AFFIRMED; Opinion Filed January 26, 2016.

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-14-01439-CV

JAMES EARL RANDLE, Appellant
V.
DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2006-OPT3, ASSET-BACKED CERTIFICATES, SERIES 2006-OPT3, Appellee

On Appeal from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-14-03523-B

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Lang, and Justice Brown
Opinion by Justice Lang

Appellant James Earl Randle appeals the trial court's judgment awarding possession of certain residential real property (the "Property") to appellee Deutsche Bank National Trust Company, as Trustee for Soundview Home Loan Trust 2006-OPT3, Asset-Backed Certificates, Series 2006-OPT3 (the "Bank"). In two issues, Randle contends the trial court erred by "hearing the case and rendering judgment" because at such time the Bank's "pleading then on file" was not (1) "a valid pleading on which judgment could have been granted" and (2) "preceded by the statutorily required demand for possession."

We decide against Randle on his two issues. The trial court's judgment is affirmed. Because all dispositive issues are settled in law, we issue this memorandum opinion. *See* TEX. R. APP. P. 47.2(a), 47.4.

I. FACTUAL AND PROCEDURAL BACKGROUND

On approximately February 28, 2006, Randle executed a promissory note secured by a deed of trust (the "Deed of Trust") encumbering the Property. The Deed of Trust provided in part that in the event of a default by Randle on the promissory note, (1) the lender had the power to sell the Property and (2) the trustee named in the Deed of Trust was authorized "to sell the Property to the highest bidder for cash." Additionally, as to such sale, the Deed of Trust stated in part as follows:

> If the Property is sold pursuant to this [section], Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. 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 Bank purchased the Property at a foreclosure sale on April 1, 2014. Subsequently, Randle was sent a May 22, 2014 letter typed on letterhead of the law firm Angel Reyes & Associates, P.C., and signed by Chance Oliver (the "May 22, 2014 Letter"). That letter stated in part,

> [The Property] was sold at a foreclosure sale to our client under a power of sale contained in a deed of trust securing said property. Title under the sale has been duly perfected. The new owner seeks to recover possession of the Property in good faith to market and sell the Property.
>
> Our client has requested that we notify you that pursuant to the Texas Property Code, Section 24.005, you are hereby DEMANDED to move and vacate these premises, along with all your personal belongings, within THREE (3) days from the date of delivery of this letter. . . . .
>
> . . . . Please contact my office with any questions you may have.

(emphasis original).

In approximately June 2014, the Bank filed an "Original Petition for Forcible Detainer" (the "Original Petition") in justice court in Dallas County. In that petition, the Bank asserted in part "[t]hat from the date of the [foreclosure sale], [the Bank] has become the landlord, and [Randle] has become a tenant at sufferance; and that written demand for possession was made on such tenant via First Class Mail and Certified Mail, Return Receipt Requested on May 22, 2014 as set forth in Exhibit 'D' attached hereto and incorporated herein, and that tenant has heretofore refused and still refuses to comply with such demand, but willfully hold [sic] over such premises from [the Bank]." Further, the petition stated "all conditions precedent have been performed or have occurred as of the filing of this petition." Attached to the Original Petition was an affidavit of Chance Oliver that (1) described Oliver as "Attorney for Plaintiff" and (2) stated "[Oliver], on oath, states that the matters and facts set out in the Forgoing Petition are true and correct and based on personal knowledge." Additionally, the following documents were attached to the Original Petition as exhibits "A" through "D," respectively: (1) a one-page legal description of the Property; (2) an April 9, 2014 "Substitute Trustee's Deed" that states in part that the Property was purchased by the Bank on April 1, 2014, and lists an address for the Bank; (3) a "Servicemembers Civil Relief Act Affidavit," in which Oliver testified Randle is "not on active duty in the military"; and (4) a copy of the May 22, 2014 Letter.

The Bank obtained a June 25, 2014 judgment in justice court that stated in part (1) the Bank is entitled to possession of the Property and (2) Randle "is a tenant at sufferance pursuant to the foreclosure held on 4-1-14." Randle timely appealed that judgment to the County Court at Law Number Two of Dallas County (the "trial court").

In the trial court, the Bank filed a July 23, 2014 "Business Records Affidavit" made by Oliver, to which were attached "business records that Plaintiff intends to introduce at trial." The attached records included, in part, the May 22, 2014 Letter.

