

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-09-00344-CV

MICHAEL M. EULER, Appellant

V.

MILES MARKS, Appellee

On Appeal from the County Court at Law No. 2
Montgomery County, Texas
Trial Cause No. 09-23388

MEMORANDUM OPINION

Miles Marks, acting as a trustee, brought a forcible detainer action in justice court seeking possession of property located at 30714 Meadow Wood Drive, Magnolia, Texas. The justice court issued a judgment granting Marks possession of the property. Euler appealed to the county court at law. *See* Tex. R. Civ. P. 749. Following a bench trial, the trial court also rendered a judgment in favor of Marks and subsequently issued a writ of possession to Marks. Euler filed a pro se notice of appeal and a brief presenting nine issues for our review. We affirm the trial court's judgment.

Forcible Entry Trial

The parties tried the case to the county court at law in a non-jury trial. Marks based his claim to possession of the property on a substitute trustee's deed, which had been executed on January 3, 2006, and filed on January 25, 2007 ("the 2007 deed"). During the trial, Marks introduced the 2007 deed without objection.

The 2007 deed was filed to correct an incomplete property description contained in an earlier substitute trustee's deed that was filed on January 17, 2006 ("the 2006 deed"). The 2007 deed contains a more complete legal description of the property; otherwise, the deeds are identical. Specifically, the 2006 deed contains an incomplete property description; however, both the 2006 deed and the 2007 deed describe the premises being conveyed as a 2.1563 acre tract, consisting of Lots 63, 64, 65, and 66 of Cripple Creek Farms North, Section 1. The 2007 deed further states: "THIS INSTRUMENT IS BEING RE-RECORDED TO CORRECT THE LEGAL DESCRIPTION AS THE ENTIRE METES AND BOUNDS DESCRIPTION WAS NOT ATTACHED."

Euler was the only witness called to testify during trial. Euler testified that the property was the subject of a foreclosure sale where the statutory posting of the sale contained an incomplete metes and bounds description. Euler also claimed that after foreclosure, he reached an agreement with Marks to repurchase the property. However, neither Marks nor Euler signed the contract, which was admitted into evidence. Euler

also explained that in response to his offer to repurchase the property, Marks rejected Euler's offer, and made a counter-offer to sell it for \$160,000. According to Euler, as of the date of the trial, the parties had not reached an agreement on a price for Euler's repurchase of the property. Additionally, Euler testified that he was told that he was not in default on his note and that "they would pull the sale at the foreclosure auction January 3, 2006." Finally, Euler testified that another court found that the foreclosure had been valid.¹

Applicable Law

In a forcible detainer action, the only issue the trial court determines is whether the party seeking to obtain possession is entitled to actual and immediate possession, and the merits of whether a party has title shall not be determined. *See* Tex. R. Civ. P. 746; *Black v. Washington Mut. Bank*, 318 S.W.3d 414, 416 (Tex. App.—Houston [1st Dist.] 2010, pet. dism'd w.o.j.); *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.). Thus, questions over whether a sale of property in a deed of trust is invalid "must be brought in a separate suit." *Williams*, 315 S.W.3d at 927; *Scott v. Hewitt*, 127 Tex. 31, 90 S.W.2d 816, 818-19 (1936); *Rice v. Pinney*, 51 S.W.3d 705, 710 (Tex. App.—Dallas 2001, no pet.). The *Rice* Court explained that "[t]o prevail in a

¹Euler's reference concerns a trial held in the United States District Court for the Southern District of Texas. *See Euler v. Miles Marks*, No. H-09-803, 2009 U.S. Dist. LEXIS 48191 (S.D. Tex., June 9, 2009). That proceeding resulted in a judgment in favor of Euler's creditor, Texas Dow Employees Credit Union, and the judgment from that proceeding was later affirmed by the Fifth Circuit Court of Appeals. *Id.*; *see also In re Euler*, No. 09-20426, 2010 U.S. App. LEXIS 16823 (5th Cir. Aug. 11, 2010).

forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession.” *Rice*, 51 S.W.3d at 709.

