Opinion issued December 30, 2011

In The

Court of Appeals

For The

First District of Texas

NO. 01-10-00837-CV

U.S. NATIONAL BANK ASSOCIATION, Appellant

V.

BOBBY JOHNSON, Appellee

On Appeal from the 434th District Court
Fort Bend County, Texas
Trial Court Case No. 09-DCV-177382

MEMORANDUM OPINION

This is a restricted appeal from a no-answer default judgment.[1] Appellee Bobby Johnston sued appellant U.S. National Bank Association (USNBA) to quiet

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[1] *See* TEX. CIV. PRAC. & REM. CODE ANN. §§ 51.102–.013 (West 2008 & Supp. 2011) (authorizing appeal by writ of error, now restricted appeal);

title to his house. USNBA brings two issues, claiming there (1) is error apparent on the face of the record because the judgment erroneously granted relief not requested in Johnson's petition and (2) is no other independent basis for the permanent injunction. We agree and reverse.

Background

In his pleadings, Johnson maintains that he signed a note to payee Mortgage Investment Lending Associates, Inc. and that USNBA claimed it was the current holder of the note, with authority to receive payments and foreclose on Johnson's house. According to Johnson's pleadings, USNBA has collected payments from him, threatened foreclosure, and disparaged his credit.

In his petition, Johnson lists two "causes of action." First, he requests a declaratory judgment (a) holding that USNBA is not the holder of the note, (b) determining the identity of the note's holder, and (c) calculating the amount owed on the note. Second, he requests a permanent injunction requiring USNBA "to cease and desist from entering and taking possession of the [house] or otherwise interfering with [his] right to the quiet enjoyment and use of the [house]; proceeding with or attempting to sell or foreclose upon the [house]; and attempting to purchase, transfer, assign or collect on the Note."

TEX. R. APP. P. 30 (restricted appeal); TEX. R. APP. P. 239 (default judgment).

After USNBA did not appear, Johnson filed a "motion for entry of default and default judgment" in which he stated he was "seeking an Order of Quiet Title" and prayed that the district court render a default judgment that "Title is quieted sole in the name of the Plaintiff."[2] The district court rendered a final default judgment that (1) quieted title in the house in Johnson as against USNBA and (2) enjoined USNBA from (a) entering and taking possession of the house or otherwise interfering with Johnson's right to the quiet enjoyment and use of the house, (b) attempting to sell or foreclose on the house, and (c) attempting to purchase, transfer, assign, or collect on the note.

Discussion

Restrictive appeal

A party can prevail in a restricted appeal only if: (1) it filed a notice of the restricted appeal within six months after the judgment was signed; (2) it was a party to the underlying lawsuit; (3) it did not participate in the hearing that resulted in the judgment complained of and did not timely file any postjudgment motions or requests for findings of fact and conclusions of law; and (4) error is apparent on the face of the record. *Ins. Co. of State of Pa. v. Lejeune*, 297 S.W.3d 254, 255 (Tex. 2009). The only element at issue in this case is the fourth: whether there is error

[2] A motion, of course, is not a pleading. *See* TEX. R. CIV. P. 78 (defining plaintiff's pleadings as original petition and such supplemental petitions as may be necessary).

apparent on the face of the record. USNBA claims the district court either erred in quieting title because Johnson did not plead that cause of action in his petition, or erred in granting more relief than Johnson requested.

A judgment must be based upon pleadings. "(A) plaintiff may not sustain a favorable judgment on an unpleaded cause of action, in the absence of trial by consent." *Stoner v. Thompson*, 578 S.W.2d 679, 682 (Tex. 1979) (quoting *Oil Field Haulers Ass'n v. R.R. Comm'n*, 381 S.W.2d 183, 191 (Tex. 1964)). In determining whether a cause of action was plead, a plaintiff's pleadings must be adequate for the court to be able, from an examination of the pleadings alone, to ascertain with reasonable certainty and without resorting to information from another source, the elements of plaintiff's cause of action and the relief sought with sufficient information upon which to base a judgment. *Stoner*, 578 S.W.2d at 683. Mere formalities, minor defects, and technical insufficiencies will not invalidate a default judgment in which the petition states a cause of action and gives "fair notice" to the opposing party of the relief sought. *Id.* Texas Rules of Civil Procedure 45(b) requires a "statement in plain and concise language of the plaintiff's cause of action" that gives "fair notice to the opponent [of] . . . the allegations as a whole," and Rule 47(a) requires "a short statement of the cause of action sufficient to give fair notice of the claim involved." A default judgment is

erroneous if the plaintiff's petition does not give fair notice of the claim asserted. *Stoner*, 578 S.W.2d at 684–85.

