Petition Conditionally Granted, Interlocutory Appeal and Appeal Vacated and Dismissed, and Opinion Filed February 20, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01056-CV

No. 05-19-00109-CV

IN RE CATAPULT REALTY CAPITAL, L.L.C., Relator

CATAPULT REALTY CAPITAL, L.L.C., Appellant
V.
TOBIAN JOHNSON, Appellee

Original Proceeding from the County Court at Law No. 2
Dallas County, Texas
Trial Court Cause No. CC-18-05600-B

On Appeal from the 191st Judicial District Court
Dallas County, Texas
Trial Court Cause No. DC-18-12714

MEMORANDUM OPINION

Before Justices Myers, Osborne,[1] and Nowell
Opinion by Justice Osborne

This interlocutory appeal, appeal, and original proceeding arise from the foreclosure of Tobian Johnson's real property.[2] The litigation in this matter has worked its way through various

[1] Justice Osborne did not participate in oral argument but participated in the resolution of this appeal. Chief Justice Burns participated in oral argument but not did not participate in the resolution of this appeal.

[2] Catapult Realty Capital, L.L.C. originally filed the interlocutory appeal, appeal, and petition for a writ of mandamus as consolidated proceedings. However, because these proceedings involve different courts and judges, we severed the original proceeding from the interlocutory appeal and appeal.

courts culminating in a web of proceedings and orders, including the orders that are the subject of these proceedings. In these proceedings, Catapult Realty Capital, L.L.C. (Catapult Capital) filed: (1) an interlocutory appeal and appeal (appellate cause no. 05-19-00109-CV) arguing the 191st District Court erred when it rendered the order entitled the "[second] temporary restraining order" (2nd TRO); and (2) a petition for a writ of mandamus (appellate cause no. 05-19-01056-CV) arguing the county court judge erred when she signed an order abating Johnson's appeal of the justice court's eviction judgment and administratively closing the case.

In the interlocutory appeal of the 2nd TRO[3] and appeal of the portion of the 2nd TRO that issued a writ of mandamus[4] against the county court judge,[5] Catapult Capital raises three issues arguing the 298th district judge, acting for the 191st District Court, erred when she signed the 2nd

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[3] Catapult Capital argues that, even though the 2nd TRO is titled a temporary restraining order, it is actually a temporary injunction. Section 51.014(a) of the Texas Civil Practice and Remedies Code permits an interlocutory appeal of an order granting a temporary injunction. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 51.014(4).

[4] On appeal, Catapult Capital refers to this portion of the 2nd TRO as an "order," a "requirement," and an "interference with an eviction." We note that there is a well-defined difference between an injunction and a mandamus. *See Campbell v. Wilder*, 487 S.W.3d 146, 153 (Tex. 2016). One is preventive and the other remedial. *See Campbell*, 487 S.W.3d at 153. The purpose of a temporary injunction is to preserve the status quo pending a trial on the merits. *See In re Estate of Skinner*, 417 S.W.3d 639, 642–43 (Tex. App.—Houston [14th Dist.] 2013, no pet.); *RP&R, Inc. v. Territo*, 32 S.W.3d 396, 400 (Tex. App.—Houston [14th Dist.] 2000, no pet.). In contrast, a writ of mandamus will issue to compel a public official to perform a ministerial act or, in a proper case, to correct a clear abuse of discretion. *See Anderson v. City of Seven Points*, 806 S.W.2d 791, 793 (Tex. 1991). Basically, when the purpose of the suit is to compel action, then mandamus is proper; conversely, when the purpose is to restrain action or threatened action, then an injunction is proper. *See Campbell*, 487 S.W.3d at 153–54. However, these two remedies can work in conjunction with each other. *See id.*

Johnson did not file a petition for a writ of mandamus in the 191st District Court nor does his petition seek mandamus relief or pray for an abatement of the county court lawsuit. Nevertheless, in the 2nd TRO, the 298th district judge on behalf of the 191st District Court ordered the county court judge to abate the county court lawsuit as follows:

> b. Abate eviction case CC-18-05600-B, that is set for [sic] in the County Court At [sic] Law 2 until the proceedings in this matter is [sic] resolved.

Further, the record shows that on February 22, 2019, during a status conference in the county court lawsuit, the county court judge understood that the 2nd TRO ordered her to abate the county court lawsuit. She also questioned whether the 298th district judge could order her to abate the county court lawsuit instead of enjoining the parties from proceeding in that case, but she recognized that she did not have authority to invalidate another court's order that was not before her. At the end of the status conference, the county court judge advised counsel for Catapult Capital that she was:

> [G]oing to try to get a conversation with the [191st District Court] upstairs about the status of [its] case, and particularly about [the 2nd TRO] that was signed by a different judge . . . that clearly has deficiencies on its face. And what, if anything, that Court thinks they have prevented and/or [sic] abated [her] from doing, and on what basis? [She was] assuming [she's] going to get to the bottom of all that very quickly, and [she's] going to find that [she is] not restrained or abated from doing anything [in the county court lawsuit].

