

**Affirmed; Opinion Filed March 15, 2018.**



**In The  
Court of Appeals  
Fifth District of Texas at Dallas**

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**No. 05-17-00224-CV**

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**ESMERALDA ESTEVEZ, Appellant  
V.  
SELENE FINANCE LP, Appellee**

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**On Appeal from the County Court at Law No. 5  
Dallas County, Texas  
Trial Court Cause No. CC-16-05348-E**

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**MEMORANDUM OPINION**

Before Justices Francis, Evans, and Boatright  
Opinion by Justice Evans

This is an appeal from an action for forcible detainer in which Selene Finance LP was awarded possession of the property at 1752 Ridgemar Drive, Grand Prairie, Texas. In four issues, Esmeralda Estevez contends the trial court erred in granting judgment in Selene Finance's favor because: (1) its pre-suit demand for possession was insufficient, (2) it lacked standing to prosecute its claim, (3) its business records affidavit should not have been considered by the trial court, and (4) it failed to establish it was entitled to treat Estevez as a tenant at sufferance under the deed of trust. For the reasons set forth below, we affirm the trial court's judgment.

**BACKGROUND**

This case originated in justice court when Selene Finance filed its original petition for forcible detainer alleging it acquired the property after a foreclosure sale and several subsequent

conveyances. Specifically, Selene Finance asserted it obtained the property by special warranty deed following a foreclosure sale in July 2009 pursuant to a deed of trust executed by Estevez. After the sale, a substitute trustee deed transferred the property to Mortgage Electronic Registrations Systems, Inc. as nominee for Leader Financial (MERS). Through three subsequent special warranty deeds, the property was ultimately transferred to Selene Finance. Estevez had been occupying the property prior to Selene Finance's acquisition and continued to reside there.

The justice court rendered a judgment of possession in favor of Selene Finance. Estevez appealed to the county court where the matter was tried de novo before the court sitting without a jury. At the trial, Selene Finance admitted six exhibits without any objection from Estevez. Exhibit 1 was the deed of trust signed by Estevez containing a provision that, if the property is sold through the foreclosure procedure, she and any other person holding possession of the property through her would be tenants at sufferance and subject to removal by writ of possession. Exhibit 2 was the substitute trustee's deed conveying the property after the foreclosure sale to MERS. Exhibits 3 through 5 were three recorded special warranty deeds, respectively conveying the property from MERS to Government National Mortgage Association, guarantor for Leader Financial Services, a division of American National Bank (GNMA), from GNMA to Loancare, a division of FNF Servicing, Inc. (Loancare), and from Loancare to Selene Finance. Exhibit 6 was a business records affidavit containing Selene Finance's August 17, 2016 notice to vacate and demand for possession. Estevez presented no evidence at the trial. The trial court signed a judgment of possession in favor of Selene Finance. Estevez appeals.

### **ANALYSIS**

Estevez's first, second, and fourth issues are all based on the fact that some of the deeds in Selene Finance's chain of title were executed via powers of attorney that were not introduced into evidence. Estevez asserts because the powers of attorney were not in evidence, (1) the August 17

notice of possession was insufficient, (2) Selene Finance lacked standing to pursue the action, and (3) Selene Finance was not entitled to rely on the tenancy at sufferance provision in the deed of trust. She generally argues that without the powers of attorney, Selene Finance’s “presuit demands should be deemed to have been made by a person without authority to make such demands,” it “did not prove a chain of ownership to support its claimed relationship to the real property,” and “the trial court had no way to know how the relationship of the mortgagee and Estevez might have been [sic] existed or not existed, nor whether one or more such powers might have altered the prospective tenancy-at-sufferance relationship.” Estevez has failed to cite any authority, and we have found none, to support her position that the powers of attorney were required to be admitted into evidence before Selene Finance could prevail. We do not agree with her contention for the reasons that follow.

The only issue in a forcible detainer action is which party has the right to immediate possession of the property. *See Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 470–71 (Tex. App.—Dallas 2010, pet. dismissed w.o.j.). Estevez’s challenge to the deeds conveying the property to Selene Finance is, in fact, an issue of title to real property which cannot be considered in the county court on appeal from a forcible detainer action and must be resolved, if at all, in a separate suit. *See Schlichting v. Lehman Bros. Bank FSB*, 346 S.W.3d 196, 199 (Tex. App.—Dallas 2011, pet. dismissed).

