

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-15-00254-CV

JOSEPH E. LEAL, Appellant

V.

SF REVOCABLE LIVING TRUST I, Appellee

On Appeal from the County Court at Law
Liberty County, Texas
Trial Cause No. CAL-11947

MEMORANDUM OPINION

Joseph E. Leal, appearing pro se, appeals from a summary judgment rendered by the Liberty County Court at Law in favor of SF Revocable Living Trust I (“Living Trust”). The judgment, which resulted in Leal being evicted from a 17.232 acre tract of property in Liberty County, awarded Living Trust the right to immediate possession of the tract.

After the County Court at Law rendered its judgment, Leal appealed, asserting that because a dispute exists over who owns legal title in the tract, the County Court

at Law did not have jurisdiction to decide a dispute involving who held title in the 17.232 acre tract. We conclude that Leal's challenge to the validity of the County Court at Law's judgment in the eviction case became moot when Leal was evicted from the tract after failing to post a supersedeas bond.

Background

Charles D. Snider Jr., as trustee of Living Trust, sought to evict Leal from possession of a 17.232 acre tract of property in Liberty County, Texas by filing an eviction suit in the Justice Court of Liberty County, Precinct Three. Following a trial, the Justice Court awarded Living Trust possession of the tract. After the Justice Court rendered judgment, Leal appealed the ruling to the County Court at Law. *See* Tex. R. Civ. P. 510.9(a) (allowing an appeal of an eviction case from the Justice Court upon the filing of a cash deposit in the Justice Court within five days of the Justice Court's judgment).

After the case was appealed to the County Court at Law, Living Trust amended its complaint, and in its amended petition, Living Trust alleged that it had a superior right to possession of the tract based on a duly recorded deed dated September 17, 2014. The amended petition also alleges that Leal acquired his interest in the property through a deed of trust, which was secured by the tract, but that after acquiring his interest in the tract, Leal failed to timely pay the amounts that he owed on his note, resulting in the owner of the tract instituting proceedings to

foreclose. Subsequently, Living Trust filed a combined traditional and no-evidence motion for summary judgment. In its motion, Living Trust asserted that it had a superior right to possess the tract, that Leal initially gained his right to occupy the tract because he purchased the property from Steve Hebert, subject to a deed of trust in Hebert's favor, that Leal defaulted on the note he gave Hebert to purchase the tract, and that following Leal's default, Hebert accelerated Leal's obligations under the note and then foreclosed on the tract. The motion for summary judgment reflects that Living Trust acquired its interest in the tract from Hebert, and it alleges that Leal continued to occupy the tract as a tenant at sufferance after Hebert foreclosed on the tract. The motion further alleges that after the foreclosure occurred and Living Trust acquired its interest in the tract from Hebert, Leal was given three days written notice to vacate but then failed to vacate the tract. Significantly, Leal did not file a response to Living Trust's motion for summary judgment.

The County Court at Law conducted a hearing on Living Trust's motion for summary judgment on June 26, 2015. Following the hearing, the County Court at Law granted Living Trust's motion, and it rendered a judgment awarding Living Trust possession of the tract. In the judgment, the County Court at Law instructed the County Clerk to issue a writ of possession commanding any sheriff or constable to evict Leal from the tract. Subsequently, Leal filed an untimely request asking the

County Court at Law to set a supersedeas bond. The record before us reflects that Leal never superseded the judgment.

On June 30, 2015, Leal filed a motion to vacate the judgment and motion for new trial. Leal's post-judgment motion addresses the merits of Living Trust's motion for summary judgment, and Leal attached documents to the post-judgment motion that he argues support his position that Living Trust did not have a superior right of possession to the 17.232 acre tract. However, Leal's post-judgment motion does not assert that any of the evidence that is attached to his post-judgment motion was newly discovered evidence, and the motion does not explain why the same documents could not have been filed in a timely manner in response to Living Trust's motion for summary judgment. On the day Leal filed his motion for new trial, he filed a notice of appeal, appealing the County Court at Law's judgment.

On November 17, 2015, the Liberty County Sheriff's Office executed a writ of possession on the 17.232 acre tract. The sheriff's return reflects that on November 17, 2015, Charles D. Snider Jr., as the agent for Living Trust, obtained possession of the tract, and nothing in the record reflects that Leal ever regained possession of the 17.232 acre tract after being evicted.

Analysis

In his appeal, Leal argues the trial court lacked jurisdiction to evict him from the tract. Leal also contends the trial court abused its discretion by failing to set a

supersedeas bond in response to his request, which he filed on October 8, 2015. In response to the arguments Leal raises in his brief, Living Trust contends that Leal's appeal is moot and should be dismissed because he is no longer in possession of the tract.

Issues of title are not subject to being tried in eviction actions, as the only issue to be decided in such proceedings is who has the right to immediate possession of the property. *Marshall v. Housing Auth. of the City of San Antonio*, 198 S.W.3d 782, 785 (Tex. 2006); *see also* Tex. R. Civ. P. 510.3(e) ("The court must adjudicate the right to actual possession and not title."). In this forcible-detainer case, the County Court at Law did not adjudicate the parties' claims over who actually held title in the 17.232 acre tract. Instead, the judgment awarded Living Trust possession of the disputed tract. Consequently, unless Leal can demonstrate that he has "a potentially meritorious claim of right to current, actual possession of the [property,]" the fact that Leal failed to supersede the judgment moots any questions over who is entitled to actual possession of the property until another court resolves a trespass-to-try-title case regarding the 17.232 acre tract. *Marshall*, 198 S.W.3d at 787.

