NUMBER 13-16-00564-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI - EDINBURG

NORA S. GUTIERREZ,
BELINDA G. POMPA, AND
JORGE RUBEN POMPA, **Appellants,**

v.

ELOISA GARCIA, **Appellee.**

On appeal from the County Court at Law No. 5
of Nueces County, Texas.

MEMORANDUM OPINION

Before Chief Justice Valdez and Justices Contreras and Benavides
Memorandum Opinion by Justice Benavides

This is an appeal from a judgment of eviction rendered in favor of appellee Eloisa Garcia (Eloisa) following a de novo appeal from the justice court to the trial court. By three issues, which we address out of order, appellants Nora Gutierrez, Belinda G. Pompa, and Jorge Ruben Pompa assert that: (1) the trial court lacked jurisdiction over this matter; (2) the trial court committed harmful error by failing to respond to their request for findings of

facts and conclusions of law; and (3) the trial court erred by ordering them to vacate the premises. We affirm.

I. BACKGROUND

In approximately June of 2016, Eloisa allowed her sisters Nora and Belinda, and Belinda's husband Jorge (collectively the appellants) to move into her house located on Acushnet Drive in Corpus Christi in order to give "them time to fix their house and save money so they could eventually move back to" their own home on Kasper Street.[1] Eloisa testified that "after a while" she saw that the appellants had no intention of moving back to their home. According to Eloisa, she paid "all the bills," and therefore, the appellants had "no claim to the house." Eloisa wanted to evict them because she felt "like a prisoner in [her] own house." Nora testified that she has not paid "any rent per se" to Eloisa for her stay at the Acushnet house, but had contributed to "the upkeep of the house." When asked by the trial court what legal basis the appellants have to stay at the Acushnet home, Nora testified that she was not served a proper notice to vacate under the Texas Property Code.

Eloisa filed a forcible detainer suit in the justice court, in which she asserted that she gave the appellants written notice to vacate on September 1, 2016 by personal delivery, as well as a verbal notice to vacate the premises by September 1, 2016. On September 21, 2016, the justice court held a hearing and ordered the appellants to vacate the Acushnet property by September 26, 2016. The appellants subsequently appealed to the trial court. After holding a de novo hearing, the trial court likewise granted Eloisa relief and ordered the appellants to vacate the premises. This appeal followed.[2]

[1] The record is devoid of any lease agreement between the parties.

[2] All parties to this appeal appeared pro se in the proceedings below and proceed pro se on appeal.

II. JURISDICTION OF COUNTY COURT

By their third issue, the appellants assert that the trial court lacked jurisdiction to hear this case because they lacked the assistance of counsel.

A. Jurisdiction in Eviction Cases

An appeal taken from an eviction suit in the justice court is tried de novo in the county court. *See* TEX. R. CIV. P. 510.10. A trial de novo is a new trial in which the entire case is presented as if there had been no previous trial. *Id.* The trial, as well as any hearings and motions, is entitled to precedence in the county court. *Id.* An appeal is perfected from the justice court on an eviction case when a bond, cash deposit, or statement of inability to afford payment of court costs is filed in accordance with rule of civil procedure 510.9. *See id.* R. 510.9.

Here, the appellants perfected their appeal on September 26, 2016 from the justice court. Accordingly, the trial court properly acquired jurisdiction over this matter on that date. *See id.* R. 510.9–.10.

B. Assistance of Counsel

The appellants argued to the trial court and now on appeal that they were not represented by counsel and wanted such representation before continuing, which was denied by the trial court. On appeal, the appellants argue that they needed an attorney, and as a result, their lack of legal representation made the judgment void. We disagree.

Absent limited constitutional and statutory exceptions, neither the Texas nor United States Constitutions guarantees a right to counsel in a civil suit. *See Stokes v. Puckett*, 972 S.W.2d 921, 927 (Tex. App.—Beaumont 1998, pet. denied). In fact, the Texas Property Code expressly states that in eviction proceedings before the justice courts, "the

parties may represent themselves or be represented by their authorized agents, who need not be attorneys." TEX. PROP. CODE ANN. § 24.011 (West, Westlaw through 2015 R.S.). We find no authority, and the appellants provide none, which entitle appellants to legal representation at the de novo eviction hearing before the trial court. Furthermore, no authority supports the proposition that lack of representation by counsel in this case rendered the trial court's judgment void. Accordingly, we overrule the appellants' third issue.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

By their second issue, the appellants assert that the trial court committed harmful error by failing to respond to their timely request for findings of fact and conclusions of law.

A. Applicable Law and Standard of Review

Rule of civil procedure 296 states in relevant part:

> In any case tried in the district or county court without a jury, any party may request the court to state in writing its findings of fact and conclusions of law. Such request shall be entitled "Request for Findings of Fact and Conclusions of Law" and shall be filed within twenty days after judgment is signed with the clerk of the court, who shall immediately call such request to the attention of the judge who tried the case.