Randle filed a July 31, 2014 "Plea in Abatement and Original Answer Subject to Plea" in the trial court. In his plea in abatement, Randle contended in part that "[t]his suit should be dismissed, or in the alternative, abated," because (1) the Original Petition was not "'sworn to by the plaintiff" as required by the "plain language" of Texas Rule of Civil Procedure 510.3(a), *see* TEX. R. CIV. P. 510.3(a), and (2) the "generic notice and demand . . . given by Plaintiff's law firm on or about May 22, 2014" did not comply with the requirements of Texas Property Code sections 24.002 and 24.005 that pre-suit demand and notice to vacate "be given in a prescribed manner 'by a person entitled to possession'" and therefore was not "statutorily sufficient to support a forcible detainer suit." Further, Randle stated in his plea in abatement that he "object[s] to any proffered business records affidavit filed by [the Bank] and hence to all contents thereof, due to the absence of a sufficient Original Petition, and/or due to the failure of one or more conditions precedent to the filing of the Original Petition, and/or due to the absence of capacity in the chain of title leading to Plaintiff."

A bench trial was held by the trial court on August 6, 2014. Counsel for Randle argued that the plea in abatement "is predicated on primarily two things": (1) "the petition is not sworn to by the plaintiff as Rule 510 provides" and (2) "the necessary preceding demand to vacate, demand for possession was not made by someone entitled to possession," but rather is "just a generic letter from a law firm, doesn't say it's made on behalf of anybody, doesn't name anybody at all." Specifically, as to the first argument, counsel for Randle stated "the new rule [510.3(a)] says that the petition must be sworn to by the plaintiff not by—not by an agent, not by their lawyer, Mr. Oliver, but by the plaintiff." Further, as to the second argument, the following exchange occurred:

> [COUNSEL FOR BANK]: . . . I have a business record affidavit, a sworn affidavit showing when the notice to vacate was sent that was within the time frame required by the code.

> THE COURT: Do you have a copy?
>
> [COUNSEL FOR BANK]: I do. It's one of my exhibits that I haven't been able to get to yet, but I do have it and I'm happy to give that to you.
>
> THE COURT: Let me just see what—
>
> [COUNSEL FOR BANK]: It's a business affidavit that was filed 14 days before trial. I also have as Exhibit D as the tracking information, which we believe is a public record, that accurately shows that it was sent to the property address and that it was unclaimed.
>
> [COUNSEL FOR RANDLE]: We don't think there's any question that the May 22nd letter was sent. It's just—or that it was sent to the right address. It's just a question of did it satisfy the statute, did it satisfy Chapter 24?
>
> [COUNSEL FOR BANK]: And as you can see, the language right there in the letter, your Honor, you can see what our letter says. And the letter fully complies with the property code. There's no requirement any place in the code that requires that we name Deutsche Bank in the notice to vacate.

The trial court overruled Randle's plea in abatement, then proceeded to hear evidence on the merits of the case. Four documents were offered by the Bank and admitted into evidence without objection: (1) the Deed of Trust, (2) the Substitute Trustee's Deed, (3) the May 22, 2014 Letter, and (4) "tracking information" showing that the May 22, 2014 Letter was "sent and unclaimed." After the Bank rested its case, counsel for Randle argued,

> Again, the May 22nd, 2014 letter from Mr. Oliver to Mr. Randle is not sufficient to meet the requirements of Chapter 24 of the property code. It refers merely to our client. Doesn't say who that client is. Doesn't refer to any particulars about the trustee's deed or anything like that. So it should be statutorily insufficient to support this case.

Following the trial court's judgment described above, Randle filed a September 5, 2014 motion for new trial. Therein, he (1) restated his argument that the Original Petition was not "sworn to by the plaintiff" as required by the "plain language" of rule 510.3(a), and (2) requested, based on that argument, that the trial court "vacate the Judgment in its entirety, vacate all relief granted as sought by Plaintiff as Plaintiff has (and had) no standing, and grant the Defendants a hearing and new trial, and . . . an abatement or dismissal of Plaintiff's case."

Randle's motion for new trial was overruled by operation of law. This appeal timely followed.

