

NO. 12-16-00299-CV

IN THE COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT

TYLER, TEXAS

*PORSHA ANDERSON,
APPELLANT*

§ *APPEAL FROM THE*

V.

§ *COUNTY COURT*

*LISA CHANDLER,
APPELLEE*

§ *UPSHUR COUNTY, TEXAS*

MEMORANDUM OPINION

Porsha Anderson appeals the county court's judgment in a forcible detainer action. In two issues, Anderson contends the county court lacked jurisdiction over the case. We vacate the judgment of the county court and dismiss the forcible detainer action for want of jurisdiction.

BACKGROUND

The property at issue in this case was previously owned by Eddie Don Perry, now deceased. Perry was the uncle of Appellee Lisa Chandler and the great uncle of Anderson.

At trial, Anderson testified that in 2013, Perry made an oral gift of the property to her in the presence of other family members. When one of the relatives asked him if he was sure, he said, "Yeah," because he was going to live with Shonda Dukes. Anderson testified that when Perry made the gift, he told her that the house needed to be "fixed up." Amanda Moon was present during this conversation, and testified that she observed Perry tell Anderson that the property was being given to Anderson. Anderson made improvements to the property and took possession. She continues to live on the property, has always treated the property as her own, and has never paid rent.

Two years after the purported gift to Anderson, Perry became gravely ill. On July 24, 2015, he entered hospice care. There is testimony that he lapsed in and out of consciousness and

did not appear aware of his surroundings. A few days after Perry entered hospice, Chandler took him to her home for “a couple of days.” During that period, Perry signed a deed to a family trust, which named Chandler sole trustee and beneficiary. After signing the documents on Friday, July 29, 2015, he returned to hospice care and died on August 2.

On May 31, 2016, Chandler signed a petition for eviction. The justice court signed an eviction judgment on June 16. Anderson appealed. In her answer in the county court, Anderson pleaded that she owned the property, and that resolution of title was a necessary issue in the case. She further asserted the justice court and county court had no jurisdiction. The county court dismissed the case for lack of jurisdiction because “land title is a necessary issue in this case.” Chandler filed a motion for rehearing and for a new trial, which the county court granted.

At trial, Chandler argued that, as record owner of the property, she was entitled to possession. The county court rendered judgment for Chandler and awarded her possession on August 11, 2016. Anderson filed a request for findings of fact and conclusions of law. In its findings, the county court determined that (1) Chandler “is the record owner of title of the premises occupied by” Anderson, (2) Chandler is entitled to possession of the property, (3) the pleadings failed to raise a title issue, and (4) “the occupant, Porsha Anderson, has no legal interest in the property[.]” This appeal followed.

WAIVER

Because it implicates this Court’s jurisdiction, we first address Anderson’s second issue, in which she contends that the county court erred in determining that she waived the jurisdictional issue by (1) failing to comply with Texas Rule of Civil Procedure 93 when asserting the affirmative defense of a title dispute, and (2) the affirmative defense was ineffective. On appeal, Chandler claims that Anderson waived the jurisdictional issue by (1) failing to file a sworn pleading contending lack of jurisdiction, and (2) misstating the name of the previous owner in her answer.

Rule 93 requires that certain pleas be verified. *See* TEX. R. CIV. P. 93. However, a plea to jurisdiction need not be sworn. *Pakdimounivong v. City of Arlington*, 219 S.W.3d 401, 413-14 (Tex. App.—Fort Worth 2006, pet. denied); *see Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 554 (Tex. 2000) (a plea to the jurisdiction is intended to defeat a cause of action on lack of subject matter jurisdiction rather than on the merits). Moreover, subject matter jurisdiction is

fundamental and may be raised for the first time on appeal. *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 445 (Tex. 1993). Accordingly, we conclude that Anderson was not required to verify her answer asserting a title dispute and challenging the county court's jurisdiction.