TEX. R. CIV. P. 296. Furthermore,

> If the court fails to file timely findings of fact and conclusions of law, the party making the request shall, within thirty days after filing the original request, file with the clerk . . . a "Notice of Past Due Findings of Fact and Conclusions of Law" which shall be immediately called to the attention of the court by the clerk.

Id. 297.

Because the trial court's duty to file findings and conclusions is mandatory, the failure to respond when all requests have been properly made is presumed harmful, unless

"the record before [the] appellate court affirmatively shows that the complaining party has suffered no injury." *Cherne Indus., Inc. v. Magallanes*, 763 S.W.2d 768, 772 (Tex. 1989) (internal quotations omitted). Error is harmful if it prevents a party from properly presenting a case to the appellate court. TEX. R. APP. P. 44.1; *Elliot v. Kraft Foods N. Am., Inc.*, 118 S.W.3d 50, 54 (Tex. App.—Houston [14th Dist.] 2003, no pet.).

B. Discussion

A person commits a forcible entry and detainer if the person enters the real property of another without legal authority or by force and refuses to surrender possession on demand. TEX. PROP. CODE ANN. § 24.001 (West, Westlaw through 2015 R.S.). A forcible detainer action is a special proceeding governed by particular statutes and rules. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). It was created to provide a speedy, simple, and inexpensive means for resolving the question of the right to possession of premises. *Id.* To preserve the simplicity and speedy nature of the remedy, the applicable rule of civil procedure provides that the court must solely adjudicate the right to actual possession and not title. TEX. R. CIV. P. 510.3(e). Thus, the sole issue in a forcible detainer suit is who has the right to immediate possession of the premises. *Rice*, 51 S.W.3d at 709. Accordingly, to prevail in a 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. *Id.*

Here, the evidence shows that Eloisa owned the Acushnet Drive property, Eloisa wanted the appellants to vacate the premises, the appellants refused, and the appellants had no right to possession of the premises. Furthermore, Nora testified that she had not even paid rent to stay at the Acushnet Drive property. We hold that there is sufficient

evidence to support the trial court's judgment ordering the appellants to vacate the premises, and as a result, the record affirmatively shows that appellants have suffered no injury as a result of the trial court's failure to file their timely requested findings of fact and conclusions of law. We overrule the appellants' second issue.

IV. EVICTION JUDGMENT

By their first issue, the appellants claim that the trial court erred by rendering an eviction judgment in this case because they were not provided written notice to vacate by Eloisa prior to her filing the forcible detainer suit.

A. Applicable Law

The property code states in relevant part:

> If the occupant is a tenant under a written lease or oral rental agreement, the landlord must give a tenant who defaults or holds over beyond the end of the rental term or renewal period at least three days' written notice to vacate the premises before the landlord files a forcible detainer suit, unless the parties have contracted for a shorter or longer notice period in a written lease or agreement.

TEX. PROP. CODE ANN. § 24.005 (West, Westlaw through 2015 R.S.). Because forcible detainer is a statutory cause of action, a landlord must strictly comply with its requirements, including providing written notice to vacate under section 24.005. *See Briones v. Brazos Bend Villa Apts.*, 438 S.W.3d 808, 811 (Tex. App.—Houston [14th Dist.], no pet.).

B. Discussion

The appellants argue that the trial court erred by rendering an eviction judgment in this case because they were not provided written notice to vacate by Eloisa prior to her filing the forcible detainer suit. We disagree.

In the eviction petition filed in the justice court, Eloisa checked a box stating that she had given the appellants written notice to vacate the property by September 1, 2016 pursuant to chapter 24.005 of the Texas Property Code. Eloisa further noted on the petition, which was filed on September 6, 2016, that her daughter and "a friend" also gave the appellants "a verbal deadline" of September 1, 2016. We note that at the hearing, Nora testified that she never received written notice pursuant to chapter 24.005.

In a bench trial such as the one in this case, the trial court, as fact finder, is the sole judge of the credibility of the witnesses. *Nelson v. Najm*, 127 S.W.3d 170, 174 (Tex. App.—Houston [1st Dist.] 2003, pet. denied). In sitting as fact finder, the judge may take into consideration all the facts and surrounding circumstances in connection with the testimony of each witness and accept or reject all or any part of that testimony. *Id.* Here, the trial court chose to find Nora's testimony asserting that she did not receive written notice not credible and found that Eloisa properly complied with the statutory requirements of the forcible detainer action by asserting those facts in her pleadings. *See Briones*, 438 S.W.3d at 811. Accordingly, we overrule the appellants' first issue.

V. CONCLUSION

We affirm the trial court's judgment.

GINA M. BENAVIDES,
Justice

Delivered and filed the
8th day of June, 2017.