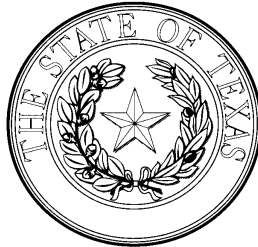


Opinion issued April 26, 2016



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

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NO. 01-15-00663-CV

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**DEVON WILMINGTON, Appellant**  
V.  
**BAY AREA UTILITIES, LLC, Appellee**

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**On Appeal from County Civil Court at Law No. 3  
Harris County, Texas  
Trial Court Case No. 1057183**

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**MEMORANDUM OPINION**

Appellant, Devon Wilmington, appeals from the trial court's judgment in a forcible-detainer action. In three issues, Wilmington argues the trial court lacked jurisdiction in this suit because appellee, Bay Area Utilities, LLC, lacked a

justiciable interest in the property. Bay Area argues the appeal is moot because Wilmington is no longer in possession of the property.

We affirm.

### **Background**

In February 2009, Wilmington issued a deed of trust, naming herself as borrower, David Brown as the trustee, Mortgage Electronic Registration Systems, Inc. as the beneficiary (“solely as nominee for Lender”), and Ryland Mortgage Company as the lender. This was in exchange for a mortgage on the property listed in the deed of trust. Under the terms of the deed of trust,

If the property is sold pursuant to [the deed’s foreclosure procedures], 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.

In July 2014, the holder of the note foreclosed on the property. Nationstar Mortgage LLC purchased the property at the foreclosure sale. Nationstar subsequently sold the property to Bay Area.

Bay Area filed the underlying action with a Harris County justice of the peace court. The court signed a judgment in favor of Bay Area. Wilmington appealed to a county court at law. After a trial, the county court at law also signed a judgment in favor of Bay Area. The trial court’s judgment granted a writ of possession to Bay Area.

Wilmington appealed but did not supersede the judgment. There is some evidence in the appellate record that, since Wilmington's filing of her notice of appeal, Bay Area has executed the writ of possession, that Wilmington has vacated the property, and that Bay Area has taken and maintained possession of the property.

### **Mootness**

A controversy must exist between the parties at every stage of the legal proceedings, including appeal. *Bd. of Adjustment of City of San Antonio v. Wende*, 92 S.W.3d 424, 427 (Tex. 2002). Mootness affects subject-matter jurisdiction of a court. *Stern v. Marshall*, 471 S.W.3d 498, 515 (Tex. App.—Houston [1st Dist.] 2015, no pet.). If the issues on appeal are moot, the appeal must be dismissed. *See Marshall v. Housing Authority of City of San Antonio*, 198 S.W.3d 782, 785–87 (Tex. 2006).

Bay Area asserts that, after the foreclosure, Wilmington became a tenant at sufferance on the property. A tenant at sufferance does not have any legal right to possession but, instead, wrongfully maintains possession. *Coinmach Corp. v. Aspenwood Apartment Corp.*, 417 S.W.3d 909, 915 (Tex. 2013). If an occupier of property, who is subject to a forcible detainer action, loses physical possession of the property and has no legal right to claim repossession, then there ceases to be a live, justiciable controversy between the parties about possession. *See Marshall*, 198 S.W.3d at 786–87 (holding no live controversy between tenant subject to

forcible-detainer action and owner of property because tenant voluntarily vacated property and lease term expired during pendency of appeal). When there is no live, justiciable controversy between the parties, the appeal is moot. *See id.*

If the issues on appeal concern matters beyond possession, however, then the appeal is not rendered moot. *Cavazos v. San Antonio Hous. Auth.*, No. 04-09-00659-CV, 2010 WL 2772450, \*2 (Tex. App.—San Antonio July 14, 2010, no pet.) (mem. op.) (citing *Rice v. Pinney*, 51 S.W.3d 705, 707 (Tex. App.—Dallas 2001, no pet.)). A claim for rents can be included in a forcible detainer action. *Id.* (citing TEX. R. CIV. P. 738; *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 434 (Tex. App.—Houston [1st Dist.] 2007, no pet.)). A challenge of an award of rents is not rendered moot by a change in possession. *Id.*

Here, in addition to determining rights of possession, the trial court's judgment awarded rents and attorneys' fees. Accordingly, any change in possession of the property would not render this entire cause moot.

### **Justiciable Interest in Property**

In her three issues on appeal, Wilmington argues the trial court lacked jurisdiction in this suit because Bay Area lacked a justiciable interest in the property.

#### **A. Standard of Review**

The question of subject matter jurisdiction is a legal question that we review *de novo*. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex.