II. RANDLE'S ISSUES

A. Standard of Review

Interpretation of statutes and rules of procedure are issues we review de novo. *See, e.g.*, *Long v. Castle Tex. Prod. Ltd. P'ship*, 426 S.W.3d 73, 78 (Tex. 2014). Also, we review de novo a challenge to a trial court's subject matter jurisdiction. *See, e.g.*, *Willms v. Am. Tire Co., Inc.*, 190 S.W.3d 796, 808 (Tex. App.—Dallas 2006, pet. denied); *Reagan v. NPOT Partners I, L.P.*, No. 06-08-00071-CV, 2009 WL 763565, at *2 (Tex. App.—Texarkana Mar. 25, 2009, pet. denied) (mem. op.) (citing *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998)); *see also Njuku v. Middleton*, 20 S.W.3d 176, 177 (Tex. App.—Dallas 2000, pet. denied) (standing is component of subject matter jurisdiction and is reviewed de novo).

We review a trial court's denial of a plea in abatement for an abuse of discretion. *See, e.g., Lagow v. Hamon*, 384 S.W.3d 411, 415 (Tex. App.—Dallas August 24, 2012, no pet.) (citing *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988)); *Lee v. GST Transp. Sys., LP*, 334 S.W.3d 16, 18 (Tex. App.—Dallas 2008, pet. denied). A trial court abuses its discretion when it acts in an unreasonable and arbitrary manner or without reference to any guiding rules or principles. *Lagow*, 384 S.W.3d at 415 (citing *Downer v. Aquamarine Operators, Inc.*, 701 S.W.2d 238, 241–42 (Tex. 1985)). Further, an error in analyzing or applying the law is an abuse of discretion. *See, e.g., O'Brien v. Baker*, No. 05-15-00489-CV, 2015 WL 6859581, at *2 (Tex. App.—Dallas Nov. 9, 2015, no pet.) (mem. op.).

When a party challenges the legal sufficiency of the evidence to support an adverse finding on which he did not have the burden of proof at trial, the party must demonstrate there is no evidence to support the adverse finding. *See, e.g., Thornton v. Dobbs*, 355 S.W.3d 312, 316

(Tex. App.—Dallas 2011, no pet.). If more than a scintilla of evidence supports the finding, the no-evidence challenge fails. *Id*.

B. Applicable Law

The same rules of construction govern the interpretation of both statutes and rules of procedure. *See, e.g.*, *Ford Motor Co. v. Garcia*, 363 S.W.3d 573, 579 (Tex. 2012) (citing *In re Christus Spohn Hosp. Kleberg*, 222 S.W.3d 434, 437 (Tex. 2007)). We rely on the plain meaning of the text unless the plain meaning would lead to an absurd or nonsensical result or a different meaning is supplied by statutory definition or is apparent from the context. *Beeman v. Livingston*, 468 S.W.3d 534, 538 (Tex. 2015). Further, section 311.023 of the Texas Government Code states that in construing a statute, regardless of whether it is considered ambiguous on its face, a court may consider, among other matters, the object sought to be attained, the circumstances under which it was enacted, its legislative history, common law or former statutory provisions on the same or similar subjects, consequences of a particular construction, the statute's administrative construction, and the title and preamble. TEX. GOV'T CODE ANN. § 311.023 (West 2013).

Pursuant to section 24.002(a) of the Texas Property Code, "[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." TEX. PROP. CODE ANN. § 24.002(a) (West 2014). "The demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005." *Id*. § 24.002(b). Under section 24.005, "[i]f the occupant is a tenant at will or by sufferance, the landlord must give the tenant at least three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties have contracted for a shorter or longer notice period in a written lease or agreement." *Id*. § 24.005(b) (West Supp. 2015). The notice to vacate shall be

given in person or by mail at the premises in question. *Id*. § 24.005(f). A notice to vacate shall be considered a demand for possession for purposes of section 24.002(b). *Id*. § 24.005(h).

Lawsuits to recover possession of real property under Chapter 24 of the Texas Property Code are governed by rules 500–507 and 510 of the Texas Rules of Civil Procedure. TEX. R. CIV. P. 500.3(d). Texas Rule of Civil Procedure 510 is titled "Eviction Cases." TEX. R. CIV. P. 510. Rule 510.3(a) provides in part that "a petition in an eviction case must be sworn to by the plaintiff." TEX. R. CIV. P. 510.3(a). That rule became effective on August 31, 2013, and replaced former rule of civil procedure 739, which stated in part, "When the party aggrieved or his authorized agent shall file his written sworn complaint with [a justice of the peace], the justice shall immediately issue citation directed to the defendant . . . ." *See Norvelle v. PNC Mortg.*, 472 S.W.3d 444, 445 (Tex. App.—Fort Worth 2015, no pet.) (quoting former rule of civil procedure 739).

