

Opinion issued March 1, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00036-CV

HEALTHCARE SECURITY SERVICES, INC. D/B/A GROVES SECURITY SOLUTIONS AND ALL OCCUPANTS OF 829 YALE STREET, HOUSTON, TEXAS, Appellants

V.

NICHOLAS FUGEDI, IN HIS CAPACITY AS TRUSTEE OF THE CARB PURA VIDA TRUST, Appellee

**On Appeal from the County Court at Law No. 1
Harris County, Texas
Trial Court Case No. 1150005**

MEMORANDUM OPINION

Appellants, Health Care Security Services, Inc. d/b/a Groves Security Solutions, and All Occupants of 829 Yale Street, Houston, TX, are appealing the

county court’s “Order as to Bond Revision and Maintenance of the Property” entered on December 16, 2020. Amongst three issues on appeal, appellants argue that the county court erred in entering its order because it lacked subject-matter jurisdiction.

We vacate the county court’s order and dismiss the underlying proceedings.

Background

The underlying forcible detainer suit involves an unfinished construction property located at 829 Yale Street in Houston, Texas. The record shows that third parties hired appellants, a security guard company, to secure and protect the property. Appellee, Nicholas Fugedi, in his capacity as trustee of the Carb Pura Vida Trust, brought a forcible-detainer action against appellants, seeking to evict appellants and contending that he had a superior right to possession to the property. Specifically, appellee claims that a July 22, 2019 deed from 2017 Yale Development, LLC to the Carb Pura Vida Trust provides a greater right to possession.

The justice court granted a writ of possession in favor of appellee, and appellants appealed to the county court. In the course of those proceedings, the county court issued the subject “Order as to Bond Revision and Maintenance of the Property” that required appellants to repair and maintain the subject property.

On January 19, 2021, appellants appealed the county court’s order.

Jurisdiction

We first address appellee's argument that this Court lacks jurisdiction over this appeal.

Appellate Jurisdiction

In its brief, appellants argues that this Court has jurisdiction because the trial court's order appoints a receiver or grants a temporary injunction. *See* TEX. CIV. PRAC. & REM. CODE § 51.0014(a)(1), (4) (providing interlocutory jurisdiction over order appointing receiver or granting temporary injunction). In response, appellee acknowledges that section 51.014 of the Texas Civil and Practices Remedies Code could provide interlocutory jurisdiction, but he argues that appellants are not receivers because the formalities of appointing a receiver were not followed and that the county court did not grant injunctive relief. Appellee thus argues that we lack interlocutory jurisdiction.

Generally, a party may appeal only from a final judgment, and to be final and appealable, a judgment must dispose of all issues and parties in a case. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 192–93 (Tex. 2001). It is well settled that appellate courts have jurisdiction to consider immediate appeals of interlocutory orders only if a statute specifically provides for appellate jurisdiction. *See Stary v. DeBord*, 967 S.W.2d 352, 352–53 (Tex. 1998). A person may appeal from an interlocutory order that grants or refuses a temporary injunction or grants

or overrules a motion to dissolve a temporary injunction. TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4).

Although styled as an “Order as to Bond Revision and Maintenance of the Property,” “it is the character and function of an order that determine its classification.” *Del Valle Indep. Sch. Dist. v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992). An injunction may be prohibitive or mandatory. *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.). A prohibitive injunction forbids certain conduct, whereas a mandatory injunction requires certain conduct. *Id.* Thus, an interlocutory order that “directs the conduct of a party” is a mandatory injunction. *See Del Valle Indep. Sch. Dist.*, 845 S.W.2d at 809.

Here, the county court’s interlocutory order requires appellant to perform certain actions. Specifically, the order requires appellants to:

[D]rain the standing water on the Property and mow the property and clean the waste on the property such that there will be no trash or debris or weeds. Defendants will clean the sidewalk and make it safe and free of weeds, trash, and debris. Defendants will also pay all outstanding tickets issued by the City to date.

Because the order requires certain conduct of appellants, we conclude that the county court’s order is an example of a mandatory injunction. *See Qwest Commc’ns Corp. v. AT & T Corp.*, 24 S.W.3d 334, 336 (Tex. 2000) (“The trial court’s order here commands Qwest to undertake certain monitoring and notice provisions when conducting certain boring operations. Thus, the order is an

injunction.”); *RP & R*, 32 S.W.3d at 400 (“The temporary injunction in this case is mandatory because it requires [appellant] to pay weekly paychecks to appellee.”). We accordingly conclude that we have jurisdiction over this interlocutory appeal. *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4).

