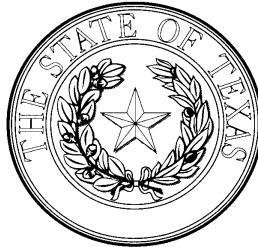


Opinion issued April 3, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00157-CV

**MOST WORSHIPFUL PRINCE HALL GRAND LODGE OF TEXAS AND
JURISDICTION FREE AND ACCEPTED MASONS AND TRUE LEVEL
LODGE 226, PRINCE HALL AFFILIATE, Appellants**

V.

TRUE LEVEL MASONIC LODGE 226 501(C)(3), Appellee

**On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Case No. 1082736**

MEMORANDUM OPINION

This appeal concerns a real-property dispute between a Masonic grand lodge and former members of one of its constituent lodges. The appeal arises from a county court at law's judgment which purported to award possession of real

property to a new entity created by the departed former members. We reverse and vacate the judgment, which is void for want of jurisdiction because resolution of the case required a determination about which party had title to the property.

Background

This case is related to a separate appeal from a Harris County district court proceeding, *True Level Masonic Lodge #226, Inc., et al. v. Most Worshipful Prince Hall Grand Lodge of Texas and Jurisdictions Free and Accepted Masons*, No. 01-16-00339-CV. The district court litigation resolved a dispute over ownership of property, including a building located at 4212 Lyons Avenue, which also is at issue in this case. In the district court, evidence showed that Most Worshipful Prince Hall Grand Lodge of Texas and Jurisdictions Free and Accepted Masons (the “Grand Lodge”) and True Level Lodge #226 (the “constituent lodge”) acquired title to 4212 Lyons Avenue by warranty deed in 1952.

Gregory August, Johnnie L. Jones, Mack Prince Deshay, and Arthur C. Mays were members and officers in the constituent lodge. They attempted to surrender the constituent lodge’s charter to the Grand Lodge, and they formed a new lodge, True Level Masonic Lodge 226 501(c)(3) (the “independent lodge”). The independent lodge officers purported to convey the property at 4212 Lyons Avenue, which had been in the possession of the constituent lodge, to the independent lodge by signing a special warranty deed. The Grand Lodge voided

the attempted surrender of the constituent lodge's charter, and it expelled the independent lodge officers. Then it sought a declaratory judgment confirming ownership of the property which had been controlled by the constituent lodge. The independent lodge and the expelled members filed a trespass-to-try-title counterclaim relating to the disputed real property, including 4212 Lyons Avenue.

After a jury trial, the district court granted a take-nothing judgment on the independent lodge's counterclaim, and it declared the constituent lodge was entitled to "possession of all property, both real and personal, of every kind or nature wherever situated, acquired by True Level Lodge No. 226." It further declared that the independent lodge and its members "have no interest in any of the property." The independent lodge and the expelled members appealed the district-court judgment, though they did not appeal the take-nothing judgment on their counterclaim.

In a separate opinion issued simultaneously with this one, this court affirmed the district-court judgment, holding that it did not award real property to Grand Lodge, rather it merely declared that the property in question was never transferred to the independent lodge because the constituent lodge never surrendered its charter, and it never ceased to exist. *True Level Masonic Lodge #226, Inc. v. Most Worshipful Prince Hall Grand Lodge of Tex. & Jurs. Free & Accepted Masons*, No. 01-16-00339-CV (Tex. App.—Houston [1st Dist.] April 3, 2018, no

pet. h.).The court further concluded that the pleadings informed the meaning of the judgment and identified the property of the Grand Lodge, which included the premises at 4212 Lyons Avenue.

About four months after the independent lodge appealed the district-court judgment, it filed a forcible-entry-and-detainer action in the justice court. In its pleading, it asserted that it “is the true title owner[] of the premises located at 4212 Lyons Avenue” and therefore had the right to possession of the premises. The independent lodge attached a copy of the special warranty deed to its petition. The Grand Lodge and its constituent lodge generally denied the allegations, raised several affirmative defenses, and attached a copy of the district-court judgment.

The justice court sustained a plea to the jurisdiction filed by the Grand Lodge and its constituent lodge. The independent lodge filed an appeal for de novo review by the county court at law. The Grand Lodge and its constituent lodge then filed a general denial and a motion to dismiss.

The county court at law concluded that the independent lodge held “the last deed in time for 4212 Lyons Avenue, specifically, a Special Warranty Deed executed on July 10, 2013.” The county court also noted that the district-court judgment did not identify 4212 Lyons Avenue or include a property description for it. Thus the court found that the Grand Lodge and its constituent lodge did “not

have a deed that effectuates the transfer of 4212 Lyons Avenue to them” subsequent to the March 28, 2016 district-court judgment.

The Grand Lodge and the constituent lodge appealed. They argue that the county court at law had no jurisdiction over a forcible-entry-and-detainer suit in this case because the issue of possession was intertwined with issues of title.

