NUMBER 13-16-00566-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

JUAN CARLOS CANTU, **Appellant,**

v.

EDDIE MEDINA AND ELIZABETH MEDINA, **Appellee.**

On appeal from the County Court at Law No. 1
of Hidalgo County, Texas.

MEMORANDUM OPINION

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

In this eviction case, appellant Juan Carlos Cantu contests a judgment awarding possession of certain property in Edinburg, Texas, to appellees Eddie Medina and Elizabeth Medina (collectively the Medinas). We reverse and render.

I. BACKGROUND

On May 10, 2016, the Medinas filed a forcible detainer suit in justice court alleging that Cantu had failed to make two monthly rent payments totaling $1,850 and seeking to evict Cantu from the subject property. Cantu filed an answer asserting in part that the Medinas had no standing or capacity to bring suit because they are not owners of the property. In an affidavit, Cantu stated that the actual owner of the property was Julia Sosa—Elizabeth Medina's mother—and that Sosa died on April 12, 2016. Cantu stated that he had been negotiating with Sosa to purchase the property at the time of her death and that the Medinas were not authorized to represent Sosa's estate. After a bench trial, the justice court rendered judgment awarding possession of the property to the Medinas, as well as damages and costs of $2,316.[1] On June 23, 2016, Cantu appealed to the Hidalgo County Court at Law No. 1. *See* TEX. R. CIV. P. 510.9.

Later, in a separate proceeding, Sosa's will was admitted to probate. The will left Sosa's entire estate to the Medinas and designated Elizabeth Medina as executor of the estate. Letters testamentary were issued to Elizabeth Medina on August 10, 2016 stating that she qualified as executor and was appointed executor.

On October 6, 2016, following a trial de novo at which both sides appeared and were represented by counsel, the county court rendered judgment in favor of the Medinas. The judgment stated that the Medinas are entitled to possession of the premises and provided that a writ of possession would be issued if Cantu did not vacate the premises before October 26, 2016. Cantu then filed his notice of appeal to this Court.[2] Cantu also

[1] The judgment states that both sides were represented by counsel at trial in the justice court.

[2] Several weeks after filing his notice of appeal, Cantu filed a petition for writ of mandamus with this

filed a motion to set a supersedeas bond in the amount of $1,000, but the county court did not initially rule on the motion.

The record reflects that on October 28, 2016, at the request of the Medinas' counsel, the Hidalgo County Clerk issued a writ of possession commanding the removal of Cantu from the premises. Cantu then filed a motion for temporary restraining order and to set aside the writ of possession, arguing that he had moved for the setting of a supersedeas bond and complied with section 24.007 of the property code regarding appeals in eviction cases. *See* TEX. PROP. CODE ANN. § 24.007 (West, Westlaw through 2017 R.S.); TEX. R. CIV. P. 510.13; TEX. R. APP. P. 24.1(a)(2) . The county court granted the temporary restraining order allowing Cantu to remain on the premises and, after a hearing, rendered an order setting a bond amount of $9,000 to supersede the October 6 judgment. Cantu filed the bond, thereby suspending enforcement of the judgment and allowing him to remain on the premises pending this appeal.[3]

II. DISCUSSION

Cantu raises three issues on appeal. First, he argues that, because the Medinas were not the owners of the subject property and did not represent Sosa's estate at the time they filed suit, they did not have standing or capacity to sue in justice court. Second,

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Court seeking the same relief he requests on appeal. Cantu also filed a motion for emergency relief asking us to stay execution of the writ of possession issued by the county clerk. We denied the petition and motion. *In re Cantu*, No. 13-16-00637-CV, 2016 WL 7011587, at *1–2 (Tex. App.—Corpus Christi Nov. 29, 2016, orig. proceeding) (mem. op.). On our own motion, we take judicial notice of the record filed in the mandamus proceeding. *See* TEX. R. EVID. 201; *Estate of York*, 934 S.W.2d 848, 851 (Tex. App.—Corpus Christi 1996, writ denied) (holding that an appellate court may take judicial notice of its own records in a case involving the same subject matter between the same parties).

[3] The Medinas moved to dismiss this appeal on April 27, 2017, contending that "[t]he obvious intent on the part of the Appellant is to delay the proceedings so long as he can stay in the house." We denied the motion.

Cantu contends that the county court abused its discretion "when it allowed the executrix to participate in the case as if the [court] had had exclusive original jurisdiction." Third and finally, Cantu contends the county clerk erred in issuing a writ of possession because the county court lacked jurisdiction and because he filed a supersedeas bond.[4]

A plaintiff must have both standing and capacity in order to bring a lawsuit. *Lorentz v. Dunn*, 171 S.W.3d 854, 856 (Tex. 2005). The issue of standing focuses on whether a party has a sufficient relationship with the lawsuit so as to have a "justiciable interest" in its outcome. *Austin Nursing Ctr., Inc. v. Lovato*, 171 S.W.3d 845, 849 (Tex. 2005). On the other hand, the issue of capacity "is conceived of as a procedural issue dealing with the personal qualifications of a party to litigate." *Id*. "A plaintiff has *standing* when it is personally aggrieved, regardless of whether it is acting with legal authority; a party has *capacity* when it has the legal authority to act, regardless of whether it has a justiciable interest in the controversy." *Id*. at 848–49. In *Lovato*, the Texas Supreme Court explained that, although courts have often held that "the question of who is entitled to sue on an estate's behalf under the survival statute is an issue of standing, . . . the issue is more appropriately characterized as one of capacity." *Id*. at 851 n.3.

