



**COURT OF APPEALS  
SECOND DISTRICT OF TEXAS  
FORT WORTH**

**NO. 02-16-00171-CV**

BETTY JO TILLIS

APPELLANT

V.

HOME SERVICING, LLC

APPELLEE

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FROM COUNTY COURT AT LAW NO. 1 OF TARRANT COUNTY  
TRIAL COURT NO. 2016-001418-1

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**MEMORANDUM OPINION<sup>1</sup>**  
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In this forcible detainer case, appellant Betty Jo Tillis appeals the trial court's judgment granting possession of certain real property to appellee Home Servicing, LLC (Home Servicing). In two related issues, Tillis contends that the trial court lacked subject matter jurisdiction to grant Home Servicing possession of the property because she presented evidence that the security instrument

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<sup>1</sup>See Tex. R. App. P. 47.4.

authorizing foreclosure was forged and because the alleged forgery created an unresolved issue concerning title to the property. We affirm.

### **Background Facts**

In February 2016, in a justice court, Home Servicing filed a petition to authorize eviction of Tillis from her Fort Worth property. Home Servicing alleged that the property had been foreclosed upon, that it owned the property through a foreclosure sale deed, that it had notified Tillis to vacate the premises, and that she had refused to do so. Thus, Home Servicing pled that Tillis had committed forcible detainer.<sup>2</sup>

Home Servicing filed the foreclosure sale deed. That deed recited that Tillis had signed a deed of trust in 2002; that her property had been foreclosed upon after she had received a loan<sup>3</sup> and had defaulted; and that in September 2014, Home Servicing had bought the property at a public auction. Home Servicing also filed a May 2014 foreclosure order from a Tarrant County district court that recited that Tillis had defaulted on a loan obligation. The justice court rendered a judgment for a writ of possession in favor of Home Servicing.

Tillis appealed the justice court's judgment to the trial court. There, she filed a plea to the jurisdiction. In the plea, she argued, "The deed of trust

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<sup>2</sup>See Tex. Prop. Code Ann. § 24.002(a) (West 2014).

<sup>3</sup>The record from the hearing on Tillis's plea to the jurisdiction in the trial court indicates that she received a home equity loan. On appeal, Tillis concedes that she borrowed money but states that she "did not pledge her [h]ome as security."

document upon which [Home Servicing] relies for its title is a forgery of [Tillis's] signature, and it is void and unenforceable. Accordingly, [Home Servicing] does not have valid title or superior right to possession over [Tillis].”<sup>4</sup>

The trial court held a hearing in April 2016. Tillis's counsel told the trial court that Tillis's purported signature on a deed of trust was a forgery and that the deed of trust was therefore void. Her counsel contended, “[I]f there's a forgery it calls into question title to the real estate that was foreclosed on, [and] title is a dispute that this court does not have jurisdiction over. The court must dismiss the forcible detainer action for lack of jurisdiction . . . .” The trial court asked Tillis's counsel whether a suit concerning the forgery allegation was pending, and counsel stated that a suit was pending in federal court. Counsel represented that there was no final judgment in the federal case; he indicated that a federal bankruptcy court had ruled in Home Servicing's favor but that Tillis had appealed the ruling to a federal district court. Counsel contended that “until [the federal suit was] resolved,” the forcible detainer suit in state court could not proceed. Finally, counsel stated that Tillis was prepared to testify that the deed of trust was forged.

At the hearing, the trial court admitted copies of the 2002 security instrument, the foreclosure sale deed, the state district court's foreclosure order,

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<sup>4</sup>On appeal, Tillis states that she did “not sign the Texas Home Equity Security Instrument . . . upon which Home Servicing foreclosed in September 2015.”

and other documents. The security instrument expressed Tillis's obligation to repay debt under a note and stated,

It is the express intention of Lender and [Tillis] that Lender shall have a fully enforceable lien on the Property. It is also the express intention of Lender and [Tillis] that Lender's default remedies shall include the most expeditious means of foreclosure available by law. . . .

. . . .

