

Affirmed and Opinion Filed April 19, 2018



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

No. 05-17-00825-CV

**LUPE ACOSTA, Appellant
V.
ALNA PROPERTIES II, LLC, Appellee**

**On Appeal from the County Court at Law No. 1
Tarrant County, Texas
Trial Court Cause No. 2016-006928-1**

MEMORANDUM OPINION

Before Justices Francis, Myers, and Stoddart
Opinion by Justice Francis

Lupe Acosta appeals the trial court's judgment in this forcible detainer action awarding possession of the property to appellee ALNA Properties, II, LLC. In four issues, Acosta contends the trial court lacked jurisdiction to grant a judgment for possession of the property due to title defects, ALNA Properties had no valid pleading on file, and the evidence is insufficient to show Acosta was a tenant at sufferance and was in possession of the property. We affirm.

ALNA Properties filed a forcible detainer petition in justice court seeking possession of the property located at 8128 Richard Street in Tarrant County, Texas. ALNA Properties alleged it purchased the property at a foreclosure sale, gave written demand to Acosta to vacate, and Acosta refused. The justice court granted possession to ALNA Properties. Acosta appealed to the county court at law and following trial de novo, the county court granted possession of the premises to ALNA Properties. This appeal followed.

In her first issue, Acosta argues title defects prevented the trial court from having jurisdiction and granting judgment for possession of the property. Specifically, Acosta contends “the grantor of the deed under which [ALNA Properties] claims... is not the grantee of a deed of record in Tarrant County, Texas.”

In an action for forcible detainer, the issue before the court is the right to possession of property and not the right to legal title. *See Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). A party is not required to prove it has valid title, but is only required to present sufficient evidence of ownership to show a superior right to possess the property than the tenant from whom possession is being demanded. *Id.* A justice court and county court at law are only deprived of jurisdiction to adjudicate a forcible detainer action if the question of title is so intertwined with the issue of possession that possession may not be adjudicated without first determining title. *Elwell v. Countrywide Home Loans, Inc.*, 267 S.W.3d 566, 568 (Tex. App.—Dallas 2008, pet. dism’d w.o.j.).

Because a forcible detainer action is not exclusive, but cumulative, of any other remedy a party may have, the displaced party may bring a separate suit in the district court to determine the question of title. *Scott v. Hewitt*, 127 Tex. 31, 90 S.W.2d 816, 818-819 (1936); *Rice*, 51 S.W.3d at 708. Forcible detainer actions in justice or county courts may be brought and prosecuted concurrently with suits to try title in district court. *Rice*, 51 S.W.3d at 709.

Here, ALNA Properties presented as evidence (1) a certified copy of the deed of trust from Acosta to Don Ledbetter—as trustee for the benefit of United Lending Partners as lender—that included a provision that upon a nonjudicial foreclosure sale, Acosta would become a tenant at sufferance if he did not surrender possession of the property to the buyer, (2) a substitute trustee’s deed reciting that the property secured by the deed of trust was sold to Wells Fargo Bank at a nonjudicial foreclosure sale and conveying the property to Wells Fargo Bank, (3) a certified copy

of the special warranty deed transferring title of the property from Wells Fargo Bank to ALNA Properties, and (4) a copy of the notice to vacate sent to Acosta from ALNA Properties by certified and first class mail.

In this case, ALNA Properties was not required to prove a clear chain of title in order to be entitled to a forcible detainer. *See Kaldis v. Aurora Loan Servs.*, No. 01–09–00270–CV, 2010 WL 2545614 at *3 (Tex. App.—Houston [1st Dist.] June 24, 2010, pet. dismissed w.o.j.) (mem. op.) (concluding purchaser was not required to prove every “link” in the chain of title to establish a superior right of possession to the property). Acosta’s jurisdictional argument goes to the validity of title and this record fails to show a title dispute sufficient to deprive the trial court of jurisdiction. *See Deubler v. Bank of New York Mellon*, No. 02–16–00390–CV, 2017 WL 2290193 at *2 (Tex. App.—Fort Worth May 25, 2017, pet. denied.) (mem. op.). We overrule Acosta’s first issue.

In her second issue, Acosta argues the trial court erred by hearing the case and rendering judgment because ALNA Properties did not have a valid pleading on file. Specifically, she argues ALNA Properties’ pleading was not sworn to by the plaintiff, which she contends violates the requirement in Texas Rule of Civil Procedure 510.3 that “a petition in an eviction case must be sworn to by the plaintiff.” The petition, however, contains a verification sworn to by ALNA Properties’ counsel, which this Court has previously determined to be sufficient in the face of the same arguments presented here. *See Randle v. Deutsche Bank Nat’l Tr. Co.*, No. 05–14–01439–CV, 2016 WL 308711, at *5–6 (Tex. App.—Dallas Jan. 26, 2016, no pet.) (mem. op.) (concluding petition was not defective due to its failure to be sworn to by the plaintiff under TRCP 510.3(a) when it contained verification sworn to by bank's counsel). We overrule Acosta’s second issue.

In her third issue, Acosta asserts ALNA Properties was not entitled to treat Acosta as a tenant at sufferance because ALNA Properties “was not in privity of contract with Acosta in regard to a lien instrument.” But because Acosta did not raise this issue in the trial court, she failed to

preserve it for our review. *See* Tex. R. App. P. 33.1(a)(1); *Deubler*, 2017 WL 2290193 at *2 (holding same). We overrule Acosta's third issue.

In her fourth issue, Acosta contends no evidence shows Acosta continued to occupy the property after demand was made for Acosta to vacate. A no evidence challenge fails if more than a scintilla of evidence exists in the record to support the finding. *Mekeel v. U.S. Bank Nat'l Ass'n*, 355 S.W.3d 349, 358 (Tex. App.—El Paso 2011, pet. dismiss'd).

Here, ALNA Properties offered a certified mail receipt evidencing that on October 15, 2016, Acosta signed for a certified mail item delivered to the property in question, and also offered testimony from Altaf Hemani, the president and managing member of ALNA Properties, that Acosta was still occupying the property. Additionally, Acosta has continued to prosecute appeals awarding ALNA Properties possession. If Acosta was no longer occupying the property, her appeals regarding the parties' competing claims to possession would be moot. *See Marshall v. Housing Auth. of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006). The evidence shows Acosta refused to vacate the property after proper demand had been made. We overrule Acosta's fourth issue.

We affirm the trial court's judgment.

/Molly Francis/
MOLLY FRANCIS
JUSTICE

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**Court of Appeals
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JUDGMENT

LUPE ACOSTA, Appellant

No. 05-17-00825-CV V.

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Trial Court Cause No. 2016-006928-1.

Opinion delivered by Justice Francis.

Justices Myers and Stoddart participating.

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

Judgment entered April 19, 2018.