Regarding the answer's effectiveness, Anderson's answer identifies the previous owner as "Eddie Dunn" rather than Eddie Don Perry. Nevertheless, Anderson claimed that she had been given the property and, therefore, title was at issue. This allegation was sufficient to inform the county court that it lacked jurisdiction. Additionally, both sides elicited testimony, without objection, that the previous owner was Eddie Don Perry. Anderson specifically testified that her answer contained a misspelling of the name. The record does not demonstrate that anyone was misled by the misnomer, and the correction of the name at trial is allowed so long as no one was misled by the mistake. See *In re Greater Houston Orthopaedic Specialists, Inc.*, 295 S.W.3d 323, 325 (Tex. 2009) (per curiam) (orig. proceeding). For these reasons, Anderson did not waive the jurisdictional issue by failing to plead a sworn affirmative defense or by misstating the name of the previous owner in her answer. We sustain Anderson's second issue.

JURISDICTION

In issue one, Anderson contends that neither the justice court, nor the county court exercising appellate jurisdiction, have authority to determine or adjudicate title to land.

Standard of Review and Applicable Law

Whether a court has subject matter jurisdiction is a question of law which is reviewed de novo. *Tex. Dep't of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004).

The forcible detainer action is a special proceeding created to provide a speedy, simple and inexpensive procedure for resolving the question of the right to immediate possession of real property. *Ward v. Malone*, 115 S.W.3d 267, 270 (Tex. App.—Corpus Christi 2003, pet. denied). A justice court in the precinct in which real property is located has jurisdiction over a forcible detainer suit. TEX. PROP. CODE ANN. 24.004(a) (West 2014). Appellate court jurisdiction is limited to that of the court from which the appeal was taken. *Ward*, 115 S.W.3d at 269; see *Dallas Cty. Appraisal Dist. v. Funds Recovery, Inc.*, 887 S.W.2d 465, 468 (Tex. App.—Dallas 1994, writ denied). If the trial court lacked jurisdiction, the appellate court must set the judgment aside and dismiss the case. *Ward*, 115 S.W.3d at 269.

Neither a justice court, nor a county court on appeal, has jurisdiction to determine the issues of title to real property in a forcible detainer suit. *Id.*; *Mitchell v. Armstrong Capital Corp.*, 911 S.W.2d 169, 171 (Tex. App.—Houston [1st Dist.] 1995, writ denied); *see also* TEX. GOV'T CODE ANN. § 27.031(b)(4) (West Supp. 2016). Thus, the sole issue in a forcible detainer action is who has the right to immediate possession of the property. *Yarbrough v. Household Fin. Corp., III*, 455 S.W.3d 277, 280 (Tex. App.—Houston [14th Dist.] 2015, no pet.); *Ward*, 115 S.W.3d at 270; *see Goodman-Delaney v. Grantham*, 484 S.W.3d 171, 174 (Tex. App.—Houston [14th Dist.] 2015, no pet.).

The plaintiff in a forcible detainer action is not required to prove title but is only required to “show sufficient evidence of ownership to demonstrate a superior right to immediate possession.” *Ward*, 115 S.W.3d at 170. However, where the right to immediate possession necessarily requires resolution of a title dispute, the justice court has no jurisdiction[.] *Id.* “If the question of title is so integrally linked to the issue of possession that possession may not be determined without first determining title, justice and county courts [lack] jurisdiction[.]” *Falcon v. Ensignia*, 976 S.W.2d 336, 338 (Tex. App.—Corpus Christi 1998, no pet.).

“In most situations, the parties in a forcible detainer suit are in a landlord-tenant relationship.” *Ward*, 115 S.W.3d at 270, (citing *Home Sav. Ass’n v. Ramirez*, 600 S.W.2d 911, 913 (Tex. Civ. App.—Corpus Christi 1980, writ ref’d n.r.e.)). The lack of landlord-tenant relationship indicates that the case may present a title issue. *Espinoza v. Lopez*, 468 S.W.3d 692, 695-96 (Tex. App.—Houston [14th Dist.] 2015, no pet.). In *Goodman-Delaney*, the fourteenth court of appeals went so far as to hold that “[w]ithout a landlord-tenant relationship, a justice court cannot determine the issue of immediate possession without first determining who has title to the property.” 484 S.W.3d at 174.