"In an action of forcible detainer, the only issue shall be as to the right to actual possession, and the merits of the title shall not be adjudicated." *U.S. Bank Nat'l Ass'n v. Freeney*, 266 S.W.3d 623, 625 (Tex. App.—Dallas 2008, no pet.); *accord 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 is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession." *Freeney*, 266 S.W.3d at 625 (quoting *Rice*, 51 S.W.3d at 709). "All [plaintiff] must show to be entitled to possession of the premises is (1) a trustee's deed (or substitute trustee's deed) from the foreclosure sale showing [plaintiff] purchased the property in the foreclosure sale, (2) the deed of trust showing [defendants] would become tenants at sufferance following the foreclosure sale if they did not vacate, and (3) notice to vacate informing [defendants] of their tenants-at-sufferance position and [plaintiff's] requirement that they vacate the property." *Fed. Nat'l Mortg. Ass'n v. Ephriam*, No.

05-13-00984-CV, 2014 WL 2628036, at *3 (Tex. App.—Dallas June 12, 2014, no pet.) (mem. op.).

Generally, we are not authorized to consider issues not properly raised by the parties in the trial court. *See, e.g.*, *In re B.L.D.*, 113 S.W.3d 340, 350 (Tex. 2003) ("A party should not be permitted to waive, consent to, or neglect to complain about an error at trial and then surprise his opponent on appeal by stating his complaint for the first time."); *see also* TEX. R. APP. P. 33.1. However, subject matter jurisdiction and standing are issues that cannot be waived by the parties and may be raised for the first time on appeal. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993).

C. Application of Law to Facts

1. Compliance with Texas Rule of Civil Procedure 510.3(a)

In his first issue, Randle contends the trial court erred by hearing the case and rendering judgment for the Bank "because there was not, at the time of trial, a pleading on which judgment could have been granted, because it did not meet the necessary threshold of compliance with the applicable rule that requires that it be sworn to by the plaintiff." According to Randle, (1) because former rule of civil procedure 739 has been replaced by rule 510, there is "no longer any provision of the applicable rules that permits a plaintiff's attorney to swear to a forcible detainer petition"; (2) "'strict compliance' is the appropriate standard for the TRCP 510.3(a) verification requirement"; (3) "the petition should be deemed fatally defective due to its failure to be sworn to by the plaintiff in conformity with TRCP 510.3(a)"; and (4) "[t]his defect was jurisdictional and subject to [Randle] raising it at any time."

The Bank responds (1) the verification by its attorney, Oliver, complies with rule 510.3(a) and (2) Randle "failed to object to the admission of same as an exhibit in the [trial court] proceeding, and thus, waived his argument."

Subsequent to the filing of the parties' appellate briefs in this case, the Second Court of Appeals in Fort Worth delivered its opinion in *Norvelle*. *See* 472 S.W.3d at 444. In that case, David and Sylvia Norvelle appealed a trial court judgment in favor PNC Mortgage, a Division of PNC Bank, National Association ("PNC") in a forcible detainer action. *Id*. at 445. In a single issue on appeal, the Norvelles argued that "because the petition was supported by [PNC's] attorney's affidavit rather than by an affidavit from [PNC] itself, the trial court lacked jurisdiction." *Id*. The court of appeals stated that it had already concluded in a prior case involving former rule of civil procedure 739 that "a defective verification does not deprive a county court of jurisdiction to hear a forcible detainer action." *Id*. at 446. Further, the court of appeals stated, "[A]lthough the Norvelles refer us to the repeal of former rule 739 and its replacement with rule 510.3 and contend that there is 'no longer any provision of the applicable rule that permits a plaintiff's attorney to swear to a forcible detainer petition' and that strict compliance with the rule's language is required, they have not cited us to any authority to support the proposition that defects in an eviction petition can deprive the trial court of jurisdiction and make the resulting eviction judgment void." *Id*. (citing *Cisneros v. Cisneros*, No. 14-14-00616-CV, 2015 WL 1143125 at *2 (Tex. App.—Houston [14th Dist.] Mar. 12, 2015, no pet.) (mem. op.) (concluding tenant's complaint that forcible detainer petition was defective and did not meet requirements of rule 510.3(a) because it was signed and sworn to by plaintiff's attorney rather than by plaintiff did not allege fundamental error and was therefore waived because not properly preserved)).