Johnson plead for a declaratory action, which is authorized by the Uniform Declaratory Judgments Act. TEX. CIV. PRAC. & REM. CODE ANN. §§ 37.001–.011 (West 2008). The Act allows a court "to declare rights, status and other legal relations." *Id.* § 37.003(a); *see City of El Paso v. Heinrich*, 284 S.W.3d 366, 370 (Tex. 2009). Johnson's petition specifically requests a declaratory judgment (a) holding that USNBA is not the holder of the note, (b) determining the identity of the note's holder, and (c) calculating the amount owed on the note.

Suit to quiet title

We first determine whether Johnson's petition states a cause of action to quiet title. The Texas Supreme Court long ago explained the purpose of quieting title, which determines possession, as opposed to ownership:

> The action to quiet title to land . . . must embrace all that class of cases necessary to the protection of the fullest right to land recognized by law, but not declared such as will support an action of trespass to try title, or like remedy. Considered technically, a suit to quiet title, except in those cases in which it is permitted to establish a right between one person and many others claiming distinct and individual interests, is limited to cases in which a person in possession seeks relief against one who has repeatedly, and without success, sought to obtain possession by the common-law action of ejectment. That action was simply a possessory action, and no question of title was settled by it; hence the necessity, frequently, for a suit to quiet title. The action of trespass to try title serves the purposes of an action of ejectment in this state; but in it the question of title, as well as right to the possession, is determined and as fully settled as it could be by a

> suit to quiet title; hence seldom, if ever, could a suit to quiet title, technically considered, be here necessary. The suits contemplated must be suits of broader purpose, embracing suits founded even on equitable titles instituted to remove cloud from such title, and suits necessary, . . . as occasion may require it, to enable the holder of the feeblest equity to remove from his way to legal title any unlawful hinderance having the appearance of better right.

Thomson v. Locke, 1 S.W. 112, 115 (Tex. 1886). A cloud on title exists when an outstanding claim or encumbrance is shown which, on its face, if valid, would affect or impair the title of the owner of the property. Accordingly, the elements of the cause of action to quiet title are that the plaintiff must show (1) an interest in a specific property, (2) title to the property is affected by a claim by the defendant, and (3) the claim, although facially valid, is invalid or unenforceable. *Sadler v. Duvall*, 815 S.W.2d 285, 293 n.2 (Tex. App.—Texarkana 1991, writ denied); *Best Inv. Co. v. Parkhill*, 429 S.W.2d 531, 534 (Tex. Civ. App.—Corpus Christi 1968, writ dism'd); *see* 17 WILLIAM V. DORSANEO III ET AL., TEXAS LITIGATION GUIDE § 257.02[1] (2004).

Although Johnson's petition did not explicitly identify a cause of action with the heading "suit to quiet title," it does set out the following: (1) Johnson's claim that he owns the house; (2) that USNBA asserts itself as the holder of the note on the house, threatened foreclosure, and disparaged his credit; and (3) his challenges as to whether USNBA is the current note holder. Johnson's petition, therefore, gave fair notice to USNBA of the elements of a cause of action to quiet title.

This does not, however, end our inquiry. Johnson could have plead for a declaratory action quieting title but did not. Instead, he specifically requested that the trial court "issue a declaratory judgment that (a) Defendant is not the holder of the Note; (b) a declaration of which party is the current Holder of the Note if such information can be obtained, and (c) the amount owed on the Note" and "specifying their [sic] and Defendant's rights and duties in connection with the Note." When the district court, however, quieted title to the house in Johnson as against USNBA and, thus, granted more relief than Johnson requested, it erred. *See Mullen v. Roberts*, 423 S.W.2d 576, 579 (Tex. 1968) (holding default judgment must accord with pleadings); *Binder v. Joe*, 193 S.W.3d 29, 33 (Tex. App.—Houston [1st Dist.] 2006, no pet.) (error apparent on face of record when trial court granted relief in excess of that plead).[3]

We sustain issue one.