Jurisdiction of County Court

In its first issue, appellants argue that the county court lacked subject-matter jurisdiction because title to the property was so intertwined with possession. Appellee has not responded to appellants’ argument.

Justice of the peace courts and, on appeal, county courts, have jurisdiction of forcible-detainer suits. TEX. PROP. CODE § 24.004; TEX. R. CIV. P. 510.10. The sole issue in a forcible-detainer action is which party has the right to immediate possession of the property. *See Dormady v. Dinero Land & Cattle, Co.*, 61 S.W.3d 555, 557 (Tex. App.—San Antonio 2001, pet. dism’d w.o.j.). “[T]he merits of the title shall not be adjudicated.” TEX. R. CIV. P. 746. Accordingly, to prevail in a forcible-detainer action, the plaintiff need not prove title but merely present sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Dormady*, 61 S.W.3d at 557 (citing *Goggins v. Leo*, 849 S.W.2d 373, 377 (Tex. App.—Houston [14th Dist.] 1993, no writ)).

If, however, an issue of title is so intertwined with the issue of possession that a court must resolve the title dispute before determining which party has a

superior right to immediate possession, then the justice court and the county court lack jurisdiction to resolve the matter and must dismiss the case.¹ *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied). “Whether an existing title dispute in another court deprives the justice and county courts of jurisdiction to adjudicate possession in forcible-detainer actions generally turns on whether there is a basis— independent of the claimed right to title—for the plaintiff’s claim of superior possession rights in the property.” *Chinyere v. Wells Fargo Bank, N.A.*, 440 S.W.3d 80, 83 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

A landlord-tenant relationship provides “an independent basis on which the trial court could determine the issue of immediate possession without resolving the issue of title to the property.” *Rice v. Pinney*, 51 S.W.3d 705, 712 (Tex. App.—Dallas 2001, no pet.). Whether such subject-matter jurisdiction exists “is a question of law, subject to de novo review.” *Black v. Wash. Mut. Bank*, 318 S.W.3d 414, 416 (Tex. App.—Houston [1st Dist.] 2010, pet. dism’d w.o.j.). Subject-matter jurisdiction can be raised at any time, including for the first time on appeal. *Id.*

¹ A justice court may not adjudicate title to land. TEX. GOV’T CODE § 27.031(b)(4).

Analysis

Here, appellants argued below that the lower courts lacked jurisdiction because appellee attempted to establish a greater right to possession by relying on a void deed that had already been foreclosed upon and was void on its face because it did not include a proper grantee. Moreover, appellants have notified this Court that appellee also filed a quiet-title action in federal court and that the federal court has since entered a final judgment against appellee, stating that the deed on which appellee relied on below is void and that appellee “is adjudicated to possess no right, title, claim, or interest to the subject Property located at 829 Yale Street in Houston, Texas 77007, . . .” Appellee’s brief, filed in this Court on May 20, 2021, does not address the federal court’s April 16, 2021 final judgment, declaring the deed, which appellee relied on below to establish a greater right of possession, void.

We also note that the deed on which appellee relies does not contain an independent basis to claim possession, such as a landlord-tenant relationship. *See also Yarto & DTRJ Invs., L.P. v. Gilliland*, 287 S.W.3d 83, 89 (Tex. App.—Corpus Christi 2009, no pet.) (“In most situations, the parties in a forcible detainer suit are in a landlord-tenant relationship. One indication that a justice court, and a county court on appeal, is called on to adjudicate title to real estate in a forcible detainer case—and, thus exceed its jurisdiction—is when a landlord-tenant relationship is

lacking.”). Instead, appellee’s sole claim to a greater right to possession is its claim to title through a deed that the federal court has declared void. We therefore conclude that the issue of title is so intertwined with possession. *See Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 283 (Tex. App.—Houston [14th Dist.] 2015, no pet.) (holding that claim that deed of trust is void due to forgery raises genuine issue of title so intertwined with possession that title must be determined first); *1st Coppell Bank v. Smith*, 742 S.W.2d 454, 457 (Tex. App.—Dallas 1987, no writ) (holding forged deed of trust void), *disapproved on other grounds*, *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 678 (Tex. 2000). Accordingly, the lower courts “had no subject-mater jurisdiction over the case.” *Mitchell*, 911 S.W.2d at 171.

We sustain appellants’ first issue.

Conclusion

Because the lower courts had no subject-matter jurisdiction, we vacate the lower court's order and dismiss the case. We dismiss any pending motions as moot.

Sherry Radack
Chief Justice

Panel consists of Chief Justice Radack and Justices Kelly and Landau.