Additionally, after an analysis respecting interpretation of rule 510.3(a), the court of appeals stated in part as follows:

> To hold, as the Norvelles urge us, that new rule 510.3(a) requires a corporation or other entity to physically sign a petition would defy the reality that business entities operate through their agents, and it would usurp the ability of these entities to have their day in court—an absurd or nonsensical result not

> contemplated by the supreme court when it modified the rules, and a contradictory result when considered alongside the rest of the new rules, their purpose, and the pertinent provisions of the property code. See Tex. Gov't Code Ann. § 311.023. Here, the petition filed in the justice court contained a verification sworn to by [PNC's] counsel, stating her authority to make the affidavit and swearing that the facts contained in the pleading were both within her personal knowledge and true and correct. As she acted as [PNC's] corporeal agent for purposes of instituting the action, this was sufficient to meet rule 510.3(a)'s requirements.

Id. at 449. The court of appeals affirmed the trial court's judgment. *Id*.

Randle's issue before us is substantially the same as the issue addressed in *Norvelle*. *See id*. at 445–46. Like the appellants in *Norvelle*, Randle cites no cases involving rule 510.3(a) to support his position respecting the trial court's alleged lack of jurisdiction. *See id*. at 446; *cf. Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 469 (Tex. App.—Dallas 2010, pet. dism'd w.o.j.) (overruling jurisdictional challenge based on defective verification in forcible detainer case prior to enactment of rule 510). Moreover, like *Norvelle*, the case before us involves a petition filed in a forcible detainer action in justice court with a verification sworn to by the Bank's counsel. *See Norvelle*, 472 S.W.3d at 449. Assuming without deciding that Randle's first issue is properly before this Court, we conclude the petition in this case was not, as alleged by Randle, "defective due to its failure to be sworn to by the plaintiff in conformity with TRCP 510.3(a)." [1] *See id.*

We decide against Randle on his first issue.

2. Adequacy of Demand for Possession

In his second issue, Randle contends the trial court erred by hearing the case and rendering judgment for the Bank because the Bank's pleading "was not preceded by the

[1] Prior to the enactment of rule 510, this Court concluded in *Shutter* that the trial court did not err by overruling a plea in abatement based on a defective verification because the party seeking to abate did not "allege or explain how a defective verification was an impediment to the court's determination of immediate possession" and "demonstrate harm." *Shutter*, 318 S.W.3d at 469–70 (involving verification that was defective because affiant averred facts in petition were true and correct "to the best of" his personal knowledge, which qualification was improper). The parties in the case before us do not specifically address the applicability of the harm requirement described in *Shutter* to cases involving rule 510. Further, because we conclude the petition in the case before us was not defective as alleged by Randle, we do not address harm.

statutorily required demand for possession." According to Randle, (1) the trial court "erred in treating the mandatory pre-suit notice as having been sufficient, when such notice did not meet the statutory requirements and sufficient notice was an unavoidable condition precedent to any right to relief"; (2) sections 24.002 and 24.005 "require that such notice(s) be given in a prescribed manner 'by a person entitled to possession' yet the letter made demand on behalf of no one"; (3) "[a] generic notice and demand such as that given by [the Bank's] law firm on or about May 22, 2014, rather than on behalf of a clear and specific claimant and being clear as to the precise claimed status of such plaintiff, is not statutorily sufficient to support a forcible detainer suit"; (4) "[s]trict compliance with the plain language of the statutes is plainly required"; and (5) "[t]his suit should have been dismissed by the trial court, or in the alternative, abated, due to the failure of [the Bank] to give sufficient notice of demand for possession of [the Property] before having a claim of title to such real property." Additionally, Randle asserts in this Court for the first time that "[c]ompliance with the threshold requirement of pre-suit demand by a party entitled to possession is fundamental to a claim of standing, and [the Bank] cannot rightly claim standing to proceed." In support of his arguments, Randle cites the two property code sections described above and several Texas cases in which courts stated that compliance with the plain language of various statutory provisions was required. *See Emp. Ret. Sys. of Tex. v. Blount*, 709 S.W.2d 646, 647 (Tex. 1986) (statutory provisions of insurance code "are mandatory and exclusive and must be complied with in all respects"); *Kennedy v. Andover Place Apts.*, 203 S.W.3d 495, 497 (Tex. App.—Houston [14th Dist.] 2006, no pet.) (landlord did not "strictly comply" with property code's requirements respecting notice and demand for possession because he did not timely give additional notice and opportunity to respond as provided for in lease); *Onion Creek Luxury Apts. v. Powell*, No. 03-11-00008-CV, 2011 WL 3891843 (Tex. App.—

Austin Aug. 31, 2011, no pet.) (mem. op.) (landlord who allegedly provided no notice of any type before filing forcible detainer action did not comply with property code).

