



**In The
Court of Appeals
Seventh District of Texas at Amarillo**

No. 07-20-00017-CV

**ROSALBA VELOZ AND ALL OTHER OCCUPANTS
OF 5120 CRESTLINE ROAD, FORT WORTH, TEXAS, APPELLANTS**

V.

**WILMINGTON SAVINGS FUND SOCIETY, FSB d/b/a CHRISTINA TRUST,
NOT INDIVIDUALLY BUT AS TRUSTEE FOR PRETIUM
MORTGAGE ACQUISITION TRUST, APPELLEE**

**On Appeal from the County Court at Law No. 1
Tarrant County, Texas
Trial Court No. 2019-002930-1, Honorable Don Pierson, Presiding**

November 15, 2021

CONCURRING OPINION

Before QUINN, C.J., and PIRTLE and PARKER, JJ.

I concur with the majority's decision to affirm but do so for the following reasons.

Rosalba Veloz attacks the legal sufficiency of the evidence underlying the trial court's award of possession to Wilmington Savings Fund Society, FSB. Such can be done for the first time on appeal. See TEX. R. APP. P. 33.1(d); *Nelson v. Najm*, 127 S.W.3d

170, 176 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). Yet, the nature of her argument is not one that lends itself to review.

Simply put, while we have jurisdiction over the appeal, we do not over the particular argument Veloz proffered. This is so because our jurisdiction is derivative of the trial court's from which appeal was taken. See *Ward v. Malone*, 115 S.W.3d 267, 269 (Tex. App.—Corpus Christi 2003, pet. denied) (in appeal from forcible detainer action, noting that “[a]ppellate court jurisdiction of the merits of a case extends no further than that of the court from which the appeal is taken”); see also *Pearson v. State*, 159 Tex. 66, 71, 315 S.W.2d 935, 938 (1958) (“It is well settled that the jurisdiction of the appellate court as to the merits of a case extends no further than that of the court from which the appeal is taken.”). The latter here was a county court at law. Though such a court may adjudicate the issue of possession in a forcible entry and detainer proceeding, it lacks subject-matter jurisdiction to adjudicate title to the property, as does a justice of the peace court. *Ward*, 115 S.W.3d at 269–70; *Johnson v. Fellowship Baptist Church*, 627 S.W.2d 203, 204 (Tex. App.—Corpus Christi 1981, no writ). This barrier arises when the right to possession necessarily requires resolution of a title dispute. *Onyedebelu v. Wilmington Sav. Fund Soc’y, FSB*, No. 02-20-00239-CV, 2021 Tex. App. LEXIS 7871, at *7–8 (Tex. App.—Fort Worth Sept. 23, 2021, no pet. h.) (mem. op.); *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.).

According to the Second Court of Appeals, that happens when defects in the foreclosure process are urged as a bar to possession. *Onyedebelu*, 2021 Tex. App. LEXIS 7871, at *8–9. “‘The arena to challenge the propriety of a foreclosure’ is not in a forcible-detainer action but ‘in a separate suit for wrongful foreclosure or to set aside a

substitute trustee's deed," said the court. *Id.* at *9 (quoting *Martinez v. Cerberus SFR Holdings, L.P.*, No. 02-19-00076-CV, 2019 Tex. App. LEXIS 9965 (Tex. App.—Fort Worth Nov. 14, 2019, pet. denied) (mem. op.)).

Veloz attempts here that which *Onyedebelu* said she cannot. She asserts that the evidence is insufficient to support the trial court's decision to award FSB possession because there were defects in the foreclosure process. Additionally, those defects allegedly voided both the foreclosure and title acquired by FSB. Thus, her contention falls squarely within the prohibition expressed in *Onyedebelu*. And, because that opinion is authority by which we must abide, see TEX. R. APP. P. 41.3, it controls here.¹

Simply put, the county court at law could not have entertained the very argument Veloz proffers to us. Since it could not, I conclude that we cannot. So, I too overrule her sole contention.

Brian Quinn
Chief Justice

¹ The appeal was transferred from the Second Court of Appeals to the Seventh Court of Appeals. To the extent that precedent of the Fort Worth Court of Appeals controls, I would further note that the Second Court of Appeals held that omitting the substitute trustee's address from the notice rendered the foreclosure sale void, as opposed to voidable. See *G4 Trust v. Consol. Gasoline, Inc.*, No. 02-10-00404-CV, 2011 Tex. App. LEXIS 7158 *11 (Tex. App.—Fort Worth Aug. 31, 2011, pet. denied). I am bound by the rules of appellate procedures to follow that precedent, assuming none of the addresses in the notice of sale and mentioned in the majority opinion were that of the substitute trustee.