

Opinion issued February 10, 2011



In The  
**Court of Appeals**  
For The  
**First District of Texas**

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NO. 01-09-00180-CV

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**SONJA LEONARD, Appellant**

**V.**

**OLAYINKA O. OLAWALE, Appellee**

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**On Appeal from County Civil Court at Law No. 4  
Harris County, Texas  
Trial Court Case No. 926,682**

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**MEMORANDUM OPINION**

This is an appeal from the statutory county court's judgment awarding possession of a residence to appellee Olayinka O. Olawale based on appellant

Sonja Leonard's nonpayment of rent.<sup>1</sup> The forcible-detainer suit was originally filed by Olawale in the justice court against Leonard, and the justice court rendered judgment for Olawale. *See Olawale v. Leonard*, No. EV71C0035513 (J.P. Ct. Precinct 7, Pl. 1, Harris County, Tex., Aug. 28, 2008). Leonard appealed to the statutory county court. TEX. R. CIV. P. 749.

The statutory county court conducted a trial de novo. *See* TEX. R. CIV. P. 751 (appeal is by trial de novo). Olawale tendered a certified copy from the Harris County Clerk of a special warranty deed to the real estate, which was admitted. The deed states that the real estate was sold by SC Paxton I, LLC to Real Rock, LLC. Olawale also tendered a certified copy from the Texas Secretary of State of the certificate of formation for Real Rock, LLC, which was admitted. The certificate of formation states that Olawale is the manager of Real Rock, LLC, and Olawale testified at trial that he had authority to purchase property for Real Rock, LLC. The trial court rendered judgment awarding possession to Olawale.

Leonard filed a motion for new trial in which she: (1) requested abatement and consolidation of the case with a proceeding in district court, which she claimed concerned the same property; (2) challenged the factual sufficiency of the evidence because "Plaintiff did not prove he purchased the property"; (3) claimed the judgment recited an incorrect trial date; (4) asserted that title was in question and

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<sup>1</sup> *See* TEX. PROP. CODE ANN. §§ 24.001–.011 (West 2000 & Supp. 2010) (forcible-entry-and-detainer suits); TEX. R. CIV. P. 738–755 (same).

the court therefore had no jurisdiction; (5) claimed the trial court erred in finding that Olawale's documents "did not show clear change of title between seller and buyer"; and (6) claimed the trial court erred in "accepting a document that is questionably signed under the state of Texas by a notary in New York State." The motion for new trial was overruled by operation of law. *See* TEX. R. CIV. P. 329b(c).

The trial court signed findings of fact and conclusions of law filed by Olawale. Among other things, the trial court found that the special warranty deed was executed in New York and concluded that Texas should give full faith and credit to the New York notarization.

Leonard raises two issues in her appellant's brief. First, she challenges the trial court's jurisdiction on the basis that title to the real estate was at issue. Leonard contends she raised the issue of title in the statutory county court because her answer to the petition (1) stated "Plaintiff does not have clear title to [the real estate]" and (2) requested abatement because of a trial in district court concerning the same property. Nothing in the appellate record, however, demonstrates that Leonard (1) made a separate request, objection, or motion during trial concerning the alleged issue of title or abatement or (2) obtained a ruling from the trial court. *See* TEX R. APP. P. 33.1 (requiring preservation of error for appeal). Leonard also

refers in her appellate brief to documents that were not admitted in evidence at trial to attempt to demonstrate defects in title to the real estate.

We agree that the justice court has jurisdiction over forcible-detainer suits, but does not have jurisdiction over a suit for trial of title to land. *See* TEX. GOV'T CODE ANN. § 27.031(b)(4) (West Supp. 2010) (justice court has no jurisdiction over suit for trial of title to land); TEX. PROP. CODE ANN. § 24.004 (West 2000) (justice court has jurisdiction over forcible-detainer suits). In a forcible-detainer case, the only issue is the right to actual possession, and the merits of the title cannot be adjudicated. TEX. R. CIV. P. 746. On trial de novo, the statutory county court has the same jurisdiction as the justice court. *See Terra XXI, Ltd. v. AG Acceptance Corp.*, 280 S.W.3d 414, 417 (Tex. App.—Amarillo 2008, pet. denied). If it becomes apparent that a genuine issue regarding title exists in a forcible-detainer suit, the court does not have jurisdiction over the matter. *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied).

Leonard's only trial objection to the admission of the certified copy of the special warranty deed, which the trial court overruled, was that "the quality of the deed . . . looks like it was cut and paste." The only question about the validity of the deed was raised by the trial court and concerned the issue of whether the deed was signed in Texas and notarized by a New York notary. The trial court later

specifically found that the special warranty deed was executed in New York. Leonard did not raise the issue of title at trial, and the trial court did not rule on the validity of title.

We hold that the issue of title to the real estate was not before the trial court and that the trial court had subject-matter jurisdiction over the forcible-detainer suit. We overrule issue one.

In her second issue, Leonard challenges the sufficiency of the evidence to support a finding that Olawale had a superior right to possession. We interpret this as a factual sufficiency challenge because it was first raised in Leonard's motion for new trial. In reviewing a challenge to the factual sufficiency of the evidence, we must consider and weigh all the evidence and should set aside the judgment only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996) (citing *Cain v. Bain*, 709 S.W.2d 175, 176 (Tex. 1986)); *Arias v. Brookstone, L.P.*, 265 S.W.3d 459, 468 (Tex. App.—Houston [1st Dist.] 2007, pet. denied).

Leonard's only argument against the sufficiency of the special warranty deed is the trial court's statement that the deed was not valid. The trial court, however, subsequently found that the deed was executed in New York and was valid. Leonard does not provide any argument or authority for the proposition that a deed for real property located in Texas cannot be signed by a grantor outside of

Texas and the grantor's signature cannot be acknowledged by a notary in the jurisdiction where the deed was signed. We know of no such authority.

Considering and weighing all the evidence, we conclude that the trial court's judgment is not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. We overrule issue two.

Leonard filed a reply brief that raises one additional issue, claiming that her right to possession was protected by a supersedeas bond filed during a previous appeal to the Fourteenth Court of Appeals from a separate trial-court proceeding. *See Leonard v. J. P. Morgan*, No. 14-08-00472-CV (Tex. App.—Houston [14th Dist.] July 31, 2008, no pet.) (mem. op.). Olawale has filed a motion to strike the reply brief because it addresses matters that are not raised in his brief. *See* TEX. R. APP. P. 38.3 (“appellant may file a reply brief addressing any matter in the appellee’s brief”). We grant Olawale’s motion to strike the portion of Leonard’s reply brief that raises a new issue. *See Zamarron v. Shinko Wire Co.*, 125 S.W.3d 132, 139 (Tex. App.—Houston [14th Dist.] 2003, pet. denied) (holding that appellate complaints brought for first time in reply brief are waived). We note that Leonard’s new issue, however, was not preserved for appeal in the trial court under Texas Rule of Appellate Procedure 33.1.

In his appellee’s brief, Olawale requests attorney’s fees for what he deems a frivolous suit and appeal, citing Texas Rule of Civil Procedure 13 and relying on

an affidavit for attorney's fees that was not offered as evidence in the trial court.

We deny the request.

We affirm the trial court's judgment.

Jim Sharp  
Justice

Panel consists of Justices Keyes, Sharp, and Massengale.