



In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-17-00394-CV

TRANS AM SFE II, LLC, Appellant
V.
WALTER YOUNG AND ALL OTHER OCCUPANTS, Appellees

On Appeal from the County Court at Law No. 1
Dallas County, Texas
Trial Court Cause No. CC-17-00616-A

MEMORANDUM OPINION

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

Trans Am SFE II, LLC appeals the county court at law's order dismissing its suit for forcible entry and detainer against Walter Young and all other occupants of the property at issue. Trans Am brings two issues contending the county court erred in granting appellees' plea to the jurisdiction and dismissing the proceeding when its pleadings sufficiently invoked the court's subject matter jurisdiction and the evidence demonstrated Trans Am's right to possession of the property. We conclude the county court erred in granting appellees' plea to the jurisdiction. Accordingly, we reverse the court's order of dismissal and remand the cause for further proceedings.

Trans Am filed this forcible entry and detainer action in justice court in Dallas County. In its verified original petition, Trans Am alleged it was the owner of the subject property by virtue

of a substitute trustee's deed which was attached to the petition. Trans Am further alleged appellees were tenants at sufferance who were notified to vacate the property but had failed to do so. The notice to vacate and demand for possession, which identified the occupants of the property as tenants at sufferance, was also attached to the petition. Trans Am pleaded that all conditions precedent to its seeking possession of the property had been performed or had occurred. On January 26, 2017, the justice court awarded Trans Am possession. Appellees appealed the justice court's ruling to the county court at law.

On March 2, 2017, appellees filed a plea to the jurisdiction asserting Trans Am failed to establish it had standing to bring the suit and, therefore, the county court lacked subject matter jurisdiction. Specifically, the plea asserted there was no deed of trust in evidence and, as a result, Trans Am could not show appellees were tenants at sufferance or that it was the real party or successor in interest to the deed. Trans Am filed a response to the plea arguing it was not required to marshal its proof to establish standing, but was merely required to plead facts in its petition which demonstrate the court's jurisdiction to hear the case. In addition, Trans Am attached certified copies of the warranty deed, deed of trust, appointment of a substitute trustee and a copy of the substitute trustee's deed. These documents showed Trans Am purchased the subject property at a foreclosure sale and appellees' failure to surrender possession of the property made them tenants at sufferance who could be removed by writ of possession or other court proceeding.

A hearing was held on appellees' plea. At the hearing, appellees argued Trans Am could not prove appellees were tenants at sufferance without the deed of trust and, because Trans Am did not produce the deed in the justice court, it never properly invoked the court's subject matter jurisdiction. The county court granted appellees' plea stating in its order that Trans Am had "not sufficiently established the conditions precedent to raise the Court's subject matter jurisdiction." This appeal followed.

In its first issue, Trans Am contends the county court erred in granting appellees' plea to the jurisdiction because Trans Am sufficiently pleaded facts affirmatively demonstrating subject matter jurisdiction and appellees failed to present any evidence to negate the jurisdictional facts alleged. We agree. This exact issue has been addressed by this court and others before. *See Dixon v. Bank of New York Mellon*, 507 S.W.3d 783, 788 (Tex. App.—El Paso 2015, no pet.) (citing *Fed. Nat'l Mortg. Ass'n v. Ephriam*, No. 05-13-00984-CV, 2014 WL 2628036, *2 (Tex. App.—Dallas June 12, 2014, no pet.)(mem. op.)).

To establish jurisdiction, a plaintiff has the burden of alleging facts which, if taken as true, affirmatively demonstrate the court's jurisdiction to hear the case. *See Asshauer v. Wells Fargo Foothill*, 263 S.W.3d 468, 471 (Tex. App.—Dallas 2008, pet. denied). We construe the allegations in the pleading in favor of the pleader. *Id.* To prove its case, Trans Am needed to show (1) a trustee's deed or substitute trustee's deed from the foreclosure sale demonstrating it purchased the property at the foreclosure sale, (2) that appellees would become tenants at sufferance following the foreclosure sale if they did not vacate, and (3) notice to vacate informing appellees of their tenant at sufferance position and the need to vacate the property. *See Dixon*, 507 S.W.3d at 787. Each of these elements was alleged in Trans Am's petition thereby conferring jurisdiction on the justice court and the county court at law to hear the case. *Id.* at 788.

Appellees' contention that Trans Am failed to show standing because it did not submit the deed of trust into evidence in the justice court is a challenge to the existence of jurisdictional facts supporting the allegations. *Id.* Trans Am had no burden to put on jurisdictional evidence until appellees first presented evidence negating the alleged jurisdictional fact. *Id.* There is no indication in the record appellees presented evidence to contradict the jurisdictional facts alleged by Trans Am. Accordingly, Trans Am was never required to put on evidence in support of its

pleading and the pleading alone was sufficient to confer jurisdiction. *Id.* The trial court erred in granting appellees' plea to the jurisdiction.

In its second issue, Trans Am asks us to render judgment of possession in its favor because it submitted sufficient evidence in response to appellees' plea to the jurisdiction to show its entitlement to judgment. We may only render the judgment the trial court should have rendered, and rendition is improper when further proceedings are necessary. *See* TEX. RS. APP. P. 43.2, 43.3. In ruling on appellees' plea to the jurisdiction, the county court did not consider or address the merits of Trans Am's claim. *See Tx. Dept. of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004) (court must not proceed on merits of case until legitimate challenges to its jurisdiction have been decided). Because the county court has not yet addressed the merits of the case, it could not have rendered a judgment in Trans Am's favor and further proceedings are necessary.

Based on the foregoing, we reverse the county court's order of dismissal and remand the cause for further proceedings.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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

JUDGMENT

TRANS AM SFE II, LLC, Appellant

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Trial Court Cause No. CC-17-00616-A.

Opinion delivered by Justice Francis.

Justices Evans and Boatright participating.

In accordance with this Court's opinion of this date, the order of the trial court is **REVERSED** and this cause is **REMANDED** to the trial court for further proceedings.

It is **ORDERED** that appellant TRANS AM SFE II, LLC recover its costs of this appeal from appellees WALTER YOUNG AND ALL OTHER OCCUPANTS.

Judgment entered April 6, 2018.