

Opinion issued May 10, 2016



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

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NO. 01-15-00398-CV

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**JENNIE LARRY JOHNSON, Appellant**

**V.**

**FREO TEXAS LLC, Appellee**

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**On Appeal from the County Court at Law No. 3  
Fort Bend County, Texas  
Trial Court Case No. 15-CCV-054223**

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**MEMORANDUM OPINION**

In this forcible detainer case, appellant Jennie Larry Johnson appeals the county court at law's judgment awarding possession of residential real property to appellee Freo Texas LLC.

Johnson's appellate attorney filed a brief asserting that the justice court and county court at law lacked jurisdiction over the case because resolution of the case required adjudication of the property's title. The brief also asserted in two issues that the county court at law erred by (1) admitting evidence regarding the notice sent to Johnson under section 24.005 of the Property Code and (2) concluding that Freo complied with section 24.005's notice requirement.

Johnson's attorney subsequently withdrew and Johnson filed a pro se brief. Like the first brief, the pro se brief asserted that the justice court and county court at law lacked jurisdiction over the case because resolution of the case required adjudication of the property's title. It also asserted that (1) the judgment should be reversed because the court reporter did not record the county court at law proceedings; and the county court at law erred by (2) denying Johnson's oral motion for a 15-day continuance to find counsel; and (3) concluding that the Protecting Tenants from Foreclosure Act (PTFA) did not entitle Johnson to possession of the home.

Johnson filed a pro se notice of appeal, but did not post a supersedeas bond. Freo moved to dismiss the appeal on the ground that it is moot because Freo took possession of the home following the execution of a writ of possession. We grant Freo's motion to dismiss, vacate the county court at law's judgment, and dismiss the appeal as moot.

## **Background**

Johnson owned a home in Fort Bend County that she encumbered with a note secured by a deed of trust. After Johnson's purported default on the note, the mortgagee appointed a substitute trustee to conduct a foreclosure sale pursuant to the deed of trust. The substitute trustee conducted a foreclosure sale and Freo purchased the property at the sale. A substitute trustee's deed was recorded showing that Freo was the owner of the property.

The deed of trust Johnson signed provided that if the home was sold at a foreclosure sale:

Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession.

When Johnson refused to vacate the property, Freo sued for forcible detainer in justice court.

The justice court entered a default judgment in favor of Freo, and Johnson appealed to the county court at law. The case proceeded to trial, and the county court at law rendered judgment that Freo was entitled to possession. Johnson timely appealed but did not file a supersedeas bond in the amount set by the trial court, and Freo obtained possession of the home under a writ of possession.

### **Is Johnson’s appeal moot?**

As a preliminary matter, we address Freo’s argument in its motion to dismiss that the appeal is moot because it has possession of the home and Johnson has not asserted a potentially meritorious claim to current, actual possession of the home.

The only issue in an action for forcible detainer is the right to actual possession of the property. *See* TEX. R. CIV. P. 510.3(e); *Marshall v. Hous. Auth.*, 198 S.W.3d 782, 785 (Tex. 2006). If a supersedeas bond in the amount set by the trial court is not filed, the judgment in a forcible detainer action may be enforced and a writ of possession may be executed evicting the defendant from the property. *See* TEX. PROP. CODE § 24.007; *Marshall*, 198 S.W.3d at 786. A defendant’s indigence does not relieve her of the obligation to file a supersedeas bond. *See* TEX. PROP. CODE § 24.007(a) (“A judgment of a county court may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court. In setting the supersedeas bond the county court shall provide protection for the appellee to the same extent as in any other appeal . . .”).

Failure to supersede the judgment, standing alone, does not divest the appellant of her right to appeal. *Marshall*, 198 S.W.3d at 786–87. However, failure to supersede the judgment may render the appeal moot. *Id.* at 787. If a forcible-detainer defendant fails to supersede the judgment and loses possession of the

property, the appeal is moot unless the defendant (1) timely and clearly expresses her intent to appeal and (2) the appellate relief requested is “not futile; that is, so long as she held and asserted a potentially meritorious claim of right to current, actual possession of the [property].” *Marshall*, 198 S.W.3d at 787. Thus, in order to determine whether the appeal is moot, we must examine Johnson’s claims to determine whether any provide a basis for claiming a right to current, actual possession of the home. *See, e.g., Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 768 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (briefly reviewing merits of appellant’s claims to determine whether forcible detainer appeal was moot); *Cavazos v. San Antonio Hous. Auth.*, No. 04-09-00659-CV, 2010 WL 2772450, at \*2 (Tex. App.—San Antonio July 14, 2010, no pet.) (appellant’s brief did not present any basis for claiming right to current, actual possession of property, and therefore issue of possession was moot).

