

Opinion issued October 19, 2017



In The
Court of Appeals
For The
First District of Texas

NO. 01-16-00890-CV

PRAISE DELIVERANCE CHURCH, Appellant
V.
JELINIS, LLC AND HREAL COMPANY, LLC, Appellees

On Appeal from the County Civil Court at Law No. 3
Harris County, Texas
Trial Court Case No. 1080764

OPINION

Appellees Jelinis, LLC and HREAL Company, LLC brought a forcible detainer action in justice court against appellant Praise Deliverance Church. The justice court issued a judgment in favor of the church. Jelinis and HREAL appealed to the county court at law. On de novo review, the county court at law

awarded possession of the property to Jelinis and HREAL. A writ of possession was executed and possession of the property was delivered to Jelinis and HREAL.

On appeal, the church challenges the subject-matter jurisdiction of the trial courts. In three other issues, the church contends that the county court at law committed reversible error by: (1) limiting the cross-examination of witnesses; (2) awarding possession of property that Jelinis and HREAL did not identify in their petition for eviction; and (3) determining that sufficient evidence supported the identification of the property awarded to Jelinis and HREAL. In response to the church's contentions, Jelinis and HREAL raise a challenge to our appellate jurisdiction to consider the issues raised by the church. Specifically, Jelinis and HREAL argue that we lack appellate jurisdiction because this dispute is moot and the Property Code prohibits appeals contesting issues of possession when the disputed premises were used for commercial purposes. *See* TEX. PROP. CODE § 24.007.

Because the church's issues challenging the jurisdiction of the trial courts are not moot or prohibited by the Property Code, we conclude that we have appellate jurisdiction. Nevertheless, the church fails to establish that the trial courts lacked subject-matter jurisdiction over this dispute. With respect to the church's remaining issues, we conclude that we lack appellate jurisdiction to consider these issues because they are concerned with the issue of possession. Accordingly, to the

extent the church challenges the subject-matter jurisdiction of the trial courts, we affirm the county court at law's judgment for possession, and we dismiss the remainder of the appeal for want of appellate jurisdiction.

Background

Praise Deliverance Church executed a construction deed of trust in favor of Wells Fargo Bank covering ten tracts of land "commonly known as 2400 Eastex Freeway, Houston, TX." The deed of trust secured payment on a promissory note also executed by the church in favor of the bank. Wells Fargo transferred the deed of trust and note to National Loan Investors, L.P., which foreclosed on the deed of trust on June 7, 2016, following the church's default on the loan. Jelinis, LLC and HREAL Company, LLC purchased the property at the foreclosure sale.

The deed of trust provided that if the church remained in possession of the property after a foreclosure sale, it would become a tenant at sufferance of the buyer at the sale.

After Jelinis and HREAL bought the property at the foreclosure sale, they sent eviction notices to the church at 2330 and 2400 Eastex Freeway. Jelinis and HREAL then filed a petition for eviction in justice court, seeking possession of property described as "2330 Eastex Fwy, Houston, TX 77026." The petition indicated that the church could be served at "2330 Eastex Fwy, Houston, TX

77026 Known as 2400 Eastex Fwy 77026.” The petition identified Dr. Carolyn Sion as the church’s registered agent.

The justice court issued a “Judgment for Tenant,” which stated that “after hearing the evidence, the Court finds in favor of the Defendant,” and it ordered that Jelinis and HREAL take nothing. On the justice court’s “Eviction Docket Sheet,” in a section titled “Judgment for the Defendant,” a notation read: “Title Issue.”

After the justice court issued its judgment in favor of the church, HREAL filed a bond and a notice of appeal. The justice court then issued an order authorizing Jelinis and HREAL’s appeal of the judgment to the county court.

On appeal from the justice court, the county court at law held a de novo bench trial to determine who had the right to possession of the property. The church did not have an attorney present for trial. Jelinis and HREAL called one witness who testified that the two companies had purchased the property at a foreclosure sale and had followed the correct eviction procedures. The trial court admitted into evidence a substitute trustee’s deed executed after the foreclosure sale which conveyed the property from the church to Jelinis and HREAL. The deed was accompanied by an affidavit of the substitute trustee, the notice of substitute trustee’s sale, and a demand letter for payment of all amounts owed on the promissory note. The court also admitted into evidence the construction deed of trust, the eviction notice sent to the church after the foreclosure sale, and certified-

mail return receipts which demonstrated that copies of the eviction notice had been delivered to both 2330 and 2400 Eastex Freeway.

