failure to cite authority or advance substantive analysis waives issue on appeal).

Hewitt, 127 Tex. 31, 35, 90 S.W.2d 816, 818–19 (1936); *Rice*, 51 S.W.3d at 709. To preserve this nature of the remedy, the only issue in a forcible-detainer action is the right to actual and immediate possession; the merits of title are not adjudicated. Tex. R. Civ. P. 746; *Rice*, 51 S.W.3d at 709; *see Salaymeh*, 264 S.W.3d at 435. To prevail in a forcible-detainer action, a plaintiff is not required to prove title but must only show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Salaymeh*, 264 S.W.3d at 435; *Rice*, 51 S.W.3d at 709. However, when determination of the right to immediate possession necessarily requires resolution of a title dispute, a justice court has no jurisdiction to enter judgment. *Salaymeh*, 264 S.W.3d at 435; *Rice*, 51 S.W.3d at 709.

At one point in the county-court trial, Modelist made representations negating there was any title dispute between Modelist and appellee that would deprive the court of jurisdiction. In particular, Modelist expressly stated that he was not the owner of the property because he had conveyed it to a corporation named “Cobneyi” by warranty deed before the foreclosure sale. Modelist then argued he had the right of possession because Cobneyi is owner, and they agreed Modelist would live at and maintain the property.

The county court admitted the referenced warranty deed into evidence. Although the first page of the deed shows it was dated October 25, 2007 (before the foreclosure sale), it was actually executed on August 25, 2008 (after the sale). Consequently, the evidence showed Modelist as owner immediately before the foreclosure sale. Nevertheless, as the county court correctly remarked, appellee presented a valid Substitute Trustee’s Deed showing it owned the property by virtue of purchase at the foreclosure sale, regardless of the identity of the preceding owner, and thus appellee had a superior right to possession than Modelist.

Subsequently, Modelist suggested that the county court lacked jurisdiction because there *was* a title dispute pending in district court based on a claim the foreclosure was invalid. However, he presented the county court with no evidence to demonstrate existence of such litigation or provide additional details to show any pending litigation

deprived the county court of jurisdiction over the forcible-detainer action. Further, he did not clearly delineate the parties to this dispute because he told the county court that “we are in [district] court,” although he had earlier stated he did not own the property.

On appeal, Modelist reiterates that there was a title dispute pending in district court regarding validity of the foreclosure which deprived the county court of jurisdiction over the forcible-detainer action. However, the facts cited and documents presented to support his claim are not part of the appellate record in this case.² Moreover, contrary to his express representations at trial, Modelist apparently now claims he and “Cobneyi” are the same person and the title dispute was between Modelist and appellee.³

Regardless, the fact that such a title dispute may have been pending in district court did not deprive the county court of jurisdiction over the forcible-detainer action. A forcible-detainer action is not exclusive, but cumulative, of any other remedy that a party may have in the courts of this state. *Scott*, 127 Tex. at 35, 90 S.W.2d at 819; *Salaymeh*, 264 S.W.3d at 435–36; *Rice*, 51 S.W.3d at 709. The displaced party is entitled to bring a separate suit in district court to determine questions of title. *See Scott*, 127 Tex. at 35, 90 S.W.2d at 818; *Salaymeh*, 264 S.W.3d at 436; *Rice*, 51 S.W.3d at 709. A forcible-detainer action may run concurrently with a suit in another court even if the other suit involves adjudication of matters that could result in a different determination of possession from the decision rendered in the forcible-detainer action. *Salaymeh*, 264 S.W.3d at 436; *see Rice*,

² On appeal, Modelist sets forth a detailed history of events leading to, and various litigation concerning, the foreclosure. However, he presented no evidence at trial to support these assertions and cites various documents attached to his briefs that are not part of the record. Modelist also filed in this court a transcript of a hearing in the district-court case, at which he requested the court to enjoin appellee from obtaining a “writ” for possession until the title dispute and all underlying causes of action were adjudicated by the district court. He apparently filed this transcript in the present appeal to show there was a title dispute in district court. However, this hearing occurred after trial of the forcible-detainer action, and thus the transcript is not part of the record in the present case.

³ Specifically, on appeal, Modelist makes the following statement: “On about 02 October 2007 during annual ‘Rebirth’ Appellant, was Divinely inspired and directed to become known as ‘Cobneyi’, in all things. Thereafter, on about 25 October 2007 Appellant, initiated precepts to facilitate that ‘Rebirth’ which, included renaming real property.”

51 S.W.3d at 709. Accordingly, a justice court is not deprived of jurisdiction merely by the existence of a title dispute; it is deprived of jurisdiction only if resolution of a title dispute is a prerequisite to determination of the right to immediate possession. *Salaymeh*, 264 S.W.3d at 435; *Rice*, 51 S.W.3d at 709, 713.

