NUMBER 13-15-00464-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

CLARENCE W. LEWIS SR. AND EVELYN J. LEWIS, **Appellants,**

v.

CITY OF CONROE, TEXAS, **Appellee.**

On appeal from the County Court at Law No. 2 of Montgomery County, Texas.

MEMORANDUM OPINION

Before Justices Rodriguez, Contreras, and Benavides
Memorandum Opinion by Justice Contreras

In this forcible detainer action, pro se appellants Clarence W. Lewis Sr. and Evelyn J. Lewis contend by seven issues that the trial court erred by granting judgment in favor

of appellee, the City of Conroe, Texas (the City). We affirm.[1]

I. BACKGROUND

The City purchased the subject property, located on South Fifth Street in Conroe, from the Conroe Independent School District in 2010. The City later demanded that appellants, who claimed that they lived at the subject property since 1993, vacate the premises. In response, appellants filed a trespass to try title action asserting that they had obtained title to the property via adverse possession. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.026 (West, Westlaw through 2015 R.S.). The matter was settled in mediation. Under the mediation agreement, appellants agreed that the City was the rightful owner of the property and the City agreed to lease the subject property to appellants "for a period of ten (10) years for the sum of $100.00 monthly payable on the first day of each month." The City also agreed to offer to sell the subject property to appellants at the end of the lease term for $25,000 or the then-current appraised value, whichever is less. A district court rendered judgment in 2011 memorializing the mediation agreement.

Pursuant to the mediation agreement, appellants and the City entered into a lease agreement in 2012 calling for appellants to make $100 monthly payments "due and payable in advance on the first day of each calendar month beginning on January 1, 2012." The lease agreement also required appellants to pay taxes and maintain liability insurance on the subject property.

The City filed an eviction petition in justice court in 2015, alleging among other

[1] This appeal was transferred from the Ninth Court of Appeals pursuant to a docket equalization order issued by the Texas Supreme Court. *See* TEX. GOV'T CODE ANN. § 73.001 (West, Westlaw through 2015 R.S.).

things that appellants owed $2,200 in past due monthly rent payments. The justice court rendered judgment in favor of the City, and appellants appealed to the Montgomery County Court at Law Number 2. *See* TEX. R. CIV. P. 510.10.

At a trial de novo in the county court at law, Nancy Mikeska, the head of the City's Community Development Department, testified that she would periodically check the Montgomery County property tax rolls in order to identify "non-protective" properties that are suitable for the City to purchase using federal Community Development Block Grants.[2] In 2010, she determined that the subject property was "very attractive" for purposes of community development because it was not in a floodplain, it was large enough for two or three families, and it was available for purchase. She did not know the Lewises were living there at the time.

Mikeska identified City records showing that the Lewises made $100 rent payments for the first eight months of 2012, but did not make any further payments in 2012. They made a $100 payment in January of 2013 and a $700 payment in December 2013, but they did not make any further payments up to the date of trial, in August of 2015. Mikeska stated that, on May 5, 2015, the City notified appellants that they were in material breach of the lease and gave them ten days to cure the breach, but appellants did not cure the breach, so the City filed suit to evict them.

The county court at law rendered judgment in favor of the City on August 12, 2015. The judgment stated in part:

> IT IS THEREFORE, ORDERED, ADJUDGED AND DECREED by the Court that Plaintiff, City of Conroe have and recover from Defendants, Clarence Lewis Sr. and Evelyn Joyce Lewis possession of the premise; that a Writ of

[2] Mikeska stated that "non-protective" properties "are properties no longer paying taxes because they have gone onto the rol[l] for failure to pay taxes, and property owners have lost their property rights because of the tax suit that was held at some point in time by the county."

> Possession immediately issue to the proper officer commanding him to seize possession of said premise and deliver same to Plaintiff after said Writ of Possession has been duly filed by Plaintiff, if the Defendants have not vacated the herein described premise by September 14, 2015.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that to avoid execution of this judgement, Defendant must file a supersedeas bond in the amount of Three Hundred Dollars and No/100 ($300.00).

Appellants filed a supersedeas bond on September 10, 2015. Subsequently, at the City's request, the county clerk issued a writ of possession on September 29, 2015, compelling appellants to vacate the subject property.

The county court at law later issued findings of fact and conclusions of law stating, in part, that appellants breached the lease agreement by repeatedly failing to pay rent in a timely manner and by failing to maintain the required liability insurance. This appeal followed.

II. DISCUSSION

Appellants contend by their first issue that the City did not "offer substantial evidence" to prove the elements of a forcible detainer and that the evidence was factually insufficient to support the judgment in favor of the City. Appellants do not provide references to the record, nor do they cite authority supporting their position.[3] The issue is therefore waived as inadequately briefed. *See* TEX. R. APP. P. 38.1(i); *Jarvis v. Feild*, 327 S.W.3d 918, 925 (Tex. App.—Corpus Christi 2010, no pet.) (noting that, while we construe pro se pleadings and briefs liberally, we hold pro se litigants to the same standards as licensed attorneys).