A person affiliated with the church, Dr. Carolyn Sion, was present during the trial. After Jelinis and HREAL completed their direct examination of their sole witness, Dr. Sion sought to question the witness. The court told her she could not examine the witness because she was not an attorney. Dr. Sion then testified, on behalf of the church, that it had the “immediate right” to possession because it was “never served.” She also stated that the addresses where Jelinis and HREAL mailed notices were vacant lots.

The county court at law issued a judgment awarding possession of the property “commonly known as 2400 Eastex Freeway” to Jelinis and HREAL. Prior to appealing, the church failed to supersede the judgment by filing a bond within ten days. *See* TEX. PROP. CODE § 24.007; TEX. R. CIV. P. 510.13. As a result, a writ of possession was executed, and Jelinis and HREAL obtained possession of the property.

Praise Deliverance Church appealed the judgment of the county court at law.

Analysis

This appeal features cross-challenges of a jurisdictional nature. The church contends that the trial courts lacked subject-matter jurisdiction, and they thus lacked the power to enter a judgment awarding possession of the property to Jelinis

and HREAL. The church also contends that the county court at law erred by: (1) limiting the examination of witnesses; (2) awarding possession of property to Jelinis and HREAL that they had not identified in their petition for eviction; and (3) determining that sufficient evidence supported the identification of the property awarded to Jelinis and HREAL.

With respect to all of the issues raised by the church, Jelinis and HREAL raise two general challenges to our appellate jurisdiction. First, they argue that the dispute in this case is moot because the church is no longer in possession of the property, and it failed to supersede the judgment. Second, they contend that the Property Code prohibits appeals “on the issue of possession unless the premises in question are being used for residential purposes only.” TEX. PROP. CODE § 24.007.

I. Subject-matter jurisdiction in the trial courts

The church contends that the trial courts lacked subject-matter jurisdiction to resolve the issue of possession. Specifically, the church argues that the justice court determined it lacked jurisdiction over this case because the issue of possession required it to resolve a title issue, and as a result the county court at law also lacked jurisdiction because of this jurisdictional determination by the justice court. In support of this argument, the church relies upon the justice court’s “Eviction Docket Sheet,” which contained the handwritten notation, “Title Issue.” The church also argues that because it never received notice of the justice court’s

order authorizing Jelinis and HREAL's appeal, the county court at law lacked jurisdiction.

a. Appellate jurisdiction

Jelinis and HREAL contend that we lack appellate jurisdiction to decide these issues because this appeal is moot and the Property Code prohibits our consideration of them.

With respect to mootness, Jelinis and HREAL contend that there is “no longer a justiciable controversy between the parties” because the church is no longer in current possession of the property and fails to assert any basis under which it might claim a superior right to actual current possession of the property. The appellate record reflects, however, that the church filed wrongful-foreclosure suits in state and federal court challenging the foreclosure sale upon which Jelinis and HREAL based their claims for possession of the property. Although the appellate record does not indicate the status of that litigation, our review of public records indicates that those legal challenges have been dismissed voluntarily, without prejudice.*

* We take judicial notice of the publicly accessible docket sheets that indicate that the church's federal suit (case no. 4:16CV01819 in the U.S. District Court, Southern District of Texas) and Harris County suit (case no. 1079161, County Court at Law Two) referenced in the appellate record of this case were dismissed without prejudice as of July 7, 2016.