In the present case, determination of the right to immediate possession did not require resolution of any title dispute. Rather, appellee presented a security instrument and Substitute Trustee's Deed showing Modelist held the status of tenant at sufferance upon appellee's purchase of the property. This landlord-tenant relationship provided both the justice court and the county court with an independent basis to determine the immediate right to possession without the necessity of resolving any title dispute. *See Rice*, 51 S.W.3d at 708–13 (holding county court had jurisdiction over forcible-detainer suit brought by foreclosure-sale purchaser against former owners where deed of trust securing note provided they were tenants at sufferance upon sale of property, despite owners' contention that title dispute pending in district court challenging foreclosure deprived county court of jurisdiction).

Modelist also challenges the county court's subject-matter jurisdiction by presenting a statute-of-limitations argument. However, the gist of his argument is primarily that the foreclosure sale was barred by limitations. Therefore, this contention is encompassed within any separate title dispute pending in district court and is not a basis for opposing the forcible-detainer action. At one point, he suggests the forcible-detainer action was also barred by limitations. However, Modelist failed to raise any statute-of-limitations challenge to the forcible-detainer action in the county court. A statute-of-limitations claim is not a challenge to the trial court's subject-matter jurisdiction but is a procedural matter that is waived if not raised in the trial court. *BancorpSouth Bank v. Prevot*, 256 S.W.3d 719, 726 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (citing *Franco v. Allstate Ins. Co.*, 505 S.W.2d 789, 793 (Tex. 1974)).

In sum, the county court had subject-matter jurisdiction over the forcible-detainer action. We overrule the first issues of Modelist's brief and supplemental brief.

III. TESTIMONY PRESENTED BY APPELLEE

In the second issue of his brief, Modelist contends the trial court abused its discretion by allowing appellee's attorney to testify as its representative. Modelist suggests that, by presenting testimony from its own attorney, appellee effectively furnished no representative at trial; thus, it made no appearance, and this action should have been dismissed for want of prosecution.

Modelist apparently refers to Rex Kesler, who conducted the foreclosure sale as substitute trustee. At the outset of trial, both Kesler and an attorney named Jeffrey Hardaway appeared as counsel for appellee. Then, anticipating Modelist would object to his testimony, Kesler announced he was withdrawing as attorney so that he could testify. Modelist objected to Kesler's testimony on the grounds he was a witness in the pending district-court suit, he was testifying in the forcible-detainer action for an entity that "does not exist" in Texas, and the county court had no jurisdiction. The trial court overruled Modelist's objection, and Kesler presented his testimony.

Modelist waived his appellate complaint because it does not comport with his objection at trial. *See* Tex. R. App. P. 33.1(a) (providing party must make timely, specific objection to preserve error for appellate review); *Wohlfahrt v. Holloway*, 172 S.W.3d 630, 639–40 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (holding that to preserve error, party's argument on appeal must comport with its argument in trial court). Modelist's appellate complaint that Kesler could not appear as both attorney and witness in the forcible-detainer action is not the same as his objection to Kesler testifying as a witness in both the forcible-detainer action and the district-court suit. Moreover, Modelist did not ask the trial court to dismiss the case because appellee effectively failed to appear at trial. Nonetheless, because Kesler withdrew as attorney before testifying, we reject Modelist's contention and overrule his second issue.

IV. GENERAL VOIDNESS AND DUE-PROCESS ARGUMENTS

In the third issue of his brief, Modelist contends the county court's judgment was void. In addition to generally reiterating his contention the county court lacked jurisdiction, he further makes a bare assertion that the trial court violated his due-process rights by failing to follow "statutory procedure." Modelist expands the due-process argument in the second issue of his supplemental brief by contending the trial court deprived him of the right to prepare a defense and examine witnesses and allowed appellee's witness to testify without personal knowledge. However, Modelist failed to preserve error because he did not object on these grounds at trial, much less present any due-process arguments. *See Magnuson v. Mullen*, 65 S.W.3d 815, 829 (Tex. App.—Fort Worth 2002, pet. denied) (recognizing that even constitutional complaints may be waived by failure to object at trial). Accordingly, we overrule the third issue of his brief and the second issue of his supplemental brief.

We affirm the trial court's judgment.⁴

/s/ Charles W. Seymore
Justice

Panel consists of Justices Yates, Seymore, and Brown.

⁴ On July 21, 2009, September 9, 2009, and October 19, 2009, Modelist filed in this court motions entitled respectively, "Appellant's Verified Motions; To Strike Appellee's Original Petition, Vacate Void Final Judgment And Dismiss Appeal," "Appellant's Second Verified Motions; To Vacate Void Final Judgment And Dismiss Appeal, Request For Oral Arguments And Reply To Appellee(s) Briefs," and "Appellant's Third Verified Motions; To Vacate Void Judgment And Dismiss Appeal, Request For Oral Arguments, To Strike Sham Pleadings And Reply To Appellee(s) Briefs," which we ordered taken with the case. Because these motions reiterate the relief requested in Modelist's brief, which we have addressed, we overrule the motions.