



Fourth Court of Appeals
San Antonio, Texas

MEMORANDUM OPINION

No. 04-20-00361-CV

Rogelio **DE HOYOS**, Dianaly De Hoyos, San Juanita Garcia, RDH Cattle Co., RDH Site & Concrete Company and all other Occupants,
Appellants

v.

Jose Luis **CRUZ**, Individually and as the Independent Administrator of the Estate of Enedina Cruz,
Appellee

From the County Court, Brooks County, Texas
Trial Court No. 20-01217-CV
Honorable Eric Ramos, Judge Presiding

Opinion by: Irene Rios, Justice

Sitting: Luz Elena D. Chapa, Justice
Irene Rios, Justice
Liza A. Rodriguez, Justice

Delivered and Filed: November 24, 2021

AFFIRMED

Appellants Rogelio De Hoyos, Dianaly De Hoyos, San Juanita Garcia, RDH Cattle Co., and RDH Site and Concrete Company (collectively “De Hoyos”) appeal the county court’s judgment awarding appellee Jose Luis Cruz, individually and as the independent administrator of the estate of Enedina Cruz, (“Cruz”) possession of a 202-acre ranch (“the Ranch”). In one issue, De Hoyos argues the issue of possession necessarily required resolution of a title dispute and the county court lacked jurisdiction to adjudicate the alleged title dispute. We affirm.

BACKGROUND

Cruz filed the underlying forcible detainer suit in justice court. The justice court granted Cruz possession and issued a writ of possession. De Hoyos appealed to the county court for a trial de novo. At trial, De Hoyos argued the issue of possession could not be determined without first determining title and neither the justice court nor the county court had jurisdiction to adjudicate title to land.

The evidence at trial showed that sometime in 2012 Cruz and Javier Garcia entered into an oral agreement whereby Cruz agreed to sell the Ranch to Javier Garcia for \$760,000. At some point in 2014 Garcia died and stopped making payments.

On September 16, 2016, RDH Site and Concrete, LLC (“RDH Concrete”)—an entity owned by Garcia’s brother-in-law, Rogelio De Hoyos (“Rogelio”)—entered into an agreement with Cruz and his wife to purchase the Ranch (“the First Contract”). The purchase price was reduced to \$630,700 and this agreement was recorded in the Brooks County real property records. Rogelio’s spouse, Dianaly De Hoyos (“Dianaly”), testified the First Contract was intended to be a contract for deed.

On February 15, 2018, Cruz and RDH Cattle Company (“RDH Cattle”)—an entity wholly owned by Rogelio—entered into a Farm and Ranch Contract (“the Second Contract”) to purchase the Ranch.¹ Dianaly testified that Cruz credited RDH Cattle with payments that had been made by RDH Concrete and the purchase price under the Second Contract was reduced to \$530,800.20.² The Second Contract stated closing would occur on or before May 30, 2018. The Second Contract never closed.

¹ The Second Contract conveyed the same property that was conveyed by the First Contract. Dianaly testified Rogelio entered into the Second Contract to move RDH Concrete’s debt under the First Contract to RDH Cattle.

² Dianaly was the only witness called by De Hoyos.

Following trial, the county court rendered a final judgment stating it had jurisdiction over the case, granting Cruz possession of the Ranch, and issuing a writ of possession in Cruz's favor. De Hoyos appeals.

DISCUSSION

Standard of Review

When a party challenges a county court's subject-matter jurisdiction in a forcible detainer suit, we review the county court's ruling de novo. *Chinyere v. Wells Fargo Bank, N.A.*, 440 S.W.3d 80, 83 (Tex. App.—Houston [1st Dist.] 2012, no pet.). “Subject-matter jurisdiction can be raised at any time, including for the first time on appeal.” *Id.*

Applicable Law

In a forcible detainer suit, the trial court determines the right to immediate possession of real property where there is no claim of unlawful entry. *Lenz v. Bank of Am., N.A.*, 510 S.W.3d 667, 671 (Tex. App.—San Antonio 2016, pet. denied); TEX. PROP. CODE ANN. § 24.002. “Jurisdiction to hear forcible detainer actions is vested in justice courts, and on appeal, to county courts for trial de novo.” *Dormady v. Dinero Land & Cattle Co., L.C.*, 61 S.W.3d 555, 557 (Tex. App.—San Antonio 2001, pet. dismissed w.o.j.). The sole “issue in a forcible detainer action is which party has the right to immediate possession of the property.” *Id.* “[T]he merits of the title shall not be adjudicated.” *Id.*; *see also* TEX. R. CIV. P. 510.3(e). 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.” *Chinyere*, 440 S.W.3d at 82–83.

However, where resolution of the issue of possession necessarily requires a determination of title, a justice court, and county court on appeal, lack subject-matter jurisdiction to enter a judgment in the lawsuit. *Valdez v. Gonzalez Equities, Ltd.*, No. 04-12-00466-CV, 2013 WL

3871063, at *2 (Tex. App.—San Antonio July 24, 2013, no pet.) (mem. op.); *see also Rice v. Pinney*, 51 S.W.3d 705, 713 (Tex. App.—Dallas 2001, no pet.) (emphasis in original) (quotations omitted) (“[A] justice court or county court . . . is not deprived of jurisdiction merely by the existence of a title dispute, but is deprived of jurisdiction only if the right to immediate possession *necessarily requires the resolution of a title dispute.*”).

“One indication that a justice court[,] and county court on appeal[,] is called on to adjudicate title to real estate in a forcible detainer case—and, thus, exceeds its jurisdiction—is when a landlord[-]tenant relationship is lacking.” *Aguilar v. Weber*, 72 S.W.3d 729, 733 (Tex. App.—Waco 2002, no pet.). However, if the controlling contract explicitly states that—in the event of default—the parties will be treated as landlord and tenant, then the justice court, and the county court on appeal, will have jurisdiction over the forcible detainer action because possession can be determined under the terms of the contract without an adjudication of title. *Valdez*, 2013 WL 3871063, at *2.

