

Affirmed and Memorandum Opinion filed July 18, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00771-CV

KRISEAN JOHNSON, Appellant

V.

MARSHA BROWN, Appellee

**On Appeal from the County Court at Law No. 2
Galveston County, Texas
Trial Court Cause No. CV-0076978**

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

This is an appeal from a final judgment of eviction. In six issues, pro se appellant Krisean Johnson contends that the county court erred by granting a judgment in favor of appellee Marsha Brown and by refusing to consider his counterclaim for nuisance and to recover the cost of improvements allegedly made to the property. Because we have no record of the county court proceedings and counterclaims are not permitted in eviction cases, we affirm.

BACKGROUND

In August 2016, Marsha Brown filed a petition in justice court to evict Krisean Johnson from the premises at 2511 Avenue P ½ in Galveston, Texas, 77550 (the property). Johnson, appearing pro se, filed an answer and counterclaim in which he denied Brown's allegations and claimed that Brown had "failed to comply with her statutory duties and abandon[ed] the property for more than 10 years."

In a separately filed counterclaim, Johnson alleged that Brown's abandonment of the property caused it to become a nuisance to his grandmother's home next door and to the neighborhood generally. Johnson sought money damages for materials and labor he claimed were necessary to secure and improve the property, a lien against the property for the amount owed, and the right to occupy the property until he was paid in full.

On August 11, 2016, Brown was awarded possession of the property. Johnson was ordered to pay monthly rent of \$700.00 during the pendency of the appeal, court costs, and interest.

Johnson appealed the judgment to the county court. On September 12, 2016, the county court signed a final judgment affirming the justice court's judgment. The county court's judgment did not mention or include a ruling on Johnson's counterclaims.

Johnson filed a motion to reconsider in which he alleged that his counterclaim concerning the abandonment of the property was never addressed. Johnson also claimed that he had taken possession of the property by adverse possession because it became a nuisance to the surrounding properties. The trial court did not rule on the motion. This appeal followed.

ANALYSIS

I. The Judgment

In his first issue, Johnson contends that the trial court erred by directing Brown's lawyer as to what motion to file to have the case dismissed. In his fourth, fifth, and sixth issues, Johnson appears to challenge the sufficiency of the evidence supporting certain facts.¹ We cannot address these issues, however, because Johnson has not provided a record of the proceedings in the county court.

"The burden is on the complaining party to present a sufficient record to the appellate court to show error requiring reversal." *Melendez v. Exxon Corp.*, 998 S.W.2d 266, 278 (Tex. App.—Houston [14th Dist.] 1999, no pet.). A reporter's record is usually essential to a successful appeal. *See King's River Trail Ass'n, Inc. v. Pinehurst Trail Holdings, L.L.C.*, 447 S.W.3d 439, 449–51 (Tex. App.—Houston [14th Dist.] 2014, pet. denied). While there are circumstances that obviate the need for a complete record, such as a partial-record appeal, in most cases a reporter's record is necessary for a genuine review of the merits. *See id.* at 449–51.

In this case, we are unable to review the circumstances surrounding Johnson's complaint that the trial court improperly assisted Brown's attorney or the sufficiency of the evidence presented in the county court. Absent a record of the trial proceedings, we must presume that the proceedings support the trial court's judgment, and we cannot reach the merits of Johnson's issues. *See Middleton v. Nat'l Fam. Care Life Ins. Co.*, No. 14-04-00428-CV, 2006 WL 89503, at *2 (Tex. App.—Houston [14th Dist.] Jan. 17, 2006, pet. denied) (mem.

¹ Johnson frames his fourth, fifth, and sixth issues as follows:

(4) Did the Appellee abandon the property?

(5) Did the property become a nuisance and a hazard to its neighbors and the community?

(6) Is the Appellee responsible for the property and the upkeep? If so, what date did she become aware?

op.); *Hiroms v. Scheffey*, 76 S.W.3d 486, 489 (Tex. App.—Houston [14th Dist.] 2002, no pet.) (holding court could not address merits of alleged charge error because appellate record did not contain complete record of trial proceedings). We overrule Johnson’s first, fourth, fifth, and sixth issues.

II. The Counterclaim

In his second issue, Johnson contends that the trial court erred by failing to address his unspecified “counterclaim.” Because Johnson’s brief focuses on the alleged nuisance created by the property, we understand Johnson to be referring to his counterclaim for nuisance and damages for the improvements he claims to have made to the property.² In his third issue, Johnson contends that if his counterclaim is not addressed in the county court, he will be precluded from raising it later.

An eviction action is a procedure to determine a party’s right to possession of the premises. *See* Tex. Prop. Code § 24.001–.011; Tex. R. Civ. P. 510.1; *see also* Tex. Prop. Code § 24.004 (“Eviction suits include forcible entry and detainer and forcible detainer suits.”). The only issue to be resolved in an eviction action is the right to actual and immediate possession of the property; the merits of title are not adjudicated. *See* Tex. R. Civ. P. 510.3(e) (“The court must adjudicate the right to actual possession and not title.”). Counterclaims are not permitted in eviction cases but may be brought separately. *Id.* A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction. *Id.*

Because a judgment of possession in an eviction case is a determination only of the right to immediate possession, it does not determine the ultimate rights of

² Although Johnson asserted a claim of adverse possession in his motion to reconsider in the county court, he does not mention this claim on appeal or make any argument supporting a counterclaim for adverse possession. Moreover, Johnson alleges that he began maintaining the property in August 2011, which is insufficient to support a claim of adverse possession based on the ten-year statute. *See* Tex. Civ. Prac. & Rem Code § 16.026.

the parties to any other issue in controversy relating to the property at issue. *See Coinmach Corp. v. Aspenwood Apt. Corp.*, 417 S.W.3d 909, 919 (Tex. 2013) (noting that a judgment in a forcible entry and detainer action “is not res judicata against a related claim for trespass to try title” and a party who loses possession in that action “may still sue in district court to obtain adjudication of its title and its right to regain possession of the property”); *Fed. Home Loan Mortg. Corp. v. Pham*, 449 S.W.3d 230, 235 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (“[N]o issue in a forcible detainer action other than the right of immediate possession has preclusive effect in a subsequent suit between the parties.”).

Thus, the county court did not err by failing to address Johnson’s counterclaim because it could not decide any issue between the parties concerning the property other than immediate possession. We overrule Johnson’s second and third issues.

CONCLUSION

Having overruled Johnson’s issues, we affirm the county court’s judgment.

/s/ Ken Wise
Justice

Panel consists of Justices Christopher, Brown, and Wise.