To prevail in its forcible detainer action, Selene Finance must show only that (1) the property was conveyed to Selene Finance after the foreclosure sale and substitute trustee’s deed conveying the property to MERS, (2) Estevez became a tenant at sufferance when the property was sold under the deed of trust, (3) Selene Finance gave proper notice to Estevez to vacate the premises, and (4) Estevez refused to vacate the premises. *See TEX. PROP. CODE ANN.* §§ 24.002(a)(2), (b), 24.005 (West 2014); *see also U.S. Bank Nat’l Ass’n v. Freeney*, 266 S.W.3d

623, 625 (Tex. App.—Dallas 2008, no pet.). Based on the record before us, Selene Finance established its right to immediate possession of the property. *See Shutter*, 318 S.W.3d at 471. We resolve Estevez’s first, second, and fourth issues against her.

In her third issue, Estevez complains about the trial court’s consideration of Selene Finance’s business record affidavit attaching the August 17 notice to vacate and demand for possession. She argues that because Selene Finance offered no evidence to show the affidavit and attached records were ever served on her electronically through the electronic filing manager pursuant to Texas Rule of Civil Procedure 21a(a)(1), the affidavit and attachments were not properly before the trial court.

In order to preserve a complaint for appellate review, the record must reflect the complaint was made to the trial court by a timely request, objection, or motion and that the trial court ““(A) ruled on the request, objection, or motion, either expressly or implicitly; or (B) refused to rule . . . and the complaining party objected to the refusal.”” *See* TEX. R. APP. P. 33.1(a); *In re Z.L.T.*, 124 S.W.3d 163, 165 (Tex. 2003). As an appellate court, we review a trial court’s ruling or an objection to its refusal to rule. *See* TEX. R. APP. P. 33.1(a)(2); *Tex. Dep’t of Protective & Regulatory Servs. v. Sherry*, 46 S.W.3d 857, 861 (Tex.2001) (constitutional claim on appeal in paternity suit waived by failure to raise complaint at trial) (citing *Dreyer v. Greene*, 871 S.W.2d 697, 698 (Tex.1993)); *Quintana v. CrossFit Dallas, L.L.C.*, 347 S.W.3d 445, 448–49 (Tex. App.—Dallas 2011, no pet.). “Important prudential considerations underscore our rules on preservation. Requiring parties to raise complaints at trial conserves judicial resources by giving trial courts an opportunity to correct an error before an appeal proceeds.” *In re B.L.D.*, 113 S.W.3d 340, 350 (Tex. 2003). This is called preservation of error and requires that “a party’s argument on appeal must comport with its argument in the trial court.” *Knapp v. Wilson N. Jones Mem’l Hosp.*, 281 S.W.3d 163, 170 (Tex. App.—Dallas 2009, no pet.); *see* TEX. R. APP. P. 33.1(a)(1). If an issue has not been preserved for

appeal, we should not address it because nothing is presented for our review. *See In re R.B.*, 200 S.W.3d 311, 317 (Tex. App.—Dallas 2006, pet. denied) (preservation of error requires a timely objection in the absence of which nothing is presented for appellate court review).

Here, Estevez neither raised an objection to the admission of the affidavit and attached documents nor otherwise complained in the trial court about the method of service Selene Finance used regarding these items. Because Estevez failed to present this complaint to the trial court, her third issue presents nothing for our review.

### **CONCLUSION**

We affirm the trial court's judgment.

/David Evans/  
DAVID EVANS  
JUSTICE

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**Court of Appeals  
Fifth District of Texas at Dallas**

**JUDGMENT**

ESMERALDA ESTEVEZ, Appellant

No. 05-17-00224-CV      V.

SELENE FINANCE LP, Appellee

On Appeal from the County Court at Law  
No. 5, Dallas County, Texas

Trial Court Cause No. CC-16-05348-E.

Opinion delivered by Justice Evans,

Justices Francis and Boatright participating.

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

It is **ORDERED** that appellee Selene Finance LP recover its costs of this appeal and the accrued rent from appellant Esmeralda Estevez and from the cash deposit in lieu of supersedeas bond. After all costs and rent have been paid, the clerk is directed to release the balance, if any, to Esmeralda Estevez.

Judgment entered this 15th day of March, 2018.