Then, on March 5, 2019, the county court judge signed an order abating the county court lawsuit and administratively closing the case.

We agree with the county court judge that the portion of the 2nd TRO ordering her to abate the county court lawsuit was not an injunction. It was a writ of mandamus because it compeled her to abate the county court lawsuit. *See generally, Campbell*, 487 S.W.3d at 153–54. Accordingly, we refer to that portion of the 2nd TRO as a mandamus in this opinion.

[5] An original proceeding for a writ of mandamus initiated in the district court is a civil action subject to trial and appeal on the same substantive law issues and the rules of procedure as any other civil suit. *See Anderson*, 806 S.W.2d at 795 n.1; *Dallas Fort Worth Int'l Airport Bd. v. Cox*, 261 S.W.3d 378, 382 (Tex. App.—Dallas 2008, no pet.); *Gabriel v. Outlaw*, No. 05-18-00503-CV, 2019 WL 1760324, at *1 (Tex. App.—Dallas Apr. 22, 2019, no pet.) (mem. op.). A court of appeals has appellate jurisdiction over such proceedings. *See Gabriel*, 2019 WL 1760324, at *1.

TRO because: (1) it is void as it fails to state when it expires or provide the date of an injunction hearing or trial; (2) it has expired pursuant to Texas Rule of Civil Procedure 680; and (3) it is actually an injunction that impermissibly interferes with and stops an eviction. Johnson did not file a brief in the interlocutory appeal or appeal. However, Johnson did file a post-submission letter brief in response to this Court's jurisdictional concerns. We conclude the 298th district judge erred when she signed the 2nd TRO on behalf of the 191st District Court because she did not have the authority to do so and, as a result, the 2nd TRO is void. Accordingly, we do not have jurisdiction to consider the merits of this interlocutory appeal and appeal. The 2nd TRO is vacated and the interlocutory appeal and appeal are dismissed.

In the mandamus proceeding, Catapult Capital argues the county court judge erred when she abated and administratively closed the case because: (1) the county court judge abused her discretion when she concluded that she could not determine whether the county court had jurisdiction over the forcible-detainer action; and (2) Catapult Capital has no adequate remedy by appeal because the forcible-detainer action "shall remain in legal limbo indefinitely" because the county court judge abated the county court lawsuit for an indefinite period of time without stating how the case could be reinstated. Johnson, the real party in interest, did not file a response to Catapult Capital's petition for a writ of mandamus. We conditionally grant Catapult Capital's petition for a writ of mandamus.

I. FACTUAL AND PROCEDURAL BACKGROUND

On August 31, 2018, Johnson filed his first original petition against New Penn Financial, L.L.C. d/b/a Shellpoint Mortgage Servicing (Shellpoint) in the 191st District Court (trial court cause no. DC-18-12714) alleging violations of the Texas Property Code, Texas Business and Commerce Code, and Texas Finance Code, as well as seeking a declaratory judgment, temporary restraining order, and temporary and permanent injunctions preventing the foreclosure of his

property (first district court lawsuit). The record does not show that a temporary restraining order or temporary injunction was rendered in the first district court lawsuit.

On September 4, 2018, the property was sold for $202,000 in a foreclosure sale to Catapult Capital, a third party. According to Catapult Capital, it provided Johnson written notice to vacate on September 5, 2018.[6]

On September 10, 2018, Johnson filed a second lawsuit for wrongful foreclosure against Mortgage Electronic Registration Systems, Inc., as nominee for Countrywide Bank, F.S.B., its successors and assigns, Shellpoint, The Bank of New York Mellon f/k/a The Bank of New York, as trustee for the Certificate Holders of SWALT, Inc., Alternative Loan Trust 2007-OH2, Mortgage Pass-Through Certificates, Series 2007-OH2, and Catapult Realty Partners, L.L.C. (Catapult Partners)[7] in the 101st District Court (trial court cause no. DC-18-13296) (second district court lawsuit). The second district court lawsuit alleged claims for violations of the Texas Business and Commerce Code and sought a temporary restraining order and temporary and permanent injunctions that would prevent the defendants from taking possession of the property. It also requested the 101st District Court set aside the sale of the property and sought economic, punitive, treble, and exemplary damages as well as attorneys' fees.[8] The record does not show that Catapult Partners was served with, answered, or otherwise appeared in the second district court lawsuit.[9]

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[6] *See* TEX. PROP. CODE ANN. §§ 24.002(b), 24.005.

[7] In the interlocutory appeal, Catapult Capital contends that Catapult Partners is a separate entity that owns 50% of Catapult Capital.