Analysis

On appeal, Anderson maintains that a determination of the immediate right of possession to the property required a determination of the property’s title, an issue over which the county court lacked jurisdiction. Chandler contends the county court had jurisdiction to determine the immediate right to possession of the subject property, “because no title issue was legally raised by the pleadings.” Chandler also contends Anderson’s answer contains “only an allegation of a gift of property which was unsworn to, and further did not meet the requisites of a parole gift of real estate.” She argues Anderson’s pleading “made only a general allegation that the property

was given to her without raising any particular facts.” Chandler apparently believes that to raise a title question, Anderson was required to plead in her answer each element necessary to prove a parole gift of land with supporting facts.

Anderson pleaded “that the property, the subject of the suit, was given to her by the owner, Eddie Dunn. Defendant owns the property, the subject of the suit.” She further alleged that the “justice court and the county court lack[] jurisdiction over controversies regarding title to land. Resolution of the title issue is a necessary issue in this case.” Anderson’s assertion of title through a parole gift of the property was sufficient to apprise the county court of the title question and, therefore, the county court’s lack of jurisdiction. *See Guadalupe Econ. Servs. Corp. v. Dehoyos*, 183 S.W.3d 712, 716 (Tex. App.—Austin 2005, no pet.) (responsive pleadings should be construed liberally and “an answer must contain sufficient information to place in issue the claims made in the suit[]”).

The evidence at trial only confirmed the existence of a title dispute that required resolution before a determination of the right to immediate possession. *See Ward*, 115 S.W.3d at 170; *see also Falcon*, 976 S.W.2d at 338. The county court heard testimony that, in 2013, Perry orally gave Anderson the property and went to live with Dukes. Anderson took possession of the property. She testified that she made improvements to the property and treated it as her own. Therefore, Anderson presented some evidence that a valid oral gift had been made to her in 2013. *See In the Estate of Wright*, 482 S.W.3d 650, 657 (Tex. App.—Houston [14th Dist.] 2015, pet. denied).

The county court also heard Anderson testify that she never paid rent. The record does not indicate that Anderson was ever in a landlord-tenant relationship with Perry or Chandler. There is no suggestion that she was a tenant at sufferance. The absence of a landlord-tenant relationship made jurisdiction questionable. *See Goodman-Delaney*, 484 S.W.3d at 174; *see also Espinoza*, 468 S.W.3d at 695-96. Additionally, the county court heard evidence regarding the questionable circumstances surrounding Perry’s execution of the deed to Chandler only days before he died and while he was under hospice care.

After hearing the evidence, the county court found that Chandler had record title, and Anderson had no title to the property. In reaching this result, it is evident that the county court necessarily decided the issue of title in determining the right to immediate possession. This fact is further confirmed by the county court’s findings that Chandler “is the record owner of title”

and Anderson has no legal interest in the property. While there may be weaknesses in the parties' evidence in support of their respective rights to title, it is not within the jurisdiction of the justice court or county court to consider credibility or weight of the evidence supporting either party's right to title. *See Falcon*, 976 S.W.2d at 338.

Because the right to immediate possession necessarily required resolution of a title dispute, in attempting to resolve that dispute, the county court exceeded its jurisdiction. *See Ward*, 115 S.W.3d at 269; *see also Mitchell*, 911 S.W.2d at 171. We sustain Anderson's first issue.

DISPOSITION

Having sustained Anderson's two issues, we *vacate* the judgment of the county court and *dismiss* the forcible detainer action *for want of jurisdiction*.

BILL BASS
Justice

Opinion delivered June 30, 2017.

Panel consisted of Worthen, C.J., Hoyle, J., and Bass, Retired J., Twelfth Court of Appeals, sitting by assignment.

(PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

JUNE 30, 2017

NO. 12-16-00299-CV

PORSHA ANDERSON,
Appellant
V.
LISA CHANDLER,
Appellee

Appeal from the County Court
of Upshur County, Texas (Tr.Ct.No. 16CV00066)

THIS CAUSE came to be heard on the appellate record and briefs filed herein; and the same being considered, because it is the opinion of this court that there was error in the judgment of the court below, it is ORDERED, ADJUDGED and DECREED by this Court that the judgment of the county court be **vacated** and the forcible detainer action be **dismissed for want of jurisdiction**; and that all costs of this appeal are hereby adjudged against the Appellee, **LISA CHANDLER**, for which execution may issue; and that this decision be certified to the court below for observance.

Bill Bass, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Bass, Retired J., Twelfth Court of Appeals, sitting by assignment.