If the Property is sold pursuant to this [s]ection . . . , [Tillis] or any person holding possession of the Property . . . shall immediately surrender possession of the Property to the purchaser at that sale. If possession is not surrendered, [Tillis] or such person . . . may be removed by writ of possession or other court proceeding.<sup>[5]</sup>

The final page of the security instrument contains a signature that bears Tillis's name.

After the hearing concluded, the court signed a judgment granting possession of the property to Home Servicing and ordering the issuance of a writ of possession. Tillis posted a supersedeas bond and brought this appeal.<sup>6</sup>

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<sup>5</sup>Tillis does not contend that this language was legally inadequate to justify Home Servicing's right to possess the property for any reason other than the allegation that her signature on the security instrument was forged.

<sup>6</sup>Tillis also filed a request for findings of fact and conclusions of law. In a footnote within her brief on appeal, she complains that the trial court did not file such findings and conclusions. But Tillis did not file a notice of past due findings and conclusions, so she waived her right to complain about the lack of findings and conclusions. See Tex. R. Civ. P. 297; *Holmes v. GMAC, Inc.*, 458 S.W.3d 85, 97 (Tex. App.—El Paso 2014, no pet.); *Commercial Servs. of Perry, Inc. v. Wooldridge*, 968 S.W.2d 560, 563 (Tex. App.—Fort Worth 1998, no pet.).

## Subject Matter Jurisdiction

In her two related issues on appeal, Tillis argues that the trial court lacked subject matter jurisdiction to grant possession of the property to Home Servicing because an outstanding issue exists concerning whether the security instrument authorizing foreclosure was forged and because, therefore, “issues of possession necessarily include resolution of title.” She contends that because the security instrument was forged and void, it could not authorize the foreclosure and the resulting transfer of title to Home Servicing. Thus, she asserts that the right of possession in Home Servicing “cannot be resolved . . . because title to the property is necessarily involved.”

A plea to the jurisdiction is a dilatory plea that is unconcerned with the merits of the asserted claims. *Weiderman v. City of Arlington*, 480 S.W.3d 32, 36 (Tex. App.—Fort Worth 2015, pet. denied). Such a plea challenges the trial court’s power to adjudicate a case. *Id.* Whether a trial court has subject-matter jurisdiction is a legal question that we review de novo. *Id.*

A forcible detainer suit determines the right to immediate possession of real property if there was no unlawful entry. *Mosely v. Am. Homes 4 Rent Props. Eight, LLC*, No. 02-15-00200-CV, 2015 WL 9942695, at \*2 (Tex. App.—Fort Worth Dec. 10, 2015, pet. dismiss’d) (citing *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.)). Such a suit provides a speedy, simple, and inexpensive means for resolving the question of the right to possession of

premises; therefore, the sole issue in the suit is who has the right to immediate possession. *Id.*

As we explained in *Mosely*,

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. *Schlichting v. Lehman Bros. Bank FSB*, 346 S.W.3d 196, 199 (Tex. App.—Dallas 2011, pet. dismissed); see *Rice*, 51 S.W.3d at 709 (“Forcible detainer actions in justice courts may be brought and prosecuted concurrently with suits to try title in district court.”). In most cases, “the right to immediate possession can be determined separately from the right to title. The trial court is deprived of jurisdiction only if the determination of the right to immediate possession *necessarily requires* the resolution of the title dispute.” *Schlichting*, 346 S.W.3d at 199 . . . .

*Id.*; see *Diffley v. Fed. Nat’l Mortg. Ass’n*, No. 02-13-00403-CV, 2014 WL 6790043, at \*1 (Tex. App.—Fort Worth Nov. 26, 2014, no pet.) (mem. op.) (“It is only when the right to immediate possession necessarily requires resolution of *the title dispute*—that is, when the court’s decision of which party has a superior right of possession must rest on a determination of title—that the justice court, and therefore the county court at law, may not adjudicate the forcible detainer action.” (emphasis added)).

