

AFFIRMED and Opinion Filed March 30, 2021



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

No. 05-19-01258-CV

**LINDA HENDERSON AND/OR ALL OTHER OCCUPANTS OF 1225
KENSINGTON DR. DESOTO, TX 75115, Appellant**

V.

FREEDOM MORTGAGE CORPORATION, Appellee

**On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-19-04797-D**

MEMORANDUM OPINION

**Before Justices Schenck, Smith, and Garcia
Opinion by Justice Smith**

In this forcible detainer action, the trial court entered judgment in favor of Freedom Mortgage Corporation for the sole possession of property located at 1225 Kensington Drive, Desoto, Texas. Appellant Linda Henderson, appearing pro se, challenges the trial court's subject matter jurisdiction. She further argues the trial court erred by entering judgment because Freedom Mortgage failed to follow loss mitigation procedures prior to foreclosure, and the foreclosure sale was invalid.

Henderson failed to provide a reporter's record to this Court. Due to the absence of a reporter's record, for the reasons explained below, we must presume the evidence supports the trial court's judgment. Accordingly, we affirm.

The issues on appeal are well-settled and the parties are familiar with the underlying facts; therefore, we issue this memorandum opinion. TEX. R. APP. P. 47.1.

Background

On February 6, 2018, Freedom Mortgage purchased the Kensington property at a public substitute trustee's sale. Following the foreclosure sale, Freedom Mortgage sent Henderson a written demand to vacate the Kensington property within three days or it would proceed with legal action. After Henderson refused to vacate, Freedom Mortgage filed a forcible detainer action in the justice court. Henderson failed to appear, and the justice court signed a default judgment eviction.

Henderson appealed that judgment to the county court. The final judgment from the county court acknowledged that Henderson appeared and represented herself. After reviewing the pleadings and hearing arguments, the court concluded that Freedom Mortgage was entitled to possession of the Kensington property. Henderson appealed.

Discussion

As a preliminary matter, we note an appellate record generally consists of both the clerk's and reporter's records, but only the former was filed here. *See* TEX. R.

APP. P. 34.1 (stating appellate record consists of clerk's record and reporter's record if the latter is necessary to the appeal). Our record shows that on January 7, 2020, the court reporter filed a letter stating she "had no contact from anyone involved in this case . . . requesting that a Reporter's Record be produced in this case; therefore, no transcript has been prepared regarding this appeal at this time."

On the same day, we sent Henderson a letter advising her the reporter's record had not been filed and giving her ten days to provide notice that she requested preparation of the record along with written verification that she paid or made arrangements to pay the reporter's fee; or written documentation of inability to pay costs. We specifically cautioned Henderson that if we did not receive the requested documentation within the time specified, we "may order the appeal submitted without the reporter's record." *See* TEX. R. APP. P. 37.3(c). On February 12, 2020, we entered an order stating, among other things, that the appeal would be submitted without a reporter's record.

We recognize Henderson is pro se; however, a pro se litigant is held to the same standards as a licensed attorney and, therefore, must comply with the applicable rules of appellate procedure. *See Wash. v. Bank of N.Y.*, 362 S.W.3d 853, 854 (Tex. App.—Dallas 2012, no pet.). To do otherwise would give a pro se litigant an unfair advantage over a litigant who is represented by counsel. *Id.*

When, as in this case, there is no reporter's record and findings of fact and conclusions of law are neither requested nor filed, the judgment of the trial court

implies all necessary findings of fact to sustain the judgment. *Waltenburg v. Waltenburg*, 270 S.W.3d 308, 312 (Tex. App.—Dallas 2008, no pet.); *see also Vasquez v. Firebird SFE I, LLC*, No. 05-19-00057-CV, 2020 WL 2059913, at *1 (Tex. App.—Dallas Apr. 29, 2020, no pet.) (mem. op.). In other words, we must presume the missing reporter’s record supports the decisions of the trial court. *See Bennett v. Cochran*, 96 S.W.3d 227, 230 (Tex. 2002). Similarly, statements in a brief that are unsupported by the record cannot be accepted as facts by an appellate court. *In re A.F.S.*, No. 05-16-01123-CV, 2018 WL 3434509, at *2 (Tex. App.—Dallas July 17, 2018, no pet.) (mem. op.) (citing *Bard v. Frank B. Hall & Co.*, 767 S.W.2d 839, 845 (Tex. App.—San Antonio 1989, writ denied)). While we seek to resolve appeals on their merits, litigants who ignore our rules do so at the risk of forfeiting appellate review. With that said, we turn to the issues at hand.

Henderson first contends the trial court lacked subject matter jurisdiction because her claim involved a title dispute. A justice court or county court is not deprived of jurisdiction merely because of the existence of a title dispute. *In re Am. Homes for Rent Props. Eight, LLC*, 498 S.W.3d 153, 156 (Tex. App.—Dallas 2016, orig. proceeding). Rather, the court is deprived of jurisdiction only if the determination of the right to immediate possession necessarily requires the resolution of a title dispute. *Id.* Given Henderson’s failure to file a reporter’s record and the absence of pertinent findings, we must presume the evidence presented supports the trial court’s implicit finding that the resolution of title was not

necessarily required for a determination of the right to immediate possession. As such, we presume the court was not deprived of jurisdiction. We overrule Henderson's first issue.

In her second and third issues, Henderson argues the trial court erred because Freedom Mortgage failed to establish its status as a holder of the note and failed to follow loss mitigation procedures prior to foreclosure. Complaints relating to defects with the foreclosure process or with the purchaser's title to the property may not be considered in a forcible detainer action. *See Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.).

Even assuming these complaints could properly be raised in a forcible detainer action, an analysis of each complaint is dependent upon evidence presented at trial. *See Taylor v. Wells Fargo Bank*, No. 05-16-00115-CV, 2017 WL 1282896, at *2 (Tex. App.—Dallas Apr. 6, 2017, no pet.) (mem. op.). In the absence of a reporter's record, we must presume Freedom Mortgage presented sufficient evidence to overcome Henderson's complaints and established its right to immediate possession of the Kensington property as required to prevail in this action. We overrule Henderson's second and third issues.

Conclusion

Having overruled Henderson's three issues, we affirm the trial court's judgment.

/Craig Smith/
CRAIG SMITH
JUSTICE

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**Court of Appeals
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JUDGMENT

LINDA HENDERSON AND/OR
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1225 KENSINGTON DR. DESOTO,
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FREEDOM MORTGAGE
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D.

Opinion delivered by Justice Smith.
Justices Schenck and Garcia
participating.

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

It is **ORDERED** that each party bear its own costs of this appeal.

Judgment entered March 30, 2021.