[8] We note that the proper remedy for wrongful foreclosure is either: (1) damages equal to the difference between the value of the property at the date of foreclosure and the remaining balance due on the indebtedness; or (2) setting aside the foreclosure sale. *See Farrell v. Hunt*, 714 S.W.2d 298, 299 (Tex. 1986); *Farkas v. Aurora Loan Servs., L.L.C.*, No. 05-15-01225-CV, 2017 WL 2334235, at *5 (Tex. App.—Dallas May 30, 2017, pet. denied) (mem. op.); *Wells Fargo Bank, N.A. v. Robinson*, 391 S.W.3d 590, 593–94 (Tex. App.—Dallas 2012, no pet.). The recovery of damages is appropriate when title has passed to a third party and the plaintiff's possession of the property has been materially disturbed. *See Farkas*, 2017 WL 2334235, at *5; *Wells Fargo*, 391 S.W.3d at 594. However, when the note holder obtains title to the property at the foreclosure sale and the plaintiff retains possession, the proper remedy is to set aside the trustee's deed and to restore the plaintiff's title, subject to the note holder's right to establish the debt owed and foreclose its lien. *See Farkas*, 2017 WL 2334235, at *5; *Wells Fargo*, 391 S.W.3d at 594. The reason for this is that the law undertakes to award just compensation, no more and no less, for the injuries sustained. *See Farkas*, 2017 WL 2334235, at *5; *Wells Fargo*, 391 S.W.3d at 594.

[9] In Texas practice, personal jurisdiction attaches to a defendant when the defendant is properly served with a citation and petition. *See Cockrell v. Estevez*, 737 S.W.2d 138, 140 (Tex. App.—San Antonio 1987, no writ). Also, we note that the citation for Catapult Partners bears a red stamp stating, "Dallas County Service Fees Not Paid."

Also, Johnson's petition in the second district court lawsuit did not assert any claims against Catapult Capital, nor did it allege that Catapult Capital is the officer, agent, servant, or employee of Catapult Partners.[10]

On September 12, 2018, Catapult Capital filed its petition for eviction against Johnson in justice court (trial court cause no. JE-18-02293-L). Catapult Capital alleged that it established a landlord–tenant relationship by Johnson's occupancy of the property after a foreclosure sale and sought eviction on the basis of holding over because Johnson failed to surrender possession after receiving written notice to vacate the property, committing a forcible detainer.

On October 1, 2018, Shellpoint filed a motion seeking to consolidate the first district court lawsuit against it in the 191st District Court with the second district court lawsuit pending in the 101st District Court. On October 10, 2018, the 191st District Court granted Shellpoint's motion to consolidate and ordered that the consolidated actions proceed in the 191st District Court (trial court cause no. DC-18-12714) (consolidated district court lawsuit). The record does not show that Catapult Partners was served or filed an answer in the consolidated district court lawsuit.[11]

Meanwhile, on October 4, 2018, after a jury trial, the justice court rendered a judgment notwithstanding the verdict in favor of Catapult Capital for possession of the property and set the appeal bond at $2,020. Johnson appealed the justice court's judgment to the county court (trial court cause no. CC-18-05600-B) for a trial de novo (county court lawsuit or forcible-detainer action).[12]

On November 30, 2018, the 191st District Court signed a temporary restraining order (1st TRO) in the consolidated district court lawsuit. The 1st TRO was styled "Tobian Johnson v.

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[10] *See generally* TEX. R. CIV. P. 124; *Bennett v. Pol*, No. 09-15-00232-CV, 2016 WL 2941704 (Tex. App.—Beaumont May 19, 2016, no pet.) (mem. op.).

[11] *See supra* n.9.

[12] *See* TEX. R. CIV. P. 510.10(c).

Catapult Realty Partners LLC d/b/a Catapult Realty Capital LLC"[13] and enjoined "Catapult Realty Capital LLC" from proceeding in the county court lawsuit, which was set for trial on December 3, 2018, until further order of the 191st District Court. The 1st TRO also ordered Johnson to execute and file a bond in the amount of $500 with the district clerk and set the matter for a temporary injunction hearing on December 14, 2018, fourteen days from the district court's order. Further, the 191st District Court's docket sheet entry for the 1st TRO states, "Catapult Realty Capital LLC Unserved."

On December 7, 2018, the county court judge *sua sponte* held a hearing by telephone with the parties to address the inadequacy of the initial bond in light of the 191st District Court's "injunction" or the 1st TRO.

The 191st District Court's docket sheet reflects that a temporary injunction hearing was held on December 14, 2018. We do not have a reporter's record from the hearing but Catapult Capital asserts that the 191st district judge took the matter under advisement. Further, the 1st TRO expired by its own terms on December 14, 2018, and the record does not show that it was extended. Nor does the record indicate which parties or counsel appeared at the temporary injunction hearing.

On January 2, 2019, the county court judge signed an order acknowledging the 191st District Court's "injunction" or the 1st TRO, noting that Johnson remained in possession of the property and had not paid anything to Catapult Capital, and setting an additional bond to address "the inadequacy of the [i]nitial [b]ond after the [191st [District Court's] injunction [or the 1st TRO]." The county court ordered Johnson to pay $6,000 into the registry of the county court and an additional $2,000 each subsequent month.

[13] The style of Johnson's petition filed in the consolidated district court lawsuit lists the relevant defendant as Catapult Partners. However, the styles of the 1st and 2nd TROs list the relevant defendant as Catapult Partners d/b/a Catapult Capital. Despite the styles of the lawsuit and the TROs, as we previously noted, Catapult Capital contends on appeal that Catapult Partners is a separate entity that owns 50% of Catapult Capital. As a result, Catapult Capital maintains that it was not a party to any of the district court proceedings.