Cantu argues that the Medinas lacked standing and capacity to sue in the justice court because, at the time they filed suit on May 10, 2016, they were not the owners of the property and Elizabeth Medina had not yet been appointed personal representative of Sosa's estate. We agree. It is undisputed that Sosa was the record owner of the property at the time of her death on April 12, 2016. On May 10, 2016, when the Medinas filed suit, the property was part of Sosa's estate, but Sosa's will had not yet been probated

[4] The Medinas have not filed a brief on the merits to assist us in the disposition of the appeal.

and Elizabeth Medina had not yet been appointed executor. Only a duly qualified and appointed representative of an estate may file suit on the estate's behalf. *See* TEX. EST. CODE ANN. § 351.054(a) (West, Westlaw through 2017 R.S.) ("An executor or administrator appointed in this state may commence a suit for: (1) recovery of personal property, debts, or damages; or (2) title to or possession of land, any right attached to or arising from that land, or an injury or damage done to that land."); *Frazier v. Wynn*, 472 S.W.2d 750, 752 (Tex. 1971) ("It is settled in Texas that the personal representative of the estate of a decedent is ordinarily the only person entitled to sue for the recovery of property belonging to the estate."); *In re Estate of York*, 951 S.W.2d 122, 127 (Tex. App.—Corpus Christi 1997, no writ). Additionally, though the Medinas were named as heirs in Sosa's will, the general rule is that heirs to an estate are not entitled to maintain a suit for the recovery of property belonging to the estate. *See Frazier*, 472 S.W.2d at 752; *Chandler v. Welborn*, 294 S.W.2d 801, 806 (Tex. 1956); *In re Guardianship of Archer*, 203 S.W.3d 16, 22 (Tex. App.—San Antonio 2006, pet. denied).[5]

The Medinas had no landlord-tenant relationship with Cantu, they had no legal ownership interest in the subject property, and neither of them had the authority to act for Sosa's estate at the time they filed suit in the justice court. Accordingly, they lacked standing to sue on their own behalf, and they lacked capacity to sue on behalf of the

[5] The Texas Supreme Court has acknowledged that, when "it appears that the administrator will not or cannot act, or that his interest is antagonistic to that of the heirs desiring to sue," an heir may maintain a suit to recover property belonging to the estate while the administration is pending. *See Chandler v. Welborn*, 294 S.W.2d 801, 806 (Tex. 1956); *In re Estate of Preston*, 346 S.W.3d 137, 163 (Tex. App.—Fort Worth 2011, no pet.); *In re Guardianship of Archer*, 203 S.W.3d 16, 22 (Tex. App.—San Antonio 2006, pet. denied). The Court has separately held that "[h]eirs at law can maintain a survival suit during the four-year period the law allows for instituting administration proceedings if they allege and prove that there is no administration pending and none [is] necessary." *Shepherd v. Ledford*, 962 S.W.2d 28, 31 (Tex. 1998). Neither exception to the general rule applies here.

estate. *See Pratho v. Zapata*, 157 S.W.3d 832, 839 (Tex. App.—Fort Worth 2005, no pet.) (concluding that decedent's daughter could not "sue as an administrator on behalf of [decedent]'s estate because the probate court had not yet appointed her administrator of the estate"); *see also Lorentz*, 171 S.W.3d at 856 ("[W]hen a person is appointed administrator of the estate, she acquires the capacity to assert a survival claim on the estate's behalf.")[6]; *Williams v. Bayview-Realty Assocs.*, 420 S.W.3d 358, 362 (Tex. App.—Houston [14th Dist.] 2014, no pet.) ("If there is a landlord-tenant relationship between Bayview and Williams regarding the Property, then Bayview has standing to bring the forcible-detainer action."). It follows that the justice court erred in granting judgment in the Medinas' favor, and the county court erred in affirming that judgment.[7]

For the foregoing reasons, we sustain Cantu's first two issues on appeal, and we need not address his third issue. *See* TEX. R. APP. P. 47.1.

[6] In *Lorentz*, the Texas Supreme Court held that the trial court erred in dismissing a case where the plaintiff was not named personal representative of the estate until twelve days after she filed suit on behalf of the estate, during which time the limitations period expired. 171 S.W.3d 854, 856 (Tex. 2005). The Court reasoned that, though the plaintiff did not have capacity to sue on the estate's behalf at the time she initially filed suit, her "late-acquired capacity cured her pre-limitations lack thereof." *Id*. The instant case is distinguishable because Elizabeth Medina did not acquire capacity to sue on behalf of the estate until after the justice court rendered final judgment.

[7] As noted, by the time the county court at law heard Cantu's appeal in October of 2016, Elizabeth Medina had been duly appointed executor of Sosa's estate. However, the justice court in the precinct in which the property is located has exclusive original jurisdiction over eviction suits. TEX. GOV'T CODE ANN. § 27.031(a)(2) (West, Westlaw through 2017 R.S.); TEX. PROP. CODE ANN. § 24.004(a) (West, Westlaw through 2017 R.S.). Therefore, to the extent Cantu's appeal in the county court could be considered an original forcible detainer action, the county court lacked subject matter jurisdiction.

III. CONCLUSION

We reverse the county court at law's judgment affirming the justice court. We render judgment vacating the judgment of the justice court and providing that the Medinas take nothing by way of their forcible-detainer suit. *See* TEX. R. APP. P. 43.2(c).

DORI CONTRERAS
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
28th day of September, 2017.