Analysis

Euler’s first four issues challenge the validity of the foreclosure sale based on the defect in the property description posted in connection with the sale. Marks alleges that he was entitled to possession of the property located at 30714 Meadow Wood Drive, Magnolia, Texas, and more particularly described by the metes and bounds legal description that matched the legal description attached to the 2007 deed, which also was attached to the pleadings. At trial, the trial court admitted the 2007 deed without objection when Marks offered it. The record also contains a copy of the judgment in Euler’s suit against Texas Dow Employees Credit Union in which Marks challenged the validity of the foreclosure.

We conclude that the evidence introduced during the forcible entry and detainer action, which included the 2007 deed, was sufficient evidence to show that Marks had a superior right to possess lots 63, 64, 65, and 66 of the Cripple Creek Farms North, Section 1, an unrecorded subdivision situated in the Leander Wescott Survey, Abstract Number 615, Montgomery County, Texas, as those parcels are more particularly described in the metes and bounds descriptions filed of record with the 2007 deed. The

descriptions in the 2007 deed are consistent with the property description contained in Marks's suit for forcible entry and detainer.

To resolve Marks's claim for possession, the trial court needed to merely determine whether Marks was entitled to immediate possession as the grantee under the substitute trustee's deed. *See Black*, 318 S.W.3d at 418. Whether a defect in the foreclosure proceeding caused a defect in Marks's title was not a question the trial court was required to address. Tex. R. Civ. P. 746; *Black*, 318 S.W.3d at 416; *Williams*, 315 S.W.3d at 927.

Euler's last five issues relate to alleged misrepresentations by Marks about the foreclosure before it occurred and about the effect of Euler's attempt to repurchase the property after the date of foreclosure. Euler asks that we send the parties to mediation, declare that he is a co-owner of the property, or declare the sale of the property invalid. Although not entirely clear, Euler contends that he is entitled to recoup the funds he invested in the property and to recover his attorney's fees based on the claims he had made against Marks.

Nevertheless, the issue before the court was whether Marks was entitled to possession, not whether Euler had independent damage claims. Tex. R. Civ. P. 746; *Black*, 318 S.W.3d at 416; *Williams*, 315 S.W.3d at 927. With respect to the question of possession, the trial court could reasonably conclude from both Euler's admission that the parties never agreed on a purchase price and from Euler's failure to produce an

enforceable contract to convey the property to him, that he did not own the property involved in the dispute or have a right to superior possession. Based on the evidence at trial, the trial court could reasonably conclude that no post-foreclosure sale of the property to Euler had occurred.

With respect to Euler's additional claims, Euler's answer asserted that the trial court did not have jurisdiction over the dispute and asserted a general denial. Euler's answer does not include a counterclaim for damages.² Nor did Euler raise any matters of avoidance or affirmative defenses in his answer. *See* Tex. R. Civ. P. 94. Generally, a party must specifically plead matters constituting a claim against an opposing party or matters operating as an avoidance or affirmative defense. *See* Tex. R. Civ. P. 94, 97. Since Euler failed to plead any claim in avoidance to Marks's claimed right of possession, or request findings on any of his claims, Euler did not preserve issues five through nine for our review. *See* Tex. R. App. P. 33.1(a).

Conclusion

After reviewing the record before the trial court, we conclude the trial court had sufficient evidence before it to reasonably conclude that Marks had the right to obtain

²We do not suggest that a defendant should or that a trial court would permit a defendant to file a counterclaim seeking damages in a forcible entry and detainer case, since, with exceptions not pertinent here, the issue before the trial court is generally limited to which party has a superior right of possession. Instead, absent Euler's attempt to file a counterclaim seeking affirmative relief, no pleadings are on file that would have authorized the trial court to award the damages Euler now seeks to impose on Marks.

possession of the premises. We overrule Euler's nine issues and affirm the trial court's judgment.

AFFIRMED.

HOLLIS HORTON
Justice

Submitted on November 10, 2010
Opinion Delivered February 3, 2011
Before Gaultney, Kreger, and Horton, JJ.