On January 3, 2019, the 298th district judge signed the 2nd TRO in the consolidated district court lawsuit on behalf of the 191st District Court. The 2nd TRO was styled "Tobian Johnson v. Catapult Realty Partners LLC d/b/a Catapult Realty Capital LLC" and granted the injunctive relief sought by Johnson. In particular, it: (1) enjoined "Catapult Realty Capital LLC" from executing a substitute trustee's sale or otherwise taking possession of the property; and (2) ordered the abatement of the county court lawsuit until the consolidated district court lawsuit is resolved.[14] The 2nd TRO also stated that Johnson must execute and file with the district clerk a bond in the amount of $6,000 by "the end of December 2018" with a subsequent $2,000 bond per month by the fourth day of each month until the proceedings are concluded.[15] However, the 2nd TRO does not include an order setting a date for either a hearing on a temporary or permanent injunction or a trial on the merits with respect to the ultimate relief sought.[16]

On February 22, 2019, the county court judge held a status conference in the county court lawsuit. The reporter's record shows that only counsel for Catapult Capital appeared. Then, on March 5, 2019, the county court judge signed an order that: (1) denied Catapult Capital's motion for default judgment;[17] (2) noted she could not "confirm that [the county court] currently has jurisdiction due to a question of title"; and (3) abated the county court lawsuit and ordered the case administratively closed. This interlocutory appeal of the 2nd TRO, appeal of the writ of mandamus contained in the 2nd TRO, and original proceeding seeking a writ of mandamus against the county court judge for abating and administratively closing the county court lawsuit followed.

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[14] Again, we note that the record does not contain a petition for a writ of mandamus filed in the 191st District Court nor does Johnson's petition seek mandamus relief or pray for an abatement of the county court lawsuit.

[15] It appears from the record that Johnson was required to pay $6,000 and then $2,000 each subsequent month to *both* the registry of the county court and the clerk of the district court. At the status conference for the county court lawsuit, the county court judge acknowledged that Johnson was required to pay a bond in both the county court lawsuit and the consolidated district court lawsuit. Also, at that time, counsel for Catapult Capital advised the county court judge that Johnson was in default of both courts' bond orders.

[16] *See* TEX. R. CIV. P. 680, 683.

[17] Catapult Capital advises that it did not file a motion for default judgment as referenced in the county court's order.

II. JURISDICTION TO REVIEW THE MERITS OF THE INTERLOCUTORY APPEAL AND THE APPEAL OF THE DISTRICT COURT'S ORDER

In the interlocutory appeal and appeal, Catapult Capital raises three issues arguing the 298th district judge erred when she signed the 2nd TRO on behalf of the 191st District Court because: (1) it is void as it fails to state when it expires or provide the date of the injunction hearing or trial; (2) it has expired pursuant to Texas Rule of Civil Procedure 680; and (3) it is actually an injunction that impermissibly interferes with and stops an eviction. However, as a preliminary matter, we must address our jurisdiction over the merits of this interlocutory appeal and appeal because the record shows the 191st district judge conducted the temporary injunction hearing but the 2nd TRO was subsequently signed by the 298th district judge. In response to this Court's questions regarding its jurisdiction to review the merits of the interlocutory appeal and appeal, Catapult Capital and Johnson both filed post-submission letter briefs. In his post-submission letter brief, Johnson advises that:

> The [1st] TRO [] did not reflect [the 191st district judge's] order to pay [$6000 with the District Clerk registry and $2000 every month thereafter][18] and in order for the District Clerk to accept [Johnson's] monies they needed an order to reflect that. During this time, on or about January 3, 2019, [the 191st district judge] was out of town, therefore, [the 298th district judge] signed the [2nd TRO] so that the District Clerk could put it in the system and accept [Johnson's] money so that he may be compliant with the [191st district] judge's original order [or the 1st TRO].[19]

In contrast, Catapult Capital maintains that:

> Unfortunately, the facts and circumstances surrounding the 2nd TRO [are] a complete mystery to [Catapult Capital]. After the 191st district [judge] concluded the temporary injunction [hearing] on December 14, 2018, and took the matter under advisement, nothing was sent or communicated to [Catapult Capital]. For example, [Catapult Capital] was not apprised of how or why or by what means the 298th district [judge] became involved to sign the 2nd TRO.

[18] Johnson does not point to anything in the record showing that the 191st district judge ordered him to deposit these sums into the district clerk's registry prior to the 2nd TRO. However, we note that on January 2, 2019, the county court judge signed an order requiring deposits in the specified amounts to be deposited in the county court's registry.

[19] We note that the 1st TRO expired on December 14, 2018, and it was not extended by the 191st district judge.