[3] The only case cited in appellants' argument pertaining to their first issue is *Waller v. Sanchez*, 618 S.W. 2d 407 (Tex. 1981). We are unable to discern what relevance this case has to the case at bar.

By their second issue, appellants argue that the trial court erred by "allowing [the City] to enter a defective notice to vacate" into evidence at trial. Appellants assert that the notice provided by the City was "incomplete" because, while the notice stated that it was accompanied by certain attachments,[4] trial testimony established that the notice did not, in fact, contain an attachment. Under the property code, a landlord must generally provide a tenant with a notice to vacate prior to suing for eviction. *See* TEX. PROP. CODE ANN. § 24.005 (West, Westlaw through 2015 R.S.). But it is undisputed that the City complied with this duty, and appellants do not cite any authority, nor do we find any, stating that a notice to vacate must include certain attachments or that it must state the alleged grounds for eviction. In any event, appellants' counsel did not object to the admission of the notice to vacate as evidence at trial. Accordingly, any error in admitting the notice is waived. *See* TEX. R. APP. P. 33.1.

By their third issue, appellants contend that they "suffered irreparable harm as a result of the Motion in Limine filed by [the City]" because it "prevented the Appellants from providing the court with significant information regarding the case." Appellants are referring to a motion filed by the City seeking to preclude the admission of any trial evidence regarding, among other things, the earlier proceedings related to appellants' trespass to try title suit. However, appellants do not cite the record or any legal authority supporting their argument.[5] *See* TEX. R. APP. P. 38.1(i). Moreover, the record does not

[4] The notice to vacate, which was admitted as an exhibit at trial, states in part: "YOUR LEASE FOR THE ABOVE DESCRIBED PREMISES HAS BEEN TERMINATED. THE TERMINATION RESULTS FROM YOUR FAILURE TO CURE THE GROUNDS OF DEFAULT DESCRIBED IN THE ATTACHED NOTICE."

[5] The only case cited in appellants' argument pertaining to their third issue is *Shade v. City of Dallas*, 819 S.W.2d 578 (Tex. 1991). Again, we are unable to discern what relevance this case has to the issue raised.

contain any indication that the trial court actually granted the City's motion. *See* TEX. R. APP. P. 33.1(a)(2).

By their fourth issue, appellants argue that the trial court erred by signing the City's proposed judgment "even though [the City] did not tender it to opposing counsel before, during or after the bench trial." Again, appellants do not cite the record or any legal authority supporting their argument. *See* TEX. R. APP. P. 38.1(i). We are not aware of any authority establishing that a party must tender a proposed judgment to the opposing party prior to submitting it for the trial court's consideration, at the trial court's request.

Appellants urge by their fifth issue that the trial court erred by issuing a writ of possession even after a supersedeas bond had been filed. The property code states that a final judgment of a county court in an eviction suit "may not under any circumstances be stayed pending appeal unless, within 10 days of the signing of the judgment, the appellant files a supersedeas bond in an amount set by the county court." TEX. PROP. CODE ANN. § 24.007 (West, Westlaw through 2015 R.S.). The judgment in this case was signed on August 12, 2015, and the supersedeas bond was filed 29 days later, on September 10, 2015. Appellants appear to contend that the bond was timely because it was filed before September 14, 2015, the date specified in the judgment for the issuance of a writ of possession if appellants had not vacated the premises. We disagree. The statute clearly sets forth the time frame for the filing of a bond to supersede an eviction order, and the judgment on appeal does not contradict that. *See id*. Accordingly, the supersedeas bond was untimely and did not preclude the issuance of a writ of possession in favor of the City.

Appellants contend by their sixth issue that the trial court erred by "ignoring [the City's] testimony regarding payments received from the Appellants but never applied to the Appellants' account." They contend that the City "admitted receiving payments from the Appellants but failed to document receiving payment." They do not provide citations to the record or authority in support of this issue; accordingly, it is waived. *See* TEX. R. APP. P. 38.1(i).[6]

Finally, by their seventh issue, appellants argue that the trial court erred by "failing to issue a written explanation of its judgment." This issue is without merit because the trial court rendered findings of fact and conclusions of law as requested by appellants.

III. CONCLUSION

We overrule appellants' issues on appeal and affirm the trial court's judgment.

DORI CONTRERAS
Justice

Delivered and filed the
15th day of June, 2017.

[6] Appellants also argue that the trial court "ignored" a provision in the lease stating that "any declaration of default alleging a material breach of this Lease shall be subject to mediation prior to the termination of this Lease by Landlord." But the lease also provides that a request for mediation must be made in writing and delivered to the landlord prior to the expiration of the cure period. The trial court found that appellants "failed to cure the material breaches and also failed to request mediation, in accordance with the lease, during the 10-day cure period." Appellants do not contest the sufficiency of the evidence to support this finding.