The Bank responds (1) "[t]he notice to vacate was sufficient notice under the Texas Property Code to demand the tenant to vacate as new owner was not required to be identified by name" and (2) Randle "failed to object to the admission of the letter in the [trial court] proceeding and thus, waived such argument."

We begin with Randle's argument that the Bank "cannot rightly claim standing to proceed." Randle cites no case law, and we have found none, to support his position that the Bank lacked "standing" as a result of its alleged failure to comply with the notice requirement in question. To the extent Randle relies on the language of the property code to support his position, we find helpful the analysis in *Park v. Escalera Ranch Owners' Ass'n, Inc*., 457 S.W.3d 571 (Tex. App.—Austin 2015, no pet.). In *Park*, a property owners' association (the "Association") sued Dr. Saung Zin Park to enforce certain restrictive covenants. *Id*. at 577. After the trial court ruled in the Association's favor and denied Park's counterclaims, Park appealed. *Id*. On appeal, Park asserted in part that the Association's failure to provide him with pre-suit notice of his right to request a hearing before the Association as required by property code section 209.006 deprived the trial court of jurisdiction.[2] *Id*. (citing TEX. PROP. CODE ANN. § 209.006 (West 2014)). The Association argued the notice requirement of section 209.006 is not jurisdictional and Park waived that requirement by failing to timely object. *Id*. at 587.

The court of appeals focused its analysis on the plain language of the applicable property code chapter. *Id*. at 588–89. That court stated in part (1) "[n]othing in the plain language of

[2] As described in *Park*, section 209.006 is part of Chapter 209 of the Texas Property Code, which chapter is titled "Texas Residential Property Owners Protection Act" and "governs the relationship between property owners' associations and property owners." *Id*. at 586. Specifically, section 209.006 provides in part that before filing suit against an owner, a property owners' association "must give written notice to the owner" and such notice "must . . . inform the owner that the owner . . . may request a hearing [before the board of the association] . . . on or before the 30th day after the date the owner receives the notice." *Id*. (quoting TEX. PROP. CODE ANN. § 209.006).

Chapter 209 indicates that the Legislature intended the notice requirement to be jurisdictional"; (2) "Chapter 209's lack of a provision dictating dismissal for noncompliance is a circumstance weighing in favor of a nonjurisdictional interpretation"; and (3) "[Chapter 209's] objective, in itself, does not imply that the Legislature intended to deprive Texas trial courts of subject-matter jurisdiction when associations fail to provide the notice required under the Act." *Id*. at 589. Additionally, the court of appeals stated (1) "[t]o the extent that an association's initiation of litigation without notice may cause negative effects," the trial court is "empowered to remedy [those negative effects] by appropriate sanctions" and section 209.008 of the chapter provides for limiting the association's recovery of attorney's fees in the absence of proper notice, and (2) under Park's interpretation, an association's failure to provide the notice in question would preclude any consideration of the association's claim by a trial court and any judgments rendered in the absence of such notice would be void and indefinitely subject to collateral attack. *Id*. at 589–90. Therefore, the court of appeals stated, "[t]he final factor to be considered—the consequences of the alternative interpretations—suggests that the notice requirement is not jurisdictional." *Id*. at 589. The court of appeals concluded section 209.006 is not jurisdictional and thus its requirements are subject to waiver. *Id*. at 590.

In the case before us, the provisions in question, sections 24.002 and 24.005, are part of Chapter 24 of the property code, which chapter is titled "Forcible Entry and Detainer" and governs such actions. *See* TEX. PROP. CODE ANN. §§ 24.001–.011. A forcible detainer action "is intended to be a speedy, simple, and inexpensive means to obtain immediate possession of property." *Marshall v. Hous. Auth. of the City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006); *accord Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.). That objective, in itself, "does not imply that the Legislature intended to deprive Texas trial courts of subject-matter jurisdiction" when there is a failure to provide the notice in