A. Applicable Law

The rules of practice and procedure in civil district court allow district judges to exchange courts and transfer cases from one court to another. *See* TEX. R. CIV. P. 330(e); *see also* TEX. CONST. art. V, § 11 ("And the District Judges may exchange districts, or hold courts for each other when they may deem it expedient . . . ."); *Masa Custom Homes, L.L.C. v. Shahin*, 547 S.W.3d 332, 335 (Tex. App.—Dallas 2018, no pet.). Further, the rules allow district judges to "*hear* any part of any case or proceeding pending . . . *and determine the same*" and "*to hear and determine* any question in any case, and any other judge *may complete the hearing and render judgment* in the case." TEX. R. CIV. P. 330(g) (emphasis added); *see also Masa Custom Homes*, 547 S.W.3d at 335. However, the rules of civil procedure do not authorize a judge to render a decision following a hearing unless she personally heard the evidence on which the order or judgment is based. *See Masa Custom Homes*, 547 S.W.3d at 335; *W.C. Bank, Inc. v. Team, Inc.*, 783 S.W.2d 783, 785 (Tex. App.—Houston [1st Dist.] 1990, no writ). When a judge has no authority to render an order or judgment, that order or judgment is void. *See Masa Custom Homes*, 547 S.W.3d at 338. An appellate court has no jurisdiction to consider the merits of an appeal of a void order or judgment. *See id.*

B. Application of the Law to the Facts

The record shows that the consolidated district court case is before the 191st District Court. On November 30, 2018, the 191st district judge signed the 1st TRO and set the matter for a temporary injunction hearing on December 14, 2018, fourteen days later. The 191st District Court's docket sheet reflects that a temporary injunction hearing was held on December 14, 2018. According to Catapult Capital, the 191st district judge heard testimony and admitted documentary evidence during the hearing but did not render a decision, instead taking the matter under advisement. *See* TEX. R. APP. P. 38.1(g) (in civil cases, court of appeals will accept as true facts

stated unless another party contradicts them). Also, the record does not show that the 1st TRO was extended at that time. As a result, the 1st TRO expired on December 14, 2018. *See* TEX. R. CIV. P. 680 (TRO shall expire by its terms within such time as after signing, not to exceed 14 days, unless within time so fixed, by good cause shown, it is extended for like period or unless party against whom order is directed consents to longer period).

Then, the record shows that on January 3, 2019, the 298th district judge signed the 2nd TRO on behalf of the 191st District Court. The record does not reflect that another temporary injunction or other evidentiary hearing was held before the 298th district judge prior to her signing the 2nd TRO. Accordingly, we conclude the 2nd TRO is void because the 298th district judge did not have the authority to render that order. *See Masa Custom Homes*, 547 S.W.3d at 338. As a result, we have no jurisdiction to consider the merits of the void 2nd TRO. *See id.*

III. ORIGINAL PROCEEDING CHALLENGING THE COUNTY COURT ORDER

In the mandamus proceeding, Catapult Capital raises issues arguing the county court judge abused her discretion when she abated and administratively closed the case and it has no adequate remedy on appeal.

A. Standard for Mandamus

To be entitled to mandamus relief, a relator must show: (1) a trial judge has clearly abused her discretion; and (2) there is no adequate remedy by appeal. *See In re Prudential Ins. Co. of Am.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). An abatement order may be reviewed on mandamus when the abatement is indefinite in duration or it effectively vitiates a party's ability to present a claim or defense. *See In re Shulman*, 544 S.W.3d 861, 867 (Tex. App.—Houston [14th Dist.] 2017, orig.proceeding).

A trial judge abuses her discretion if she reaches a decision so arbitrary and unreasonable it amounts to a clear and prejudicial error of law or if she clearly fails to correctly analyze or apply

the law. *See In re Prudential*, 148 S.W.3d at 135–36; *Walker v. Packer*, 827 S.W.2d 833, 839–40 (Tex. 1992) (orig. proceeding). A trial judge has no discretion in determining what the law is or in applying the law to the facts and abuses her discretion when her decision is arbitrary and capricious. *See In re Prudential*, 148 S.W.3d at 135; *Walker*, 827 S.W.2d at 840.

The second requirement for mandamus relief, that the petitioner has no adequate remedy by appeal, "has no comprehensive definition." *See In re Prudential*, 148 S.W.3d at 136. An appeal is an inadequate remedy where a party's ability to present a viable claim or defense at trial is either completely vitiated or severely compromised. *See In re Garza*, 544 S.W.3d 836, 840 (Tex. 2018) (orig. proceeding); *Walker*, 827 S.W.2d at 843. Determining whether a party has an adequate remedy by appeal requires a "careful balance of jurisprudential considerations" and "depends heavily on the circumstances presented." *See In re Garza*, 544 S.W.3d at 840 (quoting *In re Prudential*, 148 S.W.3d at 136–37).

B. Did the County Court Judge Abuse Her Discretion?

Catapult Capital argues the county court judge abused her discretion when she concluded that she could not determine whether the county court had jurisdiction over the forcible-detainer action.

