



**Fourth Court of Appeals**  
**San Antonio, Texas**

**MEMORANDUM OPINION**

No. 04-15-00683-CV

Barton **WADE**,  
Appellant

v.

**SABR MORTGAGE LOAN 2008-1 REO Subsidiary-1 LLC**,  
Appellee

From the County Court at Law No. 10, Bexar County, Texas  
Trial Court No. 2015CV03726  
Honorable David J. Rodriguez, Judge Presiding

Opinion by: Karen Angelini, Justice

Sitting: Karen Angelini, Justice  
Marialyn Barnard, Justice  
Rebeca C. Martinez, Justice

Delivered and Filed: November 9, 2016

**AFFIRMED**

Barton Wade appeals from a judgment against him in a forcible detainer action. Wade argues the trial court (1) lacked jurisdiction over the forcible detainer action because of the existence of a title dispute, and (2) abused its discretion in denying his second motion for continuance. We affirm.

**BACKGROUND**

In 2007, Wade's parents, Barton and Mary Wade, obtained a loan secured by a deed of trust. The deed of trust secured repayment of the loan by placing a lien on the real property located

at 7530 Buckboard Street, San Antonio, Texas 78227 (“the property”). The deed of trust provided for foreclosure of the lien under a power of sale in the event of a default. The deed of trust further provided:

If the Property is sold pursuant to this Section 22, Borrower or any person holding possession of the Property through Borrower shall immediately surrender possession of the Property to the purchaser at that sale. *If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.*

(emphasis added). Thus, in the event of a foreclosure sale, the deed of trust created a landlord and tenant-at-sufferance relationship between the parties.

In 2015, the property was sold at a foreclosure sale to SABR Mortgage Loan 2008-1 REO Subsidiary-1 LLC (“SABR”). Shortly thereafter, SABR mailed written notices to Wade and the other occupants of the property demanding possession of the property and giving a deadline to vacate the property to avoid a suit for forcible detainer. When Wade and the other occupants failed to vacate the property as directed, SABR filed this forcible detainer action in the justice court. The justice court rendered judgment for possession in favor of SABR.

Wade appealed the justice court’s judgment to the county court at law. Such an appeal is conducted by trial de novo. At the first trial setting, the county court at law (“the trial court”) granted Wade’s first request for a continuance. However, the trial court warned Wade that because a forcible detainer action was an expedited proceeding, it could not delay the trial for a prolonged period. At the second trial setting, the trial court denied Wade’s second request for a continuance. The matter was tried and the trial court rendered judgment for possession in favor of SABR. Wade appealed to this court.

### **TRIAL COURT’S JURISDICTION**

We first address Wade’s argument that the trial court lacked jurisdiction over the forcible detainer action because of the existence of a title dispute. A forcible detainer action is intended to

be a speedy, simple, and inexpensive means to regain possession of property. *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 437 (Tex. App.—Houston [14th Dist.] 2008, no pet.). The only issue in a forcible detainer action is the right to actual and immediate possession. *Id.* at 435. To prevail in a forcible detainer action, a plaintiff is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession of the property. *Id.* A plaintiff is not required to prove title. *Id.* A forcible detainer action is cumulative of any other legal remedies a party may have. *Id.* at 436. A party is entitled to bring a separate suit in district court to determine title issues. *Id.*

“A justice court or county court at law is not deprived of jurisdiction in a forcible detainer action merely because of the existence of a title dispute.” *Reynoso v. Loft Concepts, Inc.*, No. 04-15-00267-CV, 2016 WL 3030946, at \*1 (Tex. App.—San Antonio 2016, no pet.). Only when the right to immediate possession necessarily requires resolution of the title dispute is a justice court or county court at law deprived of jurisdiction. *Salaymeh*, 264 S.W.3d at 435. In other words, for the justice court or the county court at law to be deprived of jurisdiction, the resolution of the title dispute must be a prerequisite to the determination of the right to immediate possession. *Id.*

Here, the deed of trust provided that the foreclosure sale created a landlord and tenant-at-sufferance relationship between SABR and Wade. This court and other courts have held that when a deed of trust establishes a landlord and tenant-at-sufferance relationship between the parties, an independent basis exists to determine the issue of immediate possession without resolving the issue of title to the property. *Reynoso*, 2016 WL 3030946, at \*2 (“[B]ased upon the tenant-at-sufferance clause in the deed of trust, there was an independent basis for the trial court to determine that [the purchaser] had the right to immediate possession without resolving whether the foreclosure was proper.”); *Shaver v. Wells Fargo Bank, NA*, No. 14-13-00585-CV, 2014 WL 3002414, at \*2 (Tex. App.—Houston [14th Dist.] 2014, pet. struck) (“[W]e [have] repeatedly held that where the deed

contains a tenant-at-sufferance clause such as the one here, the issue of possession is not intertwined with the issue of title, and the right to immediate possession can be decided regardless of whether there is an outstanding title dispute.”). Therefore, in the present case, the resolution of a title dispute was not a prerequisite to the determination of the right to immediate possession of the property. We conclude the trial court was not deprived of jurisdiction over the forcible detainer action.

### **MOTION FOR CONTINUANCE**

We next address Wade’s argument that the trial court abused its discretion by denying his second motion for continuance. We review the trial court’s denial of a motion for continuance for an abuse of discretion. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 800 (Tex. 2002). When reviewing the denial of a motion for continuance seeking additional time to conduct discovery, courts consider multiple factors including the materiality and purpose of the discovery sought. *Joe v. Two Thirty Nine Joint Venture*, 145 S.W.3d 150, 161 (Tex. 2004).

Wade asked for a second continuance because he wanted to conduct discovery on issues related to title. However, the only issue before the trial court in this forcible detainer action was the right to actual and immediate possession of the property. *Salaymeh*, 264 S.W.3d at 435. Title was not material to determining the right to immediate possession of the property, especially in light of the tenant-at-sufferance clause in the deed of trust. *See Reynoso*, 2016 WL 3030946, at \*2; *Shaver*, 2014 WL 3002414, at \*2. Additionally, a forcible detainer action is intended to be a speedy mechanism for regaining possession of property. *Salaymeh*, 264 S.W.3d at 437. Here, the trial court had already granted Wade one continuance and had warned Wade that because forcible detainer actions are expedited proceedings it would not be able to delay the trial for a prolonged period of time. We conclude the trial court did not abuse its discretion in denying Wade’s second motion for continuance.

**CONCLUSION**

The judgment of the trial court is affirmed.

Karen Angelini, Justice