The substitute trustee’s deed conveying title to Jelinis and HREAL indicated that the foreclosure sale took place on June 7, 2016, and the deed itself was signed on June 17, 2016. We have no record indicating that a title dispute relating to the contested property has been resolved definitively against the church, and Jelinis and HREAL have not demonstrated that such a claim would be barred in the future by limitations or any other reason. *See Ford v. Exxon Mobile Chem. Co.*, 235 S.W.3d 615, 618 (Tex. 2007) (stating that “an equitable action to remove cloud on title is not subject to limitations if a deed is void” and also noting that “when a deed is merely voidable” as a result of fraud, the four-year statute of limitations controls); *see also* TEX. CIV. PRAC. & REM. CODE § 16.004(a)(4); TEX. PROP. CODE §§ 16.024–.028 (limitations periods for adverse possession).

A successful challenge to the county court at law’s jurisdiction in this case would result in vacatur of the judgment of the county court, which ordered the dispossession of the property. *See Pina v. Pina*, 371 S.W.3d 361, 362, 366 (Tex. App.—Houston [1st Dist.] 2012, no pet.). Even though the church still would lack possession in that circumstance, it then could bring its own forcible detainer action and attempt to evict Jelinis and HREAL. Accordingly, we conclude that the church’s challenge to the trial courts’ jurisdiction to enter a judgment for possession in favor of Jelinis and HREAL is not moot merely because the church

currently lacks possession and failed to supersede the judgment. *See Marshall v. Hous. Auth. of City of San Antonio*, 198 S.W.3d 782, 786–87 (Tex. 2006).

Jelinis and HREAL also contend that we lack jurisdiction over these issues because the Property Code provides that “a final judgment of a county court in an eviction suit may not be appealed on the issue of possession unless the premises in question are being used for residential purposes only.” TEX. PROP. CODE § 24.007. But the church has challenged the trial courts’ jurisdiction to enter judgment, and thus the “issue” on appeal is not merely the merits of the trial court’s resolution of a disputed issue of possession. We conclude that we have jurisdiction over the church’s issues challenging the trial courts’ subject-matter jurisdiction.

b. Docket order notation did not deprive trial courts of subject-matter jurisdiction

The church contends that the trial courts both lacked jurisdiction because the justice court determined that it lacked jurisdiction. The church relies upon the justice court’s “Eviction Docket Sheet,” which includes the handwritten notation: “Title Issue,” in a section titled “Judgment for the Defendant.”

The docket sheet does not establish that the justice court made a jurisdictional determination in this case. The docket sheet was not signed by the justice of the peace and there is no indication as to who may have made the notation on it. Moreover, a “docket-sheet entry ordinarily forms no part of the record that may be considered; rather, it is a memorandum made for the trial court

and clerk's convenience." *In re Bill Heard Chevrolet, Ltd.*, 209 S.W.3d 311, 315 (Tex. App.—Houston [1st Dist.] 2006, orig. proceeding). Therefore, a "docket-sheet entry cannot contradict or take the place of a written order or judgment." *Id.* Rather than dismissing the case for want of jurisdiction, the justice court entered a judgment on the merits in favor of the church. Accordingly we cannot conclude, as suggested by the church, that the justice court determined that it lacked subject-matter jurisdiction based on the notation on the docket sheet.

Even if the justice court had determined it lacked jurisdiction, the perfection of an appeal from a justice court to a county court at law for trial de novo vacates and annuls the judgment of the justice court. *See Villalon v. Bank One*, 176 S.W.3d 66, 69–70 (Tex. App.—Houston [1st Dist.] 2004, pet. denied). The county court at law cannot affirm or reverse the judgment of the justice court. *See* TEX. R. CIV. P. 510.10(c); *Villalon*, 176 S.W.3d at 70. The de novo trial is a "new trial in which the entire case is presented as if there had been no previous trial." TEX. R. CIV. P. 510.10(c). Thus, the county court would not have been divested of jurisdiction because of a jurisdictional determination made by the justice court. Instead, the county court could make its own determination regarding its subject-matter jurisdiction. *See id.*; *Villalon*, 176 S.W.3d at 70.

Because the justice court's docket sheet does not establish that the justice court made a determination that it lacked jurisdiction, and the county court at law

could make its own jurisdictional determination during a de novo trial, we conclude that the church's first jurisdictional challenge fails to establish that the trial courts lacked subject-matter jurisdiction. *See Bill Heard Chevrolet*, 209 S.W.3d at 315; *see also* TEX. R. CIV. P. 510.10(c); *Villalon*, 176 S.W.3d at 70. Accordingly, we overrule this issue.

c. Order authorizing appeal

The church also contends that the justice court lacked jurisdiction to sign an order authorizing Jelinis and HREAL's appeal to the county court at law. The church argues that the county court at law's reliance on this order, which allegedly was not served on the church, deprived it of due process of law.

