

**Dismissed and Memorandum Opinion filed August 15, 2023.**



**In The**

**Fourteenth Court of Appeals**

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**NO. 14-22-00532-CV**

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**JAMES JOHNSON, Appellant**

**V.**

**GREENLEAF HOUSE, LLC, Appellee**

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**On Appeal from the County Civil Court at Law No. 3  
Harris County, Texas  
Trial Court Cause No. 1184038**

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**MEMORANDUM OPINION**

In this appeal from a final judgment in a forcible detainer action, the displaced party raises multiple issues, all of which essentially challenge the validity of the underlying foreclosure sale. We do not address any of those issues, however, because as we explain below, the appeal is moot.

## BACKGROUND

After James Johnson defaulted on his mortgage, his property was sold at a foreclosure auction to Greenleaf House, LLC. Greenleaf then filed a forcible detainer action in justice court, seeking to evict Johnson from the property. Both sides appeared for a non-jury trial, and the justice court rendered judgment in favor of Greenleaf.

Johnson appealed to the county court for a trial de novo, but after another non-jury trial, the county court also ruled in favor of Greenleaf and specifically found that Greenleaf was entitled to immediate possession of the property. Johnson moved for a rehearing, but that motion was overruled by operation of law.

Johnson timely appealed the county court's judgment.<sup>1</sup>

## ANALYSIS

Johnson has filed a pro se brief in our court, where he has presented five issues on appeal. However, the argument section of his brief is not structured to align with those issues. Instead, the argument section largely focuses on a single point, where Johnson claims that the foreclosure was wrongful because the proper procedures were not followed.

Greenleaf responds that Johnson's appeal is moot and should be dismissed for want of jurisdiction. Because we are duty-bound to determine questions of jurisdiction, we begin with Greenleaf's argument. *See In re City of Dallas*, 501 S.W.3d 71, 73 (Tex. 2016) (orig. proceeding) (per curiam).

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<sup>1</sup> A second individual, who is identified in some places in the record as Johnson's wife, is also named in the notice of appeal, but that individual did not personally sign the notice of appeal. Only Johnson signed the notice of appeal, and there is no indication that Johnson is a lawyer or has the authority to represent or sign for anyone else.

The only issue in a forcible detainer action is the right to actual possession—the merits of title are not adjudicated. *See* Tex. R. Civ. P. 510.3(e); *Yarbrough v. Household Fin. Corp. III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.). Here, the county court determined that Greenleaf had the right to actual possession. Johnson did not supersede the county court’s judgment, and that court issued a writ of possession, which was returned stating that Johnson had vacated the premises and delivered the property to Greenleaf.

When, as here, a defendant in a forcible detainer action is no longer in possession of the premises, an appeal from the forcible detainer judgment is moot unless the defendant asserts “a potentially meritorious claim of right to current, actual possession of the [premises].” *See Marshall v. Housing Auth. of City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006).

Drawing on the points he made in his opening brief, Johnson argues in a reply brief that he has a potentially meritorious claim because Greenleaf’s foreclosure was wrongful. That argument fails because Greenleaf was not the foreclosing entity, and more importantly, because wrongful foreclosure claims—which should be asserted in district court—do not prevent a county court in a forcible detainer action from determining who has the superior right to immediate possession. *See Bittinger v. Wells Fargo, N.A.*, No. 14-10-00698-CV, 2011 WL 4793828, at \*3 (Tex. App.—Houston [14th Dist.] Oct. 11, 2011, no pet.) (mem. op.) (“Here, Wells Fargo’s forcible detainer action was not the proper proceeding for Bittinger to attack the underlying foreclosure. Rather, Bittinger should have pursued such defect, if any, in a wrongful foreclosure action or suit to set aside the foreclosure sale deed in district court.”); *Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, no pet.) (dismissing an appeal from a forcible detainer action as moot, despite a pending claim for wrongful foreclosure in district court).

Johnson also argues in his reply brief that he has a potentially meritorious claim because Greenleaf “is soon to be evicted.” Johnson does not support that argument with any citations to the record, which was his burden. *See* Tex. R. App. P. 38.1(i). And to whatever extent that Johnson’s argument represents a continuation of his wrongful foreclosure point, it must fail for the reasons stated above.

Because Johnson is no longer in possession of the property and he has not presented a potentially meritorious claim for right of possession, we conclude that this appeal is moot and must be dismissed for want of jurisdiction. *See Wilhelm*, 349 S.W.3d at 769.

### **CONCLUSION**

The appeal is dismissed for want of jurisdiction.

/s/ Tracy Christopher  
Chief Justice

Panel consists of Chief Justice Christopher and Justices Zimmerer and Poissant.