1. Applicable Law

Subject-matter jurisdiction is essential to a court's power to decide a case and presents a question of law. *See City of Houston v. Rhule*, 417 S.W.3d 440, 442 (Tex. 2013); *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443 (Tex. 1993). All courts are obligated to ascertain that subject-matter jurisdiction exists regardless of whether the parties have questioned it. *See Rhule*, 417 S.W.3d at 442. In most cases, when there are issues of title and right to immediate possession, the issues may be litigated in separate proceedings in different courts with appropriate jurisdiction. *See Hawkins v. Hawkins*, No. 05-18-01017-CV, 2019 WL 4051830, at *2 (Tex.

App.—Dallas Aug. 28 2019, no pet.) (mem. op.); *Rice v. Pinney*, 51 S.W.3d 705, 708 (Tex. App.—Dallas 2001, no pet.); *Cook v. Mufaddal Real Estate Fund*, No. 14-15-00651-CV, 2017 WL 1274118, at *2–3 (Tex. App.—Houston [14th Dist.] Apr. 4, 2017, no pet.) (mem. op.).

District courts generally have exclusive jurisdiction to determine title to real property. *See* TEX. GOV'T CODE ANN. § 26.043; *Chambers v. Pruitt*, 241 S.W.3d 679, 684 (Tex. App.—Dallas 2007, no pet.); *City of Willow Park v. Squaw Creek Downs, L.P.*, 166 S.W.3d 336, 340 (Tex. App.—Fort Worth 2005, no pet.). However, jurisdiction over a forcible-detainer action[20] is given to a justice court in the precinct where the property is located. *See* GOV'T § 27.031(a)(2); TEX. PROP. CODE ANN. § 24.004(a); TEX. R. CIV. P. 510.3(b); *Dass, Inc. v. Smith*, 206 S.W.3d 197, 200 (Tex. App.—Dallas 2006, no pet.); *Brown v. Kula-Amos, Inc.*, No. 02-04-032-CV, 2005 WL 675563, at *2 (Tex. App.—Fort Worth Mar. 24, 2005, no pet.) (mem. op.); *see also* TEX. CIV. PRAC. & REM. CODE ANN. § 15.084 (forcible entry and detainer suits). The justice court's judgment in an eviction case may be appealed for a trial de novo in the county court. *See* TEX. R. CIV. P. 510.10(c); *Brown*, 2005 WL 675563, at *2. Notwithstanding the grant of general jurisdiction to a county court, in an appeal of a forcible-detainer judgment, the county court's jurisdiction extends only as far as the justice court's jurisdiction. *See Cook*, 2017 WL 1274118, at *2.

However, rule 510.3(e) specifies that the only issue the justice or county courts may adjudicate is the right to possession, not title, and any counterclaims and joinder of suits against third parties must be brought in a separate suit in a court of proper jurisdiction. *See* TEX. R. CIV.

[20] A person who refuses to surrender possession of real property on demand commits a forcible detainer if the person is a tenant at will or by sufferance, including an occupant at the time of foreclosure of a lien superior to the tenant's lease. TEX. PROP. CODE ANN. § 24.002(a)(2). A forcible-detainer action is a procedure to determine the right to immediate possession of real property. *See Hawkins*, 2019 WL 4051830, at *2; *Rice*, 51 S.W.3d at 709; *see also Brown v. Kula-Amos, Inc.*, No. 02-04-032-CV, 2005 WL 675563, at *2 (Tex. App.—Fort Worth Mar. 24, 2005, no pet.) (mem. op.). It is a special proceeding governed by the Texas Property Code and Texas Rules of Civil Procedure. *See* PROP. §§ 24.001–24.011; TEX. R. CIV. P. 510.1–510.13; *Rice*, 51 S.W.3d at 709; *Brown*, 2005 WL 675563, at *2; *see also* CIV. PRAC. & REM. § 15.084 (forcible entry and detainer suits). Forcible-detainer actions are intended to be a summary, speedy, and inexpensive remedy for resolving the questions of who is entitled to immediate possession of real property. *See Rice*, 51 S.W.3d at 709; *Brown*, 2005 WL 675563, at *2.

P. 510.3(e); *Brown*, 2005 WL 675563, at *2. Because a forcible-detainer action is not exclusive, but cumulative, of any other remedy that a party may have, the displaced party is entitled to bring a separate suit in the district court to determine the question of title. *See Rice*, 51 S.W.3d at 70 (citing *Scott v. Hewitt*, 90 S.W.2d 816, 818–19 (Tex. 1936)). In other words, forcible-detainer actions in the justice or county courts may be brought and prosecuted concurrently with suits to try title in the district courts. *See Rice*, 51 S.W.3d at 709. As a result, justice and county courts may adjudicate possession when issues related to the title of real property are tangentially or collaterally related to possession. *See Brown*, 2005 WL 675563, at *2. When there are grounds for determining immediate possession independent from title, the justice court and county court will have jurisdiction to hear the forcible-detainer action. *See Cook*, 2017 WL 1274118, at *3. Not only can the right to immediate possession be determined separately from the right to title, but the Texas Legislature purposely established just such a system. *See Rice*, 51 S.W.3d at 710. Challenges to the validity of a foreclosure sale do not deprive the justice court or county court of jurisdiction. *See Cook*, 2017 WL 1274118, at *3.