question. *See Park*, 457 S.W.3d at 589. Further, Randle cites no provision of Chapter 24, and we have found none, that indicates the Legislature intended the notice requirement in question to be jurisdictional or that dictates dismissal for noncompliance. *See id*. Additionally, (1) under Randle's interpretation, a failure to provide the notice in question would preclude any consideration of the claim by a trial court and any judgments rendered in the absence of such notice would be void and indefinitely subject to collateral attack; and (2) Chapter 24, like the statute in *Park*, provides that lack of the notice in question can affect eligibility to recover attorney's fees. *See* TEX. PROP. CODE ANN. § 24.006. Thus, as in *Park*, the "consequences of the alternative interpretations" suggest the notice requirement is not jurisdictional. *See Park*, 457 S.W.3d at 589. Accordingly, we disagree with Randle's position that the notice requirement in question is jurisdictional. *See id*. at 589–90; *cf. Hubenak v. San Jacinto Gas Transmission Co*., 141 S.W.3d 172, 182 (Tex. 2004) (concluding provision of Texas Property Code governing condemnation actions was not jurisdictional and stating "the modern direction of policy is to reduce the vulnerability of final judgments to attack on the ground that the tribunal lacked subject matter jurisdiction"); *Killam Ranch Props., Ltd. v. Webb Cty*., 376 S.W.3d 146, 160 (Tex. App.—San Antonio 2012, pet. denied) (concluding issue challenging whether Texas Property Code's statutory requirements for filing notice of lis pendens were met was "not a standing issue" and could not be raised for first time on appeal).

Next, we turn to Randle's assertion that the May 22, 2014 Letter "is not statutorily sufficient to support a forcible detainer suit." To the extent Randle complains as to the "manner" of the notice in question, at least one Texas court of appeals has considered a similar argument. *See Mekeel v. U.S. Bank Nat'l Ass'n*, 355 S.W.3d 349, 356–57 (Tex. App.—El Paso 2011, pet. dism'd). In *Mekeel*, a "notice to vacate letter" was sent to the occupants of the property at issue ("Mekeel") by the authorized mortgage servicer for the property, Select Portfolio. *Id*. at 355.

The letter was "issued on behalf of Select Portfolio" and did not state that the demand was made on behalf of the bank to which the property had been conveyed, U.S. Bank. *Id*. at 355–56. Subsequently, U.S. Bank prevailed at the trial court level in a forcible detainer action against Mekeel. On appeal from that judgment, Mekeel asserted in part that the demand for possession was "not in the proper form" and was "fatally defective" because the notice to vacate letter did not "state that it [was] made on behalf of U.S. Bank" therefore did not comply with the requirements of section 24.002 and 24.005. *Id*.

The court of appeals observed that "[t]o obtain a reversal based on the erroneous admission of evidence, Mekeel must show (1) the trial court erroneously admitted evidence, (2) no other similar evidence was admitted, and (3) the error probably caused the rendition of an improper judgment." *Id*. at 356 (citing TEX. R. APP. P. 44.1). That court stated that although Mekeel raised an objection to the notice to vacate letter at trial, his appellate issue did not comport with that objection. *Id*. Further, the court of appeals stated Mekeel did not object to several other exhibits admitted into evidence, including copies of (1) the "Notice of Trustee's Sale," which "named Select Portfolio as the mortgage servicer on behalf of the noteholder, U.S. Bank," and stated Select Portfolio was "authorized to represent the Noteholder . . . [and] authorized to collect the debt and to administer any resulting foreclosure of the property securing the above referenced loan," and (2) the deed of trust, which provided that Mekeel became a tenant at sufferance when he failed to vacate the property after it was sold. *Id*. Also, the court of appeals stated that the notice to vacate and demand for possession "specifically identified" Select Portfolio as the servicing agent. *Id*. at 357. The court of appeals concluded that "[e]ven had error been preserved," the trial court did not abuse its discretion "in admitting the letter sent on behalf of Select Portfolio as evidence Mekeel had notice to vacate." *Id*. at 356.

Additionally, after addressing Mekeel's other issues not pertaining to the notice to vacate, the court of appeals stated as follows:

> U.S. Bank sufficiently demonstrated its right to possession of the property by introducing into evidence the substitute trustee's deed, the deed of trust, and the notice to vacate. The substitute trustee's deed evidenced U.S. Bank purchased the property following Mekeel's default. The deed of trust evidenced Mekeel's status as a tenant at sufferance after failing to vacate the property. Finally, the notice to vacate informed Mekeel and his wife of their tenant-at-sufferance status and the requirement they vacate the property. This evidence was sufficient to establish the Bank's right to immediate possession of the property.

Id. at 357.

