

Reversed and Remanded and Memorandum Opinion filed June 9, 2016.



In The

Fourteenth Court of Appeals

NO. 14-15-00177-CV

JEFFREY M. LORENCE, Appellant

V.

**MOREQUITY, INC. AND PEAK FORECLOSURE SERVICES, INC.,
Appellees**

**On Appeal from the 164th District Court
Harris County, Texas
Trial Court Cause No. 2013-77187**

M E M O R A N D U M O P I N I O N

Appellant Jeffrey M. Lorence lived in a home owned by his friend who had died. After the note securing a lien on the property went into default, appellee Morequity, Inc. sought to foreclose. Lorence filed suit, and the trial court granted a temporary restraining order halting the foreclosure sale. Morequity filed a plea to the jurisdiction, asserting that Lorence did not have standing to challenge the foreclosure. Lorence challenges the trial court's grant of the plea. Concluding that

Morequity did not meet its burden to establish Lorence lacks standing to challenge the foreclosure sale, we reverse and remand.¹

Background

William T. Moore owned a home in Houston, Texas. Argent Mortgage Company, LLC provided Moore with a home equity loan on the property, secured by a promissory note. Moore signed a security instrument granting Argent a lien on the property, which subsequently was assigned to Morequity. Moore died intestate and defaulted on the note. Morequity filed an application in probate court to appoint an administrator over Moore's estate, which the probate court granted. Morequity filed a claim with the administrator to establish a preferred debt and lien against the property, which the administrator allowed and the trial court approved. The probate court signed an order allowing Morequity to foreclose on the property, and a foreclosure sale was scheduled.

Lorence filed a pro se petition in the trial court seeking a temporary restraining order to halt the foreclosure sale. He alleged that he had a claim to the property on record in Harris County: "I have been on file, as a claimant to that property, at the Harris County Court House, for over three (3) years, and was never notified of Morequity's application for an Order of Foreclosure."² The trial court granted the temporary restraining order. Morequity filed a plea to the jurisdiction and presented evidence that (1) Lorence was not a party to the note or security instrument; (2) Lorence was not Moore's heir; and (3) the probate administrator

¹ Although Morequity and Peak Foreclosure Services, Inc. both are appellees, only Morequity filed a plea to the jurisdiction and response to Lorence's appellate brief, so we reference only Morequity in this opinion.

² In his petition, Lorence did not indicate what kind of document was filed as evidence of his claim. On appeal, he alleges Moore quitclaimed the property to him. Morequity asserts on appeal that it found no "claim" in the Harris County real property records of Lorence's legal or equitable interest, but Morequity did not make this argument below.

and probate court had approved Morequity's claim and ordered the foreclosure sale. Lorence filed a response but did not present any evidence. The trial court granted the plea.

Discussion

Lorence complains that he had standing to participate in the foreclosure proceedings "as an interested party" who was served with a notice of the foreclosure.³ We review a trial court's ruling on a plea to the jurisdiction de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 228 (Tex. 2004); *Shannon v. Mem'l Drive Presbyterian Church U.S.*, 476 S.W.3d 612, 619 (Tex. App.—Houston [14th Dist.] 2015, pet. filed). We first look to the pleadings to determine if the pleader has alleged facts that affirmatively demonstrate the court's jurisdiction to hear the cause. *Miranda*, 133 S.W.3d at 226. We construe the pleadings liberally in favor of the plaintiff, look to the pleader's intent, and accept as true the factual allegations in the pleadings. *Thornton v. Ne. Harris County MUD 1*, 447 S.W.3d 23, 37 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). The allegations found in the pleadings may affirmatively demonstrate or negate the court's jurisdiction. *City of Waco v. Kirwan*, 298 S.W.3d 618, 622 (Tex. 2009); *City of Houston v. Song*, No. 14-11-00903-CV, 2013 WL 269036, at *2 (Tex. App.—Houston [14th Dist.] Jan. 24, 2013, pet. denied) (mem. op.). If the pleadings do neither, it is an issue of pleading sufficiency, and the plaintiff should be given

³ Lorence brings numerous issues complaining of the trial court's grant of the plea. Because we conclude that Morequity did not present conclusive proof that Lorence lacked a legal or equitable interest in the property, we need not reach his other issues involving his adverse possession claim, whether the knowledge of Morequity's agent regarding Lorence's claim to the property was imputed to Morequity, whether Morequity's breach of contract claim was barred by the statute of limitations, and whether the trial court abused its discretion in failing to allow Lorence to present evidence at the hearing on the plea. We note, however, that Lorence failed to preserve error as to several of these issues because they were not raised below. *See* Tex. R. App. P. 33.1 ("As a prerequisite to presenting a complaint for appellate review, the record must show that . . . the complaint was made to the trial court by a timely request, objection, or motion.").

an opportunity to amend the pleadings. *Kirwan*, 298 S.W.3d at 622.

