

Affirmed and Opinion Filed January 20, 2017



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-16-00010-CV

JERRY MCCALL, Appellant

V.

FEDERAL NATIONAL MORTGAGE ASSOCIATION, A/K/A FANNIE MAE, Appellee

**On Appeal from the County Court at Law No. 4
Collin County, Texas
Trial Court Cause No. 004-02492-2015**

MEMORANDUM OPINION

Before Chief Justice Wright, Justice Lang-Miers, and Justice Myers
Opinion by Chief Justice Wright

In this forcible detainer case, Jerry McCall appeals the trial court's judgment in favor of Federal National Mortgage Association, a/k/a Fannie Mae ("FNMA"). In two issues, McCall claims the trial court lacked jurisdiction because disputes exist regarding title to the property. We affirm.

BACKGROUND

On October 26, 2007, McCall as "Borrower" signed a deed of trust to secure a promissory note for property located at 604 Cypress Hill Drive in McKinney. In the event McCall defaulted on the note, the deed of trust provided the lender with remedies, including the power of sale by foreclosure. The deed of trust also provided:

If the Property is sold pursuant to this Section 22, Borrower or any person holding possession of the Property through Borrower shall immediately surrender

possession of the Property to the purchaser at that sale. If possession is not surrendered, Borrower or such person shall be a tenant at sufferance and may be removed by writ of possession or other court proceeding.

McCall defaulted on the note, and on August 4, 2015, the property was sold at a non-judicial foreclosure sale to Nationstar Mortgage LLC (“Nationstar”), the current beneficiary under the deed of trust. Nationstar subsequently transferred the property to FNMA. On September 11, 2015, FNMA sent McCall a notice by both certified and first-class mail demanding that McCall vacate the property within three days. When McCall did not do so, FNMA filed a forcible detainer proceeding in the justice court. After the justice court granted default judgment awarding possession to FNMA, McCall appealed to the county court at law.

In his appeal to the county court at law, McCall alleged that the property “was illegally sold” to FNMA. He also alleged that “[t]here are 2 entities claiming to own the defendant’s property.” After a bench trial on December 3, 2015, the trial court rendered judgment for FNMA. This appeal followed.

ISSUES AND STANDARD OF REVIEW

In two issues, McCall challenges the trial court’s jurisdiction over this case. Specifically, McCall claims both the justice court and the county court at law lacked jurisdiction because the case involves a title dispute. He argues (1) multiple entities claim ownership to the same property, and (2) the right to immediate possession of the property necessarily requires resolution of a title dispute. We address his issues together. We review questions of subject matter jurisdiction de novo. *See Gibson v. Dynegy Midstream Servs., L.P.*, 138 S.W.3d 518, 522 (Tex. App.—Fort Worth 2004, no pet.).

DISCUSSION

In a forcible detainer proceeding, the “only issue” is possession. TEX. R. CIV. P. 510.3(e); *see Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). It is

cumulative, not exclusive, of other remedies that a party may have in the courts of this state, and the displaced party is entitled to bring a separate suit in the district court to determine the question of title. *Rice*, 51 S.W.3d at 709. The right to title cannot be adjudicated in a forcible detainer action, nor can the validity of a foreclosure sale be determined. *Id.*; *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 927 (Tex. App.—Dallas 2010, no pet.). The existence of a title dispute does not deprive a justice court or county court at law of jurisdiction unless determining who has the right to immediate possession necessarily requires resolution of the title dispute. *Rice*, 51 S.W.3d at 713. To prevail in a forcible detainer action, a plaintiff is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Id.* at 709.

If an independent basis exists on which to award immediate possession that would not require resolution of a title dispute, a justice court, and therefore the county court, has jurisdiction to do so. *Martin v. Fed. Nat'l Morg. Ass'n*, No. 05-15-00210-CV, 2016 WL 3568040, at *3 (Tex. App.—Dallas June 30, 2016, pet. dismissed w.o.j.) (mem. op.). A deed of trust that creates a landlord and tenant-at-sufferance relationship upon foreclosure provides an independent basis to determine the issue of immediate possession without resolving the issue of title. *Id.* Specifically, in such cases, disputes related to the validity of the foreclosure sale are not relevant to determining the right to immediate possession. *Id.*; see also *Smith v. Beneficial Fin. I Inc.*, No. 05-14-00497-CV, 2015 WL 6777828, at *2 (Tex. App.—Dallas Nov. 6, 2015, no pet.) (mem. op.) (because borrower was subject to valid tenant-at-sufferance clause, she did not allege title dispute intertwined with right to immediate possession).

Here, FNMA established (1) it owned the property by virtue of a special warranty deed from Nationstar, which obtained the property by substitute trustee's deed after the foreclosure sale; (2) McCall became a tenant at sufferance under the terms of the deed of trust when the

property was sold at the foreclosure sale; (3) FNMA gave proper notice to McCall requiring him to vacate the premises, and (4) McCall refused to vacate the premises. *See* TEX. PROP. CODE ANN. § 24.002 (West 2014); *Elwell v. Countrywide Home Loans, Inc.*, 267 S.W.3d 566, 568–69 (Tex. App.—Dallas 2008, pet. dismiss’d w.o.j.). We conclude FNMA met its burden to establish a superior right to immediate possession of the property. *See Rice*, 51 S.W.3d at 709.

McCall argues there are title disputes that must be resolved before the right to possession of the property can be determined. He relies on alleged illegalities in the foreclosure sale arising from questions about title to the property. He also relies on a prior foreclosure sale of the property under an assessment lien deed. And he contends FNMA failed to establish a landlord-tenant relationship. But the deed of trust expressly created a landlord and tenant-at-sufferance relationship when the property was sold by foreclosure. This provided an independent basis to determine the issue of immediate possession without resolving the issue of title. *See Martin*, 2016 WL 3568040, at *3.

As we have explained, any defects in the foreclosure process or with FNMA’s title to the property may not be considered in a forcible detainer action. *Williams*, 315 S.W.3d at 927. Those defects may be pursued in a suit for wrongful foreclosure or to set aside the substitute trustee’s deed, but they are not relevant in this forcible detainer action. *Id.* Accordingly, the trial court did not err by rendering judgment for FNMA.

CONCLUSION

We overrule appellant's issues. We affirm the trial court's judgment.

/Carolyn Wright/

CAROLYN WRIGHT
CHIEF JUSTICE

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

JERRY MCCALL, Appellant

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FEDERAL NATIONAL MORTGAGE
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Trial Court Cause No. 004-02492-2015.
Opinion delivered by Chief Justice Wright,
Justices Lang-Miers and Myers
participating.

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellee Federal National Mortgage Association, a/k/a Fannie Mae recover its costs of this appeal from appellant Jerry McCall.

Judgment entered January 20, 2017.