Analysis

Forcible-entry-and-detainer actions, or eviction actions, must be filed in a justice court of the precinct where the property is located, and an appeal may be taken to the county court at law for trial de novo. TEX. PROP. CODE § 24.004(a); TEX. R. CIV. P. 510.3(b), 510.9. “A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand.” TEX. PROP. CODE § 24.001(a). The only issue to be determined in a forcible-entry-and-detainer case is the right to actual possession of the premises. *See Trimble v. Fed. Nat’l Mortg. Ass’n*, 516 S.W.3d 24, 28–29 (Tex. App.—Houston [1st Dist.] 2016, pet. denied); *see* TEX. R. CIV. P. 510 (eviction cases). The justice court, and the county court on appeal, lack jurisdiction to “resolve any questions of title beyond the immediate right to possession.” *Black v. Washington Mut. Bank*, 318 S.W.3d 414, 417 (Tex. App.—Houston [1st Dist.] 2010, pet. dismiss’d w.o.j.); *see also* TEX. GOV’T CODE § 27.031(b)(4) (“A justice court does not have jurisdiction of . . . a suit for trial of

title to land.”); *id.* § 26.043(8) (“A county court does not have jurisdiction in . . . a suit for the recovery of land.”); *Thielemann v. Kethan*, 371 S.W.3d 286, 292 (Tex. App.—Houston [1st Dist.] 2012, pet. denied) (holding that the jurisdiction of a statutory county court is limited by § 26.043). This limitation may arise when a question of title is so intertwined with the question of possession that the court cannot determine which party is entitled to possession without first resolving the question of title. *See, e.g., Mohammed v. D. 1050 W. Rankin, Inc.*, 464 S.W.3d 737, 740 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

In its original petition for forcible entry and detainer, the independent lodge alleged that it was “the true title owner[] of the premises located at 4212 Lyons Avenue.” It attached a copy of the special warranty deed to its original petition. The Grand Lodge and its constituent lodge filed an answer in the county court at law, pleading a general denial and asserting as affirmative defenses that they, not the independent lodge, were the owners of 4212 Lyons Avenue, that ownership of this property had “already been litigated,” and they were found to own the property.

The independent lodge based its argument for possession on the assertion that it was the “true” title owner. On appeal, it argues that the justice court and the county court at law had jurisdiction because the Grand Lodge and its constituent lodge failed to produce specific evidence of a title dispute. It relies on *Padilla v.*

NCJ Development, Inc., 218 S.W.3d 811 (Tex. App.—El Paso 2007, pet. dism’d w.o.j.), which is distinguishable. In that case, Padilla defaulted on a mortgage, and after foreclosure, the house was sold to NCJ Development. 218 S.W.3d at 813. NCJ later filed a forcible detainer action in a justice court to evict Padilla, who had refused to vacate the premises. *Id.* Padilla contended that he had paid \$5,000 as a down payment to purchase the property from NCJ. *Id.* at 814. He presented a handwritten receipt and a sales contract between NCJ and Padilla’s brother. *Id.* The sale never closed. *Id.* Thus, Padilla had no evidence that he had a competing or superior title to the property. *See id.* at 15.

The independent lodge also relies on *Manges v. Freer Independent School District*, 728 S.W.2d 842, 843 (Tex. App.—San Antonio 1987, writ ref’d n.r.e.), for the general proposition that “in order to raise a fact issue on the issue of title, the judgment must describe the land on its face so that the land can be identified.” That is not a correct reading of *Manges*, which actually stated that a “judgment for foreclosure of a tax lien upon real estate must describe a definite tract of land,” and that “the judgment must be specific enough that the land can be located or particularly identified.” 728 S.W.2d at 843.

As in the appeal from the district court’s judgment, the independent lodge argues that judgment violated the statute of frauds because it lacked a property description. But in affirming the district-court judgment, our court concluded that

the declaratory judgment was not a transfer of property; rather, it declared that Grand Lodge and its constituent lodge retained their longtime status as the property owners, and the independent lodge's attempts to take the property for itself were ineffective. *True Level Masonic Lodge #226*, No. 01-16-00339-CV, slip op. at 13.

A property owner's rights include the right to possession of the property and to exclude others from using or possessing it. *See Lightning Oil Co. v. Anadarko E&P Onshore, LLC*, 520 S.W.3d 39, 48–49 (Tex. 2017). The independent lodge has argued in the trial courts and on appeal that the Grand Lodge and its constituent lodge unlawfully possessed the building at 4212 Lyons Avenue because they took possession without a writ of execution. However, a property owner does not need a writ of execution to maintain possession of its own property.

The issue of proper title was placed in controversy by the conflict between the independent lodge's petition alleging superior title and the Grand Lodge and its constituent lodge's general denial based on the district-court judgment that declared the independent lodge had "no interest in any of the property." As such the county court at law could not determine which party was entitled to possession without first resolving the question of title. In its final judgment, the county court at law found that the Grand Lodge and its constituent lodge did not have a deed that was subsequent in time to the independent lodge's deed. It disregarded the

substance of the March 28, 2016 final judgment that ruled to the contrary. The county court at law lacked jurisdiction because its decision required an analysis of which party had superior title. Its judgment is therefore void. We sustain the sole issue in this appeal.

Conclusion

We vacate the judgment of the county court at law as void for lack of jurisdiction.

Michael Massengale
Justice

Panel consists of Justices Jennings, Massengale, and Caughey.