In contending that this case is among the minority of cases in which the right of possession rests on a title dispute that cannot be resolved by the justice court or county court, Tillis relies on *Yarbrough v. Household Finance Corporation III*, 455 S.W.3d 277 (Tex. App.—Houston [14th Dist.] 2015, no pet.). There, the court resolved whether an “an affirmative defense of forgery, supported by an affidavit alleging that the defendants’ signatures on a deed of

trust were forged, raise[d] a genuine issue of title intertwined with the issue of possession sufficient to deprive a justice court of jurisdiction in a forcible detainer action.” *Id.* at 278. In answering this question affirmatively, our sister court explained in part,

When there is no dispute that the parties agreed to a tenancy relationship in the event of foreclosure, the tenancy relationship provides an independent basis for resolving the issue of possession. But here, the Yarbroughs contend that Household Finance’s claim of a tenancy relationship cannot be sustained on a forged deed of trust because such a deed is void ab initio, a nullity, and passes no title.

Accordingly, the Yarbroughs argue that a forged deed of trust cannot establish a tenancy-at-sufferance relationship between the Yarbroughs and Household Finance. This case . . . is . . . akin to those in which the parties disputed the existence of a landlord-tenant relationship. . . .

Regarding forgery in particular, in *Dass, Inc. v. Smith*, the Dallas Court of Appeals upheld the district court’s temporary injunction of a forcible detainer action because the action required the resolution of a title dispute. 206 S.W.3d 197, 201 (Tex. App.—Dallas 2006, no pet.). There was undisputed evidence that Falcon Transit had leased real property from Dass for several years, but the parties disputed the nature of the relationship thereafter. The terms of the lease provided that the tenancy would continue month-to-month at the expiration of the lease, but Falcon Transit’s owner claimed that he purchased the property from Dass and introduced into evidence a document purportedly signed by the parties establishing a sale of the property. Dass’s representative testified that he did not sign the sales agreement and that his signature was a forgery. Because the parties disputed the existence of a landlord-tenant relationship and a fact finder would need to resolve whether the purported sales agreement passing title was forged, the determination of the right to immediate possession necessarily required resolution of a title dispute. The justice court lacked jurisdiction.

Because the Yarbroughs contend the deed of trust and resulting substitute trustee’s deed are void due to forgery, they have

raised a genuine issue of title so intertwined with the issue of possession as to preclude jurisdiction in the justice court. *A prerequisite to determining the immediate right to possession will be resolution of the Yarbroughs' title dispute concerning forgery of the deed of trust.* Accordingly, the justice and county courts lacked jurisdiction.

*Id.* at 282–83 (emphasis added) (some citations omitted).

A critical, determinative distinction exists between the facts of *Yarbrough* and the facts here. There, the trial court's record contained a plea to the jurisdiction and, attached to the plea, a copy of the Yarbroughs' state district court petition in which they alleged that the deed of trust was forged and in which they explicitly sought judgment for title of the property. *Id.* at 279. Thus, the Yarbroughs fulfilled their fundamental duty to present specific evidence of a pending lawsuit concerning title that a forcible detainer suit was required to yield to. *See id.*; *see also Borunda v. Fed. Nat'l Mortg. Ass'n*, No. 08-13-00331-CV, 2015 WL 7281536, at \*3 (Tex. App.—El Paso Nov. 18, 2015, no pet.) (“Specific evidence of a title dispute is required to raise an issue of a justice court's jurisdiction.”) (quoting *Padilla v. NCJ Dev., Inc.*, 218 S.W.3d 811, 815 (Tex. App.—El Paso 2007, pet. dismissed w.o.j.)); *Harrell v. Citizens Bank & Trust Co. of Vivian, La.*, 296 S.W.3d 321, 326 (Tex. App.—Texarkana 2009, pet. dismissed w.o.j.) (stating the same); *Merit Mgmt. Partners I v. Noelke*, 266 S.W.3d 637, 648 (Tex. App.—Austin 2008, no pet.) (“If the right of recovery in a suit depends, at least in part, upon the title to land, but there is no real dispute between the parties over the question of title, the question of title is incidental.”).