When the trial court ruled on Living Trust's motion for summary judgment, Leal provided no evidence disputing Living Trust's allegations that Leal was a tenant at sufferance on the tract who had been given notice to vacate the tract. The evidence before the trial court also reflects that Living Trust holds a recorded deed to the

17.232 acre tract, and the evidence before the County Court at Law when it conducted the hearing on Living Trust’s motion contains no evidence showing that Leal has a superior right of possession to the tract. The evidence before the County Court at Law on Living Trust’s motion includes a judgment from the 75th Judicial District Court of Liberty County, Texas, rendered on February 11, 2015, and the 75th District Court’s judgment reflects that Steve Hebert foreclosed on Leal’s interest in the disputed tract.

In his appeal, Leal argues that he has a pending trespass-to-try-title suit against Steve Hebert, Charles D. Snider Jr., and Charles D. Snider Jr., as trustee of the Living Trust. According to Leal, the trespass-to-try-title suit will resolve who rightfully owns the disputed tract.¹ Generally, appellate courts presume that the trial court did not consider summary judgment evidence that a party failed to timely file under requirements of Rule 166a(c), which provides that “[e]xcept on leave of court, the adverse party, not later than seven days prior to the day of hearing may file and serve opposing affidavits or other written response.” *See Benchmark Bank v. Crowder*,

¹ The fact that an action is pending in a district court to resolve claims involving title to property does not necessarily prevent another court in a forcible-detainer proceeding from determining which party has a superior right to immediate possession of the property. *See Marshall v. Housing Auth. of the City of San Antonio*, 198 S.W.3d 782, 787 (Tex. 2006); *Wilhelm v. Fed. Nat’l Mortg. Ass’n*, 349 S.W.3d 766, 768-69 (Tex. App.—Houston [14th Dist.] 2011, no pet.).

919 S.W.2d 657, 663 (Tex. 1996) (citing *INA of Tex. v. Bryant*, 686 S.W.2d 614, 615 (Tex. 1985)); *see also* Tex. R. Civ. P. 166a(c). Therefore, in deciding whether the trial court erred by granting Living Trust’s motion, we cannot consider the documents Leal filed in his post-judgment motion.² *See Benchmark Bank*, 919 S.W.2d at 663. Additionally, since Leal failed to post a supersedeas bond, the deputy sheriff had the right to execute the writ of possession. *See* Tex. Prop. Code Ann. § 24.007 (West Supp. 2016) (providing that a judgment in a county court shall not be stayed under any circumstances unless within ten days of the signing of the judgment, the appellant files a supersedeas bond as set by the county court).³

² When a party asks for a new trial relying on evidence that was not before the trial court when it resolved the issues in a case, the party that is asking for “a new trial on grounds of newly-discovered evidence must demonstrate to the trial court that (1) the evidence has come to its knowledge since the trial, (2) its failure to discover the evidence sooner was not due to lack of diligence, (3) the evidence is not cumulative, and (4) the evidence is so material it would probably produce a different result if a new trial were granted.” *Waffle House, Inc. v. Williams*, 313 S.W.3d 796, 813 (Tex. 2010). Leal’s motion for new trial, and the brief he filed in this case, do not argue that the documents he attached to his motion for new trial were documents that he failed to discover before the trial court ruled on Living Trust’s motion for summary judgment, and he also does not advance any excuse for his failure to file a response to Living Trust’s motion.

³ We cite to the current version of the statute, as legislative changes made in 2015 do not substantively affect the issues in this appeal. The trial court rendered its judgment on June 26, 2015, which made the supersedeas bond due on or before July 6, 2015. The record shows that Leal did not file his request to supersede the judgment until October 8, 2015.

In conclusion, the record on appeal shows that Leal is no longer in possession of the disputed tract. Based on the summary judgment evidence that was before the County Court at Law when it ruled on Living Trust's motion, the evidence failed to show that Leal had a superior right of possession to that of Living Trust in the 17.232 acre tract. Therefore, we conclude that Leal's appeal is moot. *See Marshall*, 198 S.W.3d at 787; *Wilhelm v. Fed. Nat'l Mortg. Ass'n*, 349 S.W.3d 766, 769 (Tex. App.—Houston [14th Dist.] 2011, no pet.). Because Leal's appeal is moot, Leal's second issue complaining about the trial court's failure to set a supersedeas bond is also moot. *Wilhelm*, 349 S.W.3d at 769. We tax costs to the party that incurred them, vacate the County Court at Law's judgment, and dismiss the appeal as moot. *See Marshall*, 198 S.W.3d at 790.

TRIAL COURT JUDGMENT VACATED AND APPEAL DISMISSED.

HOLLIS HORTON
Justice

Submitted on June 17, 2016
Opinion Delivered June 22, 2017

Before McKeithen, C.J., Kreger and Horton, JJ.