Analysis

De Hoyos argues the county court did not have jurisdiction because the issue of possession necessarily requires resolution of a title dispute. De Hoyos contends the issue of possession could not be independently determined from the issue of title absent a landlord-tenant relationship. According to De Hoyos, a landlord-tenant relationship did not exist here and, therefore, a forcible detainer action could not be maintained. De Hoyos also contends the First Contract is a contract for deed, otherwise known as an executory contract. *See Ferrara v. Nutt*, 555 S.W.3d 227, 236 (Tex. App.—Houston [1st Dist.] 2018, no pet.) (“An executory contract, or a ‘contract for deed,’ is a real-estate transaction that allows the seller of the property to retain title until the purchaser has paid for the property in full.”). Under subsection 5.079(a) of the Texas Property Code, “[a] recorded executory contract shall be the same as a deed with a vendor’s lien.” TEX. PROP. CODE

ANN. § 5.079(a). De Hoyos contends subsection 5.079(a) applies to the First Contract and it became a deed with a vendor's lien when it was recorded in the Brooks County real property records.

In response, Cruz argues the First Contract did not become a deed with a vendor's lien when it was recorded in the Brooks County real property records because subsection 5.079(a) “applies only to a transaction involving an executory contract for conveyance of real property used or to be used as the purchaser's residence”³ *See id.* § 5.062(a). According to Cruz, the trial court determined the property was not used or intended to be used as the purchaser's residence and, therefore, subsection 5.079(a) is inapplicable. Cruz contends the Second Contract is the controlling contract and the issue of possession can be determined without an adjudication of title because a tenancy at sufferance was created when RDH Cattle failed to timely close on the Second Contract.

“In the absence of findings of fact or conclusions of law, a trial court's judgment will be upheld on any theory supported by the record, and any necessary findings of fact will be implied.”⁴ *Rosemond v. Al-Lahiq*, 331 S.W.3d 764, 766 (Tex. 2011) (citations omitted). Here, the trial court could have reasonably concluded that section 5.079 of the Texas Property Code did not apply—and the First Contract did not convert to a deed with a vendor's lien—because the Ranch was not used or intended to be used as the purchaser's residence. *See* TEX. PROP. CODE ANN. § 5.062(a).

Under the First Contract, the Ranch was purchased by a legal entity, RDH Concrete, rather than an individual. Dianaly testified nobody currently lives in the house on the Ranch and “its

³ Cruz also argues the First Contract is void for failure to satisfy the statute of frauds. Because we determine the trial court had jurisdiction to hear the forcible detainer on other grounds, we need not address Cruz's statute of frauds argument. *See* TEX. R. APP. P. 47.1 (“The court of appeals must hand down a written opinion that is as brief as practicable but that addresses every issue raised and necessary to final disposition of the appeal.”).

⁴ In its brief, De Hoyos relies on its proposed findings of fact and conclusions of law. However, De Hoyos's reliance is misplaced because the trial court never adopted De Hoyos's proposed findings of fact and conclusions of law. The trial court did not issue findings of fact and conclusions of law.

been a long time” since she was on the Ranch. Although Dianaly testified she intended to use the house situated on the Ranch as her residence one day, Dianaly was not the purchaser of the Ranch under the First Contract. Subsection 5.062(a) of the Texas Property Code clearly states that the protections in subsection 5.079(a) apply only to transactions involving an executory contract for conveyance of real property to be used as *the purchaser’s* residence. *See id.* Moreover, the trial court was within its right to disbelieve Dianaly’s testimony regarding any intent to use the property as a residence. *See N. E. Indep. Sch. Dist. v. Riou*, 598 S.W.3d 243, 255 n.50 (Tex. 2020) (“Under any standard of review, the fact-finder is the sole judge of the credibility of witnesses and the weight to give their testimony.”). Finally, the Ranch consists of approximately 200 acres and Dianaly testified the Ranch was used by De Hoyos for grazing cattle. *Cf. TEX. PROP. CODE ANN. § 5.062(a)(1)* (“[A] lot measuring one acre or less is presumed to be residential property[.]”). The trial court’s implied finding that subsection 5.079(a) did not apply to the First Contract is supported by the record.

Dianaly testified that Rogelio executed the Second Contract as his sole proprietorship, RDH Cattle, to remove the debt from RDH Concrete. This testimony supports the trial court’s implied finding that the Second Contract was controlling. The Second Contract states that “closing of the sale will be on or before May 30, 2018” and “[a]ny possession by Buyer prior to closing . . . which is not authorized by a written lease will establish a tenancy at sufferance relationship between the parties.” Dianaly conceded the parties did not close on the Second Contract. Furthermore, De Hoyos did not provide evidence of a written lease authorizing RDH Cattle’s possession of the Ranch. The tenancy at sufferance clause in the Second Contract allowed the trial court to determine the issue of possession without adjudicating the issue of title. *See Hinojosa v. Fin. of Am. Reverse, LLC*, No 04-19-00787-CV, 2021 WL 1199045, at *2 (Tex. App.—San Antonio Mar. 31, 2021, no pet.) (mem. op.) (“Based on evidence of a landlord-tenant at sufferance

relationship, the issue of possession may be determined independent of title, even if a tenant at sufferance challenges the [underlying agreement].”). Therefore, we conclude the county court had jurisdiction over the forcible detainer action.

Accordingly, De Hoyos’s sole issue is overruled.

CONCLUSION

The judgment of the trial court is affirmed.

Irene Rios, Justice