Rule 510.9 provides that "a party may appeal a judgment in an eviction case by filing a bond . . . with the justice court within 5 days after the judgment is signed." This rule also provides that "an appeal is perfected when a bond . . . is filed in accordance with this rule." TEX. R. CIV. P. 510.9(f). Thus, to effectuate an appeal from the justice court to the county court at law, the justice court does not have to sign an order authorizing a party's appeal. *See id.* Once an appeal is perfected from a justice court to a county court at law for trial de novo, the judgment of the justice court is annulled and vacated. *See Villalon*, 176 S.W.3d at 69–70. Therefore, once the county court at law acquires jurisdiction, the rules of

procedure only permit the county court at law to try the case de novo or dismiss it if it is not prosecuted. *Id.*; *see* TEX. R. CIV. P. 510.10.

Jelinis and HREAL filed a bond within five days of the justice court's judgment. As a result, an appeal to the county court at law was perfected properly at that time. *See* TEX. R. CIV. P. 510.9. The order purporting to authorize the appeal was superfluous. We overrule the church's jurisdictional and due-process challenges to the justice court's order authorizing Jelinis and HREAL's appeal. *See id.*; *Villalon*, 176 S.W.3d at 69–70.

II. Lack of appellate jurisdiction to review issues of possession of commercial property

In its remaining issues, the church challenges the county court at law's judgment awarding possession of the property to Jelinis and HREAL. Specifically, it raises three issues in which it contends that the county court at law erred by: (1) limiting the examination of witnesses; (2) awarding possession of property to Jelinis and HREAL that had not been identified in their petition for eviction; and (3) determining that legally and factually sufficient evidence supported the identification of the property awarded to Jelinis and HREAL. As with the church's challenge to the trial courts' subject-matter jurisdiction, Jelinis and HREAL contend that we lack appellate jurisdiction to decide the issues the church raises because the dispute is moot and because the Property Code prohibits us from considering such issues.

On appeal from a forcible-detainer judgment, we have no jurisdiction to review the issue of possession if, as is the case here, the disputed premises were used for commercial purposes. TEX. PROP. CODE § 24.007. “The prohibition against considering possession includes consideration of any finding ‘essential to the issue of,’ ‘dependent on,’ or ‘primarily concerned with the issue of’ possession.” *Hong Kong Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 431–32 (Tex. App.—Houston [1st Dist.] 2007, no pet.) (citations omitted); *Volume Millwork, Inc. v. W. Hous. Airport Corp.*, 218 S.W.3d 722, 726–27 (Tex. App.—Houston [1st Dist.] 2006, pet. denied).

All of the remaining issues raised by the church are related to the county court at law’s ultimate determination of possession. The church’s issue contesting the award of possession of property it alleges was not identified in Jelinis and HREAL’s petition directly challenges the court’s determination of the issue of possession. The church’s other two issues regarding the county court at law’s limitations on the examination of witnesses and the sufficiency of the evidence both relate to the correctness of the court’s judgment awarding possession, and therefore those issues were “essential” to the issue of possession. Thus, we conclude that these issues are primarily concerned with the issue of possession. *See Hong Kong Dev.*, 229 S.W.3d at 431–32; *Volume Millwork*, 218 S.W.3d at 726–

27. Accordingly, we do not have jurisdiction to consider these issues. *See* TEX. PROP. CODE § 24.007; *Hong Kong Dev.*, 229 S.W.3d at 431–32.

Conclusion

To the extent Praise Deliverance Church challenges the subject-matter jurisdiction of the trial courts, we affirm the county court at law’s judgment for possession. We dismiss the remainder of the appeal for want of appellate jurisdiction.

Michael Massengale
Justice

Panel consists of Chief Justice Radack and Justices Keyes and Massengale.

Justice Keyes, dissenting.