In the case before us, Randle stated in part in his plea in abatement that he "object[s] to any proffered business records affidavit filed by [the Bank] and hence to all contents thereof, . . . due to the failure of one or more conditions precedent to the filing of the Original Petition." However, at trial, the May 22, 2014 Letter was offered and admitted into evidence without objection. *See id*. at 357 (although objection to substitute trustee's deed was asserted in plea in abatement, such objection was waived when substitute trustee's deed was offered and admitted at trial without objection). In that letter, Oliver stated that the Property had been sold to a "client," who was now the "owner," and the demand for possession in the letter was at the request of that client. Additionally, the record shows that other documents admitted into evidence at trial without objection included (1) the Deed of Trust, which provided that Randle became a tenant at sufferance after the Property was purchased at the foreclosure sale, and (2) the Substitute Trustee's Deed, which showed that the Bank was the purchaser of the Property and provided the Bank's full name and address. On this record, we conclude the trial court did not err by admitting the May 22, 2014 Letter as evidence that Randle had notice to vacate. *See id*. at 356.

Finally, to the extent Randle complains the evidence was legally insufficient to support the trial court's judgment, we cannot agree. As described above, in a forcible detainer action,

"[a]ll [plaintiff] must show to be entitled to possession of the premises is (1) a trustee's deed (or substitute trustee's deed) from the foreclosure sale showing [plaintiff] purchased the property in the foreclosure sale, (2) the deed of trust showing [defendants] would become tenants at sufferance following the foreclosure sale if they did not vacate, and (3) notice to vacate informing [defendants] of their tenants-at-sufferance position and [plaintiff's] requirement that they vacate the property." *Ephriam*, 2014 WL 2628036, at *3. Pursuant to section 24.002(b), "[t]he demand for possession must be made in writing by a person entitled to possession of the property." TEX. PROP. CODE ANN. § 24.002(b). Further, under section 24.005, "the landlord must give [a tenant at sufferance] at least three days' written notice to vacate before the landlord files a forcible detainer suit" and "[a] notice to vacate shall be considered a demand for possession for purposes of section 24.002(b)." *Id*. § 24.005. The language of those provisions does not, on its face, preclude a demand letter sent by an attorney for a person entitled to possession. *See id*. §§ 24.002(b) & 24.005; *Effel v. Rosberg*, 360 S.W.3d 626, 631 (Tex. App.—Dallas 2012, no pet.) (written notice to vacate sent by purchaser of property "through his attorney" before filing forcible detainer action conclusively showed compliance with notice requirements of property code); *Armbruster v. Deutsche Bank Nat'l Trust Co.*, No. 03-13-00532-CV, 2015 WL 5232109, at *2 (Tex. App.—Austin Aug. 31, 2015, no pet.) (mem. op.) (evidence was sufficient to establish right to possession where it included "copies of the notice mailed by Deutsche's counsel to the Armbrusters" that "advised them that their tenancy was being terminated and that they were required to vacate the property"); *cf*. TEX. R. CIV. P. 500.4 (individuals, corporations, and entities may be represented by attorney or "authorized agent" in eviction cases in justice court). Nor does that language, on its face, require that the person represented by the attorney be specifically named in such a demand letter. *See* TEX. PROP. CODE ANN. §§ 24.002(b) & 24.005. On this record, we conclude the Bank's evidence at trial was

sufficient to establish the Bank's right to immediate possession of the Property. *See id*.; *see also Mekeel,* 355 S.W.3d at 357.

We decide against Randle on his second issue.

III. CONCLUSION

We decide Randle's two issues against him. The trial court's judgment is affirmed.

/Douglas S. Lang/
DOUGLAS S. LANG
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

JAMES EARL RANDLE, Appellant

No. 05-14-01439-CV V.

DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2006-OPT3, ASSET-BACKED CERTIFICATES, SERIES 2006-OPT3, Appellee

On Appeal from the County Court at Law No. 2, Dallas County, Texas
Trial Court Cause No. CC-14-03523-B.
Opinion delivered by Justice Lang, Chief Justice Wright and Justice Brown participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee DEUTSCHE BANK NATIONAL TRUST COMPANY, AS TRUSTEE FOR SOUNDVIEW HOME LOAN TRUST 2006-OPT3, ASSET-BACKED CERTIFICATES, SERIES 2006-OPT3 recover its costs of this appeal and the full amount of the trial court's judgment from appellant JAMES EARL RANDLE and from the cash deposit in lieu of supersedeas bond. After the full amount of the judgment and all costs have been paid, the clerk of the county court is directed to release the balance, if any, of the cash deposit to appellant or to such person who deposited same.

Judgment entered this 26th day of January, 2016.