Here, Tillis did not present “specific evidence” of a pending title dispute in documents that she filed in the trial court or at the evidentiary hearing. The clerk’s record contains an amended final judgment and a notice of appeal related to Tillis’s federal case, but neither document discloses the nature of the claims in that proceeding. Tillis’s plea to the jurisdiction contains an assertion that her signature on a deed of trust was forged, but it does not state that any proceeding concerning the forgery allegation and seeking an adjudication of title based on that allegation was pending. Tillis did not present evidence of the federal proceeding at the evidentiary hearing; rather, the record from that hearing contains attorneys’ unsworn statements concerning the federal proceeding and how it concerned the foreclosure and rights to possession without any explicit allegation that Tillis had sought an adjudication of title within it.<sup>7</sup> We conclude that these unsworn, unspecific statements were insufficient to constitute specific evidence of a title dispute. See *Borunda*, 2015 WL 7281536, at \*3; *Presley v. McGrath*, No. 02-04-00403-CV, 2005 WL 1475495, at \*3 (Tex. App.—Fort Worth June 23, 2005, pet. dismiss’d w.o.j.) (mem. op.) (holding that a party failed to “present *specific* evidence raising a genuine issue of title” when in the trial court,

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<sup>7</sup>We note that on appeal, Home Servicing states, without contradiction from Tillis, that the federal bankruptcy court granted summary judgment against Tillis, that Tillis appealed the summary judgment to a federal district court, and that the federal district court dismissed the appeal for want of prosecution. Thus, it appears that there is no longer any unresolved federal claim by Tillis against Home Servicing. See Tex. R. App. P. 38.1(g) (stating that when reviewing a brief on appeal of a civil case, the court “will accept as true the facts stated unless another party contradicts them”).

the party “merely argued that a concurrent suit was under way in federal court, and he allowed the court and . . . counsel to read the complaint”); see also *Ebert v. Strada Capital, Inc.*, No. 03-13-00729-CV, 2014 WL 4915046, at \*2 (Tex. App.—Austin Oct. 1, 2014, no pet.) (mem. op.) (holding that a party failed to present specific evidence raising a title dispute when the party “presented no evidence at all, only argument”); *Jaimes v. Fed. Nat’l Mortg. Ass’n*, No. 03-13-00290-CV, 2013 WL 7809741, at \*5 (Tex. App.—Austin Dec. 4, 2013, no pet.) (mem. op.) (holding that a statement by counsel at trial was not “evidence on which the trial court could base its decision” that a genuine title dispute existed).

Because Tillis failed to present specific evidence of a title dispute in the trial court, we conclude that this case is distinguishable from *Yarbrough*<sup>8</sup> and that Tillis could not show that the justice court and county court lacked jurisdiction of her forcible detainer suit. See *Borunda*, 2015 WL 7281536, at \*3; *Harrell*, 296 S.W.3d at 326; see also *Villanueva v. Deutsche Bank Nat’l Trust Co.*, No. 13-13-00393-CV, 2015 WL 602061, at \*3 (Tex. App.—Corpus Christi Feb. 12, 2015, no pet.) (mem. op.) (“In this case, there is no evidence in the record of a separate lawsuit challenging title, and Villanueva’s apparent challenge of the foreclosure process does not prevent the county court from determining possession.”); *Govan v. Hodge*, No. 04-97-00829-CV, 1998 WL 300556, at \*2 (Tex. App.—San

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<sup>8</sup>We do not offer any opinion concerning the correctness of *Yarbrough*’s holding that a dispute in a separate lawsuit based on an alleged forgery of a deed of trust creates a title issue “so intertwined with the issue of possession as to preclude jurisdiction in the justice court.” 455 S.W.3d at 283.

Antonio June 10, 1998, no pet.) (not designated for publication) (“We again note that the record contains no evidence of a title dispute related to this case pending in district court. Specific evidence of a related title dispute is necessary before a justice or county court will be deprived of jurisdiction in a forcible detainer action.”). Therefore, we conclude that the trial court did not err by exercising jurisdiction and granting relief to Home Servicing, and we overrule Tillis’s two related issues.

### **Conclusion**

Having overruled Tillis’s two issues, we affirm the trial court’s judgment in favor of Home Servicing.

/s/ Kerry P. FitzGerald

KERRY P. FITZGERALD  
JUSTICE

PANEL: GABRIEL and KERR, JJ.; and KERRY P. FITZGERALD (Senior Justice, Retired, Sitting by Assignment).

DELIVERED: March 2, 2017