

Opinion issued January 25, 2018



In The
Court of Appeals
For The
First District of Texas

NO. 01-17-00583-CV

MICHAEL A. PATRICK, Appellant

V.

DEUTSCHE BANK NATIONAL TRUST COMPANY, Appellee

**On Appeal from the County Court at Law No. 5
Fort Bend County, Texas
Trial Court Case No. 17-CCV-059874**

MEMORANDUM OPINION

This is an appeal from a judgment in an eviction proceeding. Possession of the disputed real property was awarded to the appellee, Deutsche Bank National Trust Company, which purchased the property at a foreclosure sale in March 2017. Appellant Michael A. Patrick, a self-described “squatter,” was an occupant of the

property. Patrick claimed that he adversely possessed the property beginning around February 1, 2012. Although he did not claim to possess the property under title or color of title, *see* TEX. CIV. PRAC. & REM. CODE § 16.024, he did claim that for over five years he “lived there continuously and openly . . . maintaining the property painting as necessary, mowing the yard and repairing broken fencing.” The Justice Court of Fort Bend County, Precinct 2, entered a judgment for possession of the property in favor of Deutsche Bank. Patrick appealed to the Fort Bend County Court at Law No. 5, which also entered a judgment awarding possession to Deutsche Bank.

Patrick, who has represented himself throughout this litigation, prematurely filed an appellant’s brief before the clerk’s record was filed. Because an appellant’s brief must include appropriate citations to the record, TEX. R. APP. P. 38.1(i), the brief was struck, and Patrick was instructed to refile his brief in compliance with the rules.

Although we liberally construe pro se pleadings and briefs, we nonetheless require pro se litigants to comply with applicable laws and rules of procedure. *See Wheeler v. Green*, 157 S.W.3d 439, 444 (Tex. 2005) (“pro se litigants are not exempt from the rules of procedure”); *Mansfield State Bank v. Cohn*, 573 S.W.2d 181, 184–85 (Tex. 1978). “Having two sets of rules—a strict set for attorneys and a lenient set for pro se parties—might encourage litigants to discard their valuable right to the advice and assistance of counsel.” *Wheeler*, 157 S.W.3d at 444. “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.” *Mansfield State Bank*, 573 S.W.2d at 185; *see also Stein v. Lewisville Indep. Sch. Dist.*, 481 S.W.2d 436, 439 (Tex. Civ. App.—Fort Worth 1972, writ ref’d n.r.e.) (holding that pro se defendants in tax foreclosure are bound by rules of procedure); *Gilbert v. Houston Indep. Sch. Dist.*, No. 01-06-00159-CV, 2009 WL 3050886, at *1 (Tex. App.—Houston [1st Dist.] Sept. 24, 2009, no pet.).

Patrick has failed to timely file a brief that complies with the rules of procedure. *See* TEX. R. APP. P. 38.6(a) (governing time to file brief); TEX. R. APP. P. 38.8(a) (governing failure of appellant to file brief). After the original noncompliant brief was struck, Patrick’s brief was due on October 16, 2017. Patrick was notified on November 13, 2017 that the appeal was subject to dismissal if he did not file his brief. *See* TEX. R. APP. P. 38.8(a)(1) (authorizing dismissal for failure to file brief); TEX. R. APP. P. 42.3(b) (allowing involuntary dismissal of case). Patrick did not respond to our notice and filed no brief.

Moreover, it is apparent from Patrick’s filings that the substance of his argument does not relate to Deutsche Bank’s claim, based on its purchase of the property at a foreclosure sale, to a superior right to immediate possession of the property, which was the issue decided in this eviction proceeding. “The sole issue to be determined in a forcible detainer action is the entitlement to actual and immediate

possession, and the merits of the title shall not be adjudicated.” *Black v. Washington Mut. Bank*, 318 S.W.3d 414, 416 (Tex. App.—Houston [1st Dist.] 2010, pet. dism’d w.o.j.) (“A justice court is expressly deprived of jurisdiction to determine or adjudicate title to land.”); TEX. GOV’T CODE § 27.031(b)(4). Even if we accepted Patrick’s noncompliant brief and read it liberally, it contains no argument that could be the basis for relief in this appeal. *See* TEX. R. APP. P. 38.1(i).

We dismiss the appeal for want of prosecution. We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Justices Jennings, Massengale, and Caughey.