Generally, a justice or county court is not required to determine questions of title when considering a forcible-detainer suit if the contract provides for a landlord–tenant relationship upon default, that the buyer becomes a tenant by sufferance in the event of default, or that the buyer is subject to a forcible-detainer suit upon default. *See Brown*, 2005 WL 675563, at *3. Tenant-by-sufferance clauses separate the issue of possession from the issue of title. *See Cook*, 2017 WL 1274118, at * 3. Under these provisions, a foreclosure sale transforms the borrower into a tenant by sufferance who must immediately relinquish possession to the foreclosure-sale purchaser. *See id.*. Accordingly, if a deed of trust provides that in the event of foreclosure, the previous owner will become a tenant by sufferance if he does not surrender possession, the justice court and county court can resolve possession without resort to title. *See id.*.

However, when the right to immediate possession necessarily requires the resolution of a title dispute, the justice court, and consequently the county court, have no jurisdiction to enter a judgment and the case must be dismissed. *See Hawkins*, 2019 WL 4051830, at *2; *Rice*, 51 S.W.3d at 709. To defeat the county court's jurisdiction, the defendant must provide specific evidence of a genuine title dispute that is intertwined with the issue of immediate possession. *See Hawkins*, 2019 WL 4051830, at *2. One indication that a county court on appeal is called on to exceed its jurisdiction by adjudicating title to real estate in a forcible-detainer action is when a landlord–tenant relationship is lacking. *See Rice*, 51 S.W.3d at 712 n.4.

2. Application of the Law to the Facts

In its petition for eviction filed in the county court, Catapult Capital alleged that it purchased the property in a foreclosure sale, sent Johnson a written notice to vacate on September 5, 2018, and had established a landlord–tenant relationship with Johnson as a result of his occupancy of the property after the foreclosure sale. These allegations are sufficient to confer subject-matter jurisdiction on the county court. *See Brown*, 2005 WL 675563, at *3 (generally, county court not required to determine questions of title when considering forcible-detainer suit if contract provides for landlord–tenant relationship upon default, buyer becomes tenant by sufferance in event of default, or buyer subject to forcible-detainer suit upon default); *Cook*, 2017 WL 1274118, at *3 (tenant-by-sufferance clauses separate issue of possession from issue of title).

During the February 22, 2019 status conference, the county court judge and counsel for Catapult Capital discussed the county court's jurisdiction. Catapult Capital maintained that the county court had jurisdiction over the forcible-detainer action and requested that the case be set for trial. With respect to the county court's jurisdiction, the county court judge stated that "if there's an issue over title, [the county court] do[esn't] have jurisdiction," "[t]here's potentially an issue over title, which would create a situation where [the county court] does not have jurisdiction,"

and "unless [she] know[s] what the status [of the consolidated district court lawsuit] is and whether it's resolved, [she] cannot determine whether [the county court] has jurisdiction or not."

Then, on March 5, 2019, the county court judge signed an order stating, in part:

> The [county court] **cannot confirm that [it] has jurisdiction due to a question of title.** As a result, the [county court lawsuit] must be abated and no further actions can be taken in this proceeding until the case is reinstated to active status.

(Emphasis added.) However, the county court judge was obligated to ascertain whether the county court had subject-matter jurisdiction. *See generally Rhule*, 417 S.W.3d at 442.

Johnson's mere raising of the issue of right to title in the consolidated district court lawsuit did not divest the county court of jurisdiction over the forcible-detainer action. In other words, the county court was not deprived of jurisdiction merely by the existence of a title dispute. *See Rice*, 51 S.W.3d at 713. Johnson did not appear at the county court hearing, and the record does not show he filed anything with the county court arguing or providing specific evidence that the title dispute in the consolidated district court lawsuit was intertwined with the issue of immediate possession in the county court lawsuit. *See Hawkins*, 2019 WL 4051830, at *2 (to defeat county court jurisdiction, defendant must provide specific evidence of genuine title dispute intertwined with issue of immediate possession). Further, we note that in the forcible-detainer action, Catapult Capital is not required to present evidence demonstrating the legitimacy of the foreclosure sale or Johnson's default. Rather, to prevail, Catapult Capital must present sufficient evidence of ownership to demonstrate a superior right to immediate possession. *See Cook*, 2017 WL 1274118, at *4.

We conclude the county court has jurisdiction over the forcible-detainer action because the county court judge is not required to determine the issue of title to resolve the right to immediate possession based on the record in this original proceeding. Accordingly, we conclude the county

court judge abused her discretion when she abated the county court lawsuit because she could not determine whether the county court had jurisdiction over the forcible-detainer action.[21]

C. Does Catapult Capital Have an Adequate Remedy By Appeal?

Finally, we must consider whether Catapult Capital has no adequate remedy by appeal. Catapult Capital argues the forcible-detainer action "shall remain in legal limbo indefinitely" because the county court judge abated the county court lawsuit for an indefinite period of time without stating how the case could be reinstated.