Johnson contends that the justice court and county court at law lacked jurisdiction over the case because she filed a separate suit in district court contesting the foreclosure and the validity of the substitute trustee’s deed, and therefore adjudication of the right to possession required an adjudication of title. But Johnson agreed in the deed of trust that foreclosure would establish a landlord and tenant-at-sufferance relationship between her and the foreclosure purchaser—here, Freo. This relationship provided an independent basis for the justice court and county court at

law to determine the issue of immediate possession without resolving the issue of title to the property. *See Rice v. Pinney*, 51 S.W.3d 705, 712 (Tex. App.—Dallas 2001, no pet.) (landlord-tenant-at-sufferance relationship created after foreclosure by agreement in deed of trust provides independent basis for justice and county courts to determine issue of immediate possession without resolving issue of title to property); *Wilhelm*, 349 S.W.3d at 769 (separate suit in district court claiming wrongful foreclosure does not deprive justice and county courts of jurisdiction in forcible detainer suit). Accordingly, this jurisdictional argument does not provide a basis for a claim that Johnson is entitled to current, actual possession of the home. *See Rice*, 51 S.W.3d at 712; *Wilhelm*, 349 S.W.3d at 769.

There was no reporter's record taken of the county court at law proceedings. Johnson argues that the judgment should be reversed because various appellate and local rules compelled the county court at law to require the court reporter to record the proceedings. But generally, if a party wants a court reporter to record trial court proceedings, the party must request the court reporter do so. *See* TEX. GOV'T CODE § 52.046(a) (court reporter shall record proceedings "on request"); *Nabelek v. Dist. Attorney of Harris Cty.*, 290 S.W.3d 222, 231 (Tex. App.—Houston [14th Dist.] 2005, pet. denied) (under section 52.046 of the Government Code, court reporter is not obligated to record trial court proceedings unless party requests). Johnson concedes that she did not request that the court reporter record the trial proceedings

and simply assumed the trial court had asked the reporter to do so. She argues that because she was proceeding pro se, the trial court should have informed her that the reporter was not recording the proceedings. But Johnson's failure to comply with the applicable laws and rules of procedure is not excused because she was proceeding pro se. *See Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 185 (Tex. 1978) ("Litigants who represent themselves must comply with the applicable procedural rules, or else they would be given an unfair advantage over litigants represented by counsel."); *Brown v. Tex. Emp't Comm'n*, 801 S.W.2d 5, 8 (Tex. App.—Houston [14th Dist.] 1990, writ denied) ("Pro se litigants are held to the same standards as licensed attorneys."). Accordingly, Johnson's argument regarding the reporter's record does not provide a basis for her to claim that she is entitled to current, actual possession of the home. *See Nabelek*, 290 S.W.3d at 231 (party cannot show error in failure to take record if party does not demonstrate that it requested court reporter take a record).

Johnson's remaining claims are complaints about rulings made by the county court at law based on the evidence and argument at trial. Because it is the appellant's burden to request the court reporter to record the proceedings, an appellant waives argument about any exchanges not recorded, and when there is no reporter's record made, we assume that the trial court heard sufficient evidence to make all necessary findings in support of its judgment. *See Nicholson v. Fifth Third Bank*, 226 S.W.3d

581, 583 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (appellant’s burden to request court reporter to make record of proceedings and bring forward sufficient record to show error committed by trial court); *Vickery v. Comm’n for Lawyer Discipline*, 5 S.W.3d 241, 251 (Tex. App.—Houston [14th Dist.] 1999, pet. denied) (appellate court assumes trial court heard sufficient evidence to make all necessary findings needed to support its judgment if no reporter’s record). Because no reporter’s record was made, Johnson’s complaints about rulings made by the county court at law based on the evidence and argument at trial do not provide a basis for her to claim that she is entitled to current, actual possession of the home.

Thus, Johnson claims do not present any basis for claiming a right to current, actual possession of the home. Because she is no longer in possession of the home and she does not assert a potentially meritorious claim, the issue of possession—the sole issue in this appeal—is moot. *See Marshall*, 198 S.W.3d at 787; *Wilhelm*, 349 S.W.3d at 769. Accordingly, we will grant Freo’s motion, vacate the county court at law’s judgment, and dismiss the appeal as moot. *See Marshall*, 198 S.W.3d at 785 (“We conclude that Marshall’s case is moot and that the court of appeals erred in dismissing only the appeal and leaving the trial court’s judgment in place.”).



## **Conclusion**

We grant Freo's motion to dismiss, vacate the county court at law's judgment, and dismiss the appeal as moot.

Rebeca Huddle  
Justice

Panel consists of Justices Jennings, Massengale, and Huddle.