When a plea to the jurisdiction challenges the existence of jurisdictional facts, we consider relevant evidence submitted by the parties. *Miranda*, 133 S.W.3d at 226. The standard of review for a jurisdictional plea based on evidence “generally mirrors that of a summary judgment under Texas Rule of Civil Procedure 166a(c).” *Id.* at 228. Under this standard, we credit evidence favoring the nonmovant and draw all reasonable inferences in the nonmovant’s favor. *Id.* The defendant must assert the absence of subject-matter jurisdiction and present conclusive proof that the trial court lacks subject-matter jurisdiction. *Id.* If the movant discharges this burden, the burden shifts to the plaintiff to present evidence sufficient to raise a material issue of fact regarding jurisdiction. *Id.*; *see also City of Houston v. Little Nell Apartments, L.P.*, 424 S.W.3d 640, 646 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

A party must have standing to bring a lawsuit. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 848 (Tex. 2005). Standing concerns whether a party has a sufficient relationship with the lawsuit to have a justiciable interest in its outcome. *Id.* The standing doctrine requires that there be a real controversy between the parties that will be resolved by the judicial declaration sought. *Id.* at 849. In the absence of standing, a trial court lacks subject matter jurisdiction to hear the case. *Id.* Generally, only the mortgagor or a party who is in privity with the mortgagor has standing to contest the validity of a foreclosure sale. *Goswami v. Metro. Sav. & Loan Ass’n*, 751 S.W.2d 487, 489 (Tex. 1988). However, when a third party has a legal or equitable interest in the subject property, he has standing to challenge a foreclosure sale to the extent that his rights will be affected by the sale. *Id.*; *see also Morlock, L.L.C. v. Nationstar Mortg., L.L.C.*, 447 S.W.3d 42, 45 (Tex. App.—Houston [14th Dist.] 2014, pet. denied).

Here, Lorence did not allege that he was either the mortgagor or a party in privity with the mortgagor. However, he alleged in his petition that he is a “claimant” to the subject property with an “interest of record” in the property for which he allegedly “sought good title for over three years.” Construing the petition liberally and accepting the allegations as true, we conclude Lorence alleged that he had a legal or equitable interest in the property and thus he alleged facts that affirmatively demonstrate the trial court’s jurisdiction to hear the cause. *See Miranda*, 133 S.W.3d at 226; *see also Thornton*, 447 S.W.3d at 37. Accordingly, we consider the evidence submitted by Morequity in support of its plea to the jurisdiction.

Morequity presented evidence that Lorence is not the mortgagor or Moore’s heir. Morequity also alleged in its plea that Lorence “does not have any legal or equitable interest in the subject property.” However, Morequity failed to present any evidence to support this allegation and thus, did not meet its burden to present conclusive proof of Lorence’s lack of standing. Morequity complains that Lorence did not present any evidence that he had an interest in the property. However, the burden never shifted to Lorence to present such evidence. *See Thornton*, 447 S.W.3d at 38.

Morequity essentially asks us to treat its plea to the jurisdiction as a no-evidence motion for summary judgment on the issue of whether Lorence had an interest in the property, which would require Lorence to marshal evidence to establish jurisdiction when it is Morequity’s burden to establish the lack of jurisdiction. We have expressly held that a trial court’s subject matter jurisdiction cannot be challenged in a no-evidence motion for summary judgment, because “[p]ermitting [such a] challenge [would] improperly shift[] the jurisdictional evidentiary burdens—effectively requiring the [plaintiffs] to fully marshal their

evidence simply to establish jurisdiction and eliminating any burden on [the movant] to disprove jurisdiction through summary judgment evidence.” *Id.* at 40. When the movant does not present evidence disproving jurisdiction, a jurisdictional plea may not be granted unless the pleadings affirmatively negate jurisdiction. *Id.* at 38; *see also Green Tree Servicing, LLC v. Woods*, 388 S.W.3d 785, 792 (Tex. App.—Houston [1st Dist.] 2012, no pet.).

Conclusion

We conclude that Lorence alleged facts that affirmatively demonstrate the trial court’s jurisdiction to hear the cause and Morequity failed to conclusively establish the trial court’s lack of jurisdiction. We reverse the trial court’s dismissal order and remand the cause for proceedings consistent with this opinion.

/s/ Martha Hill Jamison
Justice

Panel consists of Justices Jamison, Donovan, and Brown.