1. Applicable Law

A motion to abate sets forth facts and reasons outside the petition why a case should not proceed or should be dismissed. *See In re Shulman*, 544 S.W.3d at 867–68. Typically, abatement procedure is invoked by the defendants rather than plaintiffs but that is not always so. *See id.* at 868. An abatement is a present suspension of all proceedings in a suit. *See Campbell v. Kosarek*, 44 S.W.3d 647, 650 (Tex. App.—Dallas 2001, pet. denied). The case is held in suspended animation and may be revived when the reason for abatement is removed. *See id.* During abatement, the court and the parties are prohibited from proceeding in any manner. *See id.* A trial court abuses its discretion when it arbitrarily abates a civil case for an indefinite period of time. *See In re Immobiliere Jeuness Estalissment*, 422 S.W.3d 909, 914 (Tex. App.—Houston [14th Dist.] 2014, orig. proceeding); *In re Gore*, 251 S.W.3d 696, 699 (Tex. App.—San Antonio 2007, orig. proceeding).

When a trial court erroneously sustains a plea in abatement, mandamus is appropriate if the plaintiff is effectively denied any other method of challenging the court's action for an

[21] Again, we note that the county court judge questioned the unusual nature of the proceedings in the 191st District Court and the effect of same on the forcible-detainer action in her court. Also, nothing in this opinion should be construed to suggest that Johnson does not have the right to bring suit in the district court to determine the issue of title independent from the county court's determination in the forcible-detainer action. Based on this record, the forcible-detainer action in the county court may be litigated concurrently with the consolidated district court lawsuit. *See Rice*, 51 S.W.3d at 709.

indefinite period of time during which the cause of action remains in a suspended state. *See In re Shulman*, 544 S.W.3d at 867; *In re Immobiliere Jeuness*, 422 S.W.3d at 914. Also, when an abatement order vitiates another party's ability to prosecute and present a viable claim or defense, ordinary appeal may not provide an adequate remedy for an abuse of the trial court's discretion. *See In re Shulman*, 544 S.W.3d at 867. Even when an abatement is not "indefinite," if it completely curtails the prosecution of an entire case and denies another party the right to proceed with full discovery or to resolution within a reasonable time, the aggrieved party has no adequate remedy by appeal and mandamus may issue. *See id.* at 870–71.

2. Application of the Law to the Facts

During the status conference, the county court judge acknowledged that the parties to the consolidated district court lawsuit were different from the parties to the county court lawsuit because the consolidated district court lawsuit was between Johnson and the foreclosing party, not Catapult Capital. She also noted that, although an abatement is usually lifted automatically or on request, the 2nd TRO restrains her from hearing the county court lawsuit indefinitely or at least for more than 14 days. Nevertheless, the county court judge's abatement order states, in part:

> As a result, the [county court lawsuit] must be abated and no further actions can be taken in this proceeding until the case is reinstated to active status.
>
> IT IS FURTHER ORDERED, ADJUDGED AND DECREED that, while the Court retains jurisdiction over the case, the County Clerk shall close this file and remove it from the active docket of pending cases. **The case is subject to being reopened upon the motion of any party without prejudice to the rights of the parties.** Nothing contained in this order shall operate as a dismissal of this matter.

(Emphasis added.)

Although the abatement order states that the county court lawsuit may be reopened on the motion of any party, it does not specify the circumstances that will allow for the case to be reinstated. As written, the abatement order denies Catapult Capital the right to proceed to a resolution of the forcible-detainer action within a reasonable time.

Based on the record before us, we conclude that Catapult Capital has shown it does not have an adequate remedy by appeal.

IV. CONCLUSION

Under the facts of this case, the 298th district judge did not have the authority to sign the 2nd TRO on behalf of the 191st District Court so the 2nd TRO is void and this Court does not have jurisdiction to review the merits of a void order. The 2nd TRO is vacated, and the interlocutory appeal and appeal are dismissed.

The county court judge abused her discretion when she abated the county court proceedings and administratively closed the case, and Catapult Capital has no adequate remedy on appeal. Catapult Capital's petition for a writ of mandamus is conditionally granted. The county court judge is directed to vacate her March 5, 2019 order abating the county court proceedings and administratively closing the county court case within thirty days of the date of this opinion. The writ of mandamus will issue only if the county court judge fails to comply with this Court's opinion and order.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CATAPULT REALTY CAPITAL, L.L.C., Appellant

No. 05-19-00109-CV V.

TOBIAN JOHNSON, Appellee

On Appeal from the 191st Judicial District Court, Dallas County, Texas
Trial Court Cause No. DC-18-12714.
Opinion delivered by Justice Osborne.
Justices Myers and Nowell participating.

In accordance with this Court's opinion of this date, the 191st Judicial District Court's January 3, 2019 "Temporary Restraining Order" is **VACATED** and the interlocutory appeal and appeal are **DISMISSED**.

It is **ORDERED** that appellant CATAPULT REALTY CAPITAL, L.L.C. recover its costs of this appeal from appellee TOBIAN JOHNSON.

Judgment entered February 20, 2020