2004). “In deciding whether the court has subject-matter jurisdiction, we consider the plaintiffs’ pleadings and the evidence pertinent to the jurisdictional inquiry, without regard to the case’s merits.” *Fink v. Anderson*, 477 S.W.3d 460, 465 (Tex. App.—Houston [1st Dist.] 2015) (citing *Cty. of Cameron v. Brown*, 80 S.W.3d 549, 555 (Tex. 2002)).

Standing is a component of subject-matter jurisdiction. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553–54 (Tex. 2000). “In order for any person to maintain a suit it is necessary that he have standing to litigate the matters in issue.” *Hunt v. Bass*, 664 S.W.2d 323, 324 (Tex. 1984). “Standing consists of some interest peculiar to the person individually and not as a member of the general public.” *Id.*

## **B. Analysis**

Bay Area brought a forcible detainer action against Wilmington. A forcible detainer action concerns the determination of right of immediate possession. *Marshall*, 198 S.W.3d at 787. “To prevail in a forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession.” *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.); accord *Morris v. Am. Home Mortg. Servicing, Inc.*, 360 S.W.3d 32, 34 (Tex. App.—Houston [1st Dist.] 2011, no pet.).

Not only is a plaintiff not required to prove title, the court has no jurisdiction to adjudicate title in a forcible detainer action. *Rice*, 51 S.W.3d at 708–09 (holding that jurisdiction of forcible detainer actions is expressly given to justice courts, that appellate jurisdiction of statutory county court from ruling by justice court is confined to jurisdictional limits of justice court, and that statutory county court has no jurisdiction to adjudicate title in de novo trial following appeal of forcible detainer suit from justice court). “Neither a justice court nor a county court has jurisdiction to determine a right to possession if resolution of that right in turn *depends on* resolution of a title dispute.” *Mohammed v. D. 1050 W. Rankin, Inc.*, 464 S.W.3d 737, 740 (Tex. App.—Houston [1st Dist.] 2015, no pet.) (emphasis added).

Wilmington argues that Bay Area lacked standing to sue her, arguing that she disputed Bay Area’s title and the dispute in title deprived the trial court of jurisdiction to determine right of possession. A dispute in title does not necessarily defeat a determination of right of possession. *Morris*, 360 S.W.3d at 34–35; *Mohammed*, 464 S.W.3d at 740–41. It is only when resolution of a right to possession depends on resolving a title dispute that a justice court is deprived of jurisdiction for a forcible detainer action. *Mohammed*, 464 S.W.3d at 741; *Rice*, 51 S.W.3d at 709.

“The existence of a landlord-tenant relationship provides a basis for the court to determine the right to immediate possession without resolving the question of

title.” *Morris*, 360 S.W.3d at 34. Here, the record shows that, according to the terms of the February 19, 2009 deed of trust executed between Wilmington and Ryland Mortgage, Wilmington would become a tenant at sufferance if a foreclosure occurred. *See Coinmach*, 417 S.W.3d at 915 (holding tenant at sufferance does not have any legal right to possession but, instead, wrongfully maintains possession). The record further shows that the property was foreclosed upon around July 1, 2014. The property was purchased at the foreclosure sale by Nationstar. Nationstar then conveyed its interest in the property to Bay Area. This establishes a superior right to possession. *See Morris*, 360 S.W.3d at 35 (holding superior right to possession established when record shows landlord-tenant established by deed of trust and plaintiff shown as successor in interest after foreclosure sale).

Wilmington also argues that Bay Area lacked standing to sue her because it “has no prima facie evidence that it owned the property.” Proof of ownership is not required for a forcible detainer action, however. *Rice*, 51 S.W.3d at 709; *Morris*, 360 S.W.3d at 34. Instead, Bay Area was only required to establish a superior right to possession. *Rice*, 51 S.W.3d at 709; *Morris*, 360 S.W.3d at 34. We have held Bay Area sufficiently established that it had a superior right to possession over Wilmington.

The remainder of Wilmington’s arguments rest on confusion about the record or the law. For instance, Wilmington argues there was no evidence that Nationstar

sent her a notice to vacate the premises. There is evidence, however, that Bay Area did send notice. Likewise, Wilmington argues the evidence shows that Bay Area did not properly conduct the foreclosure sale. But Bay Area was not the party that conducted the foreclosure sale. Moreover, any error in the foreclosure sale is not relevant to a forcible detainer action. *See Williams v. Bank of New York Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.) (“Any defects in the foreclosure process or with appellee’s title to the property . . . . may be pursued in suits for wrongful foreclosure or to set aside the substitute trustee’s deed, but they are not relevant in this forcible detainer action.”). All of Wilmington’s other complaints about whether the foreclosure sale was properly conducted fails for the same reason. *See id.*

We overrule Wilmington’s three issues.

### **Conclusion**

We affirm the judgment of the trial court.

Laura Carter Higley  
Justice

Panel consists of Justices Higley, Huddle, and Lloyd.