Injunctive relief

In its second issue, USNBA contends that the district court's grant of injunctive relief should be reversed because Johnson's request for a permanent injunction was based solely on his pleading for a declaratory action. We agree.

[3] Johnson argues that his general prayer for relief was sufficient to authorize the additional relief, citing *Stoner*, 578 S.W.2d at 684. *Stoner*, however, held that absent mention of damages in the pleadings, a general prayer did not authorize a default-judgment award of $50,000 in damages, and is not applicable to Johnson's argument. *Id.* at 683–84.

Johnson's petition does not state an independent statutory basis for injunctive relief, but instead is "[b]ased on the facts above," referring to the declaratory action. Unless a statutory ground exits for injunctive relief, the general rule at equity is that before injunctive relief can be obtained, it must appear an adequate remedy at law does not exist. *Butnaru v. Ford Motor Co.*, 84 S.W.3d 198, 210 (Tex. 2002) (quoting *Republic Ins. Co. v. O'Donnell Motor Co.*, 289 S.W. 1064, 1066 (Tex. Civ. App.—Dallas 1926, no writ)). Johnson is not entitled to injunctive relief in light of our disposition of issue one.

We sustain issue two.

Appellate relief

Johnson requests, in the alternative, that if this Court reverses the district court's judgment, that we render the judgment the district court should have rendered, i.e., issue a declaratory judgment that USNBA is not the holder of the note, quiet title to the house on that basis in Johnson against USNBA, and grant injunctive relief. *See* TEX. R. APP. P. 43 ("When reversing a trial court's judgment, the court must render the judgment that the trial court should have rendered, except when: (a) a remand is necessary for further proceedings; or (b) the interests of justice require a remand for another trial."). Johnson cites to one default-judgment case, which is distinguishable.

In *Church v. Quick*, the Fourteenth Court of Appeals modified a divorce decree to remove void portions of the decree, and as so modified, affirmed. *Church v. Quick*, No. 14-08-00131-CV, slip op. at 8, (Tex. App.—Houston [14th Dist.] July 14, 2009, no pet.) (mem. op.), *available at* http://www.14thcoa.courts.state.tx.us/opinions/PDFopinion.asp?OpinionID=85924; *see* TEX. R. APP. P. 43.2(b).[4] The error in the judgment before this Court is reversible error, not void. *See Browning v. Prostok*, 165 S.W.3d 336, 346 (Tex. 2005) ("A judgment is void only when it is apparent that the court rendering judgment 'had no jurisdiction of the parties or property, no jurisdiction of the subject matter, no jurisdiction to enter the particular judgment, or no capacity to act.'").

Johnson acknowledges that in cases of legally insufficient default judgments, Texas appellate courts do not render judgment.[5] *See Holt Atherton Indus., Inc. v. Heine*, 835 S.W.2d 80, 86 (Tex. 1992) ("Texas courts view an appeal from a default judgment somewhat differently than an appeal from a trial on the

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[4] Modifying a trial court's judgment and affirming it as modified is the functional equivalent of reversing the trial court's judgment and rendering the judgment the trial court should have rendered. *See* TEX. R. APP. P. 43.2(c).

[5] In cases in which the appellee files a remittitur, appellate courts have rendered judgment when reversing default judgments that awarded damages in excess of the amount plead for in the petition. *See, e.g., Mahon v. Caldwell, Haddad, Skaggs, Inc.*, 783 S.W.2d 769, 772 (Tex. App.—Fort Worth 1990, no pet.). We note that in *Mahon*, the Fort Worth Court of Appeals stated it would reverse and remand for trial if the remittitur was not filed. *Id.*

merits. In part, this is because an adjudication on the merits is preferred in Texas."). Because default judgments are highly disfavored, we hold that reversing the district court's erroneous default judgment and rendering a nonerroneous default judgment would not be in the interest of justice.

Accordingly, we reverse the district court's default judgment and remand the case to the district court for further proceedings. *See* TEX. R. APP. P. 43.2(d).

Jim Sharp
Justice

Panel consists of Justices Jennings, Sharp, and Brown.