

**AFFIRMED and Opinion Filed November 7, 2025**



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

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**No. 05-24-01265-CV**

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**FODAY S. FOFANAH AND HAWA FOFANAH, Appellants  
V.  
ROCKWALL RENTAL PROPERTIES, LP, Appellee**

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**On Appeal from the County Court  
Kaufman County, Texas  
Trial Court Cause No. 24C-173**

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**MEMORANDUM OPINION**

Before Justices Garcia, Breedlove, and Rossini  
Opinion by Justice Rossini

Foday Fofanah and Hawa Fofanah appeal a county court at law's grant of summary judgment against them in a post-foreclosure forcible detainer action brought by appellee Rockwall Rental Properties, LP (Rockwall Rental). In their sole issue, the Fofanahs contend the county court at law lacked jurisdiction to rule on Rockwall Rental's motion for summary judgment due to their pending trespass to try title action against Rockwall Rental in the Kaufman County District Court. Rockwall Rental's live petition and the record contain allegations and evidence that the Fofanahs agreed under their deed of trust to become tenants at sufferance and

that Rockwall Rental purchased the property at the foreclosure sale. We conclude, on the merits of the Fofanahs' only issue on appeal, that the county court at law had jurisdiction over the forcible-detainer action. Therefore, we affirm the judgment.

### **I. Background**

On January 14, 2020, the Fofanahs made, executed, and delivered a deed of trust to William C. Shaddock, Trustee for lender Rockwall Rental, to purchase property located on County Road 303 (the Property) in Terrell, Texas. The Fofanahs defaulted on their loan obligations by failing to make required payments, so Rockwall Rental appointed a substitute trustee to initiate nonjudicial foreclosure proceedings.

On May 7, 2024, Rockwall Rental was the high bidder at the foreclosure sale and acquired the Property through a substitute trustee's deed. The Fofanahs remained in possession and refused to vacate despite receiving notice to vacate.

Rockwall Rental then filed a forcible detainer action in the justice of the peace court seeking a writ of possession. The justice of the peace ruled in Rockwall Rental's favor; the Fofanahs appealed to the Kaufman County Court at Law.

In the county court at law, Rockwall Rental moved for summary judgment, seeking possession on the ground that there is no genuine issue as to the facts that (1) Rockwall Rental is the owner of the Property under the substitute trustee's deed and (2) the Fofanahs are tenants at sufferance.

The Fofanahs did not file a response to the motion for summary judgment, but they filed a plea to the jurisdiction asserting that they had filed a trespass to try title suit against Rockwall Rental in Kaufman County District Court. In their plea, the Fofanahs challenged the validity of the foreclosure and argued that “[u]ntil the District Court determines ownership of the property, Rockwall [Rental] cannot proceed with a forcible detainer action.”<sup>1</sup>

The county court at law granted Rockwall Rental’s motion for summary judgment but did not rule on the plea to the jurisdiction. The Fofanahs appealed the final judgment to this court.

## **II. Subject-Matter Jurisdiction in Forcible Detainer Actions**

In their sole issue, the Fofanahs argue that the county court at law lacked subject-matter jurisdiction to grant Rockwall Rental’s motion for summary judgment because immediate possession depends on resolution of a related title dispute filed in a different court. Therefore, the Fofanahs assert that the summary judgment is void.

Rockwall Rental argues that title and possession issues are not so inextricably intertwined that possession cannot be determined separately, and thus the trial court did not lack jurisdiction.

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<sup>1</sup> Rockwall Rental informs this court that the district court rendered final judgment in its favor during the pendency of this appeal. Because this fact is not in the record, we do not consider it.

## A. Applicable Law

A forcible detainer action determines the right to immediate possession of real property where there was no unlawful entry. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). It is intended to be a speedy, simple, and inexpensive means to obtain possession without resort to a title action. *Williams v. Bank of N.Y. Mellon*, 315 S.W.3d 925, 926–27 (Tex. App.—Dallas 2010, no pet.) (citing *Scott v. Hewitt*, 90 S.W.2d 816, 818–19 (Tex. 1936)). The only issue in a forcible-detainer action is which party has the right to immediate possession. *Rice*, 51 S.W.3d at 709. The merits of the title shall not be adjudicated in such an action. *Id.* at 709; see Tex. R. Civ. P. 510.3(e) (“The court must adjudicate the right to actual possession and not title. . . . A claim that is not asserted because of this rule can be brought in a separate suit in a court of proper jurisdiction.”). To prevail, a plaintiff need not prove title. *Rice*, 51 S.W.3d at 709. Rather, the plaintiff need only show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Id.*

Under Texas law, a substitute trustee’s deed, the deed of trust, and the notice to vacate are sufficient evidence of the foreclosure purchaser’s superior right to immediate possession in a forcible detainer action. *Williams*, 315 S.W.3d at 927. Any alleged defects in the foreclosure process or with the foreclosure purchaser’s title may not be considered in a forcible detainer action. *Rice*, 51 S.W.3d at 710; *Scott*, 90 S.W.2d at 818. Those defects may be pursued in suits for wrongful

foreclosure or to set aside the substitute trustee's deed, but they are not relevant in the forcible detainer action. *Rice*, 51 S.W.3d at 710; *Scott*, 90 S.W.2d at 818. The forcible detainer action allowed by law is not exclusive, but cumulative, of any other remedy that a party may have in the courts of this state. *Rice*, 51 S.W.3d at 710; *Scott*, 90 S.W.2d at 819.

Jurisdiction of forcible detainer actions is expressly given to the justice court of the precinct where the property is located and, on appeal, to county courts for a trial de novo. *See* Tex. Prop. Code § 24.004; *Rice*, 51 S.W.3d at 708. Justice courts have no jurisdiction to adjudicate title. Tex. Gov't Code § 27.031(b); *Rice*, 51 S.W.3d at 708. Nor does the county court on appeal. *Rice*, 51 S.W.3d at 708–09. Its jurisdiction is confined to the jurisdictional limits of the justice court. *Id.* at 708.

The mere existence of a title dispute, however, does not deprive the justice court and, on trial de novo, the county court of jurisdiction. *Id.* at 713. They can lose jurisdiction if “the right to immediate possession *necessarily requires the resolution of a title dispute.*” *Id.* But in most cases, the right to immediate possession can be determined separately from title. *Id.* at 710.

When the issues of title and possession are not so intertwined, the related title dispute may be prosecuted concurrently with the forcible-detainer action in district court. *Id.* at 709. This remains true “even if the other action adjudicates matters that could result in a different determination of possession from that rendered in the forcible-detainer suit.” *In re Am. Nat'l Invs., Corp.*, No. 05-17-00937-CV, 2017 WL

6503101, at \*2 (Tex. App.—Dallas Dec. 19, 2017, orig. proceeding) (mem. op.) (quoting *H.K. Dev., Inc. v. Nguyen*, 229 S.W.3d 415, 437 (Tex. App.—Houston [1st Dist.] 2007, no pet.)). Accordingly, it is well established that a forcible detainer action may be brought and prosecuted concurrently with a suit to try title in the district court. *See, e.g., Panagopoulos v. Catamount Props. 2018, LLC*, No. 05-23-01290-CV, 2025 WL 886969 (Tex. App.—Dallas Mar. 21, 2025, no pet.) (mem. op.) (citing *Rice*, 51 S.W.3d at 708). Jurisdiction is unaffected in this instance because “a judgment of possession in a forcible detainer action is a determination only of the right to *immediate possession* and does not determine the *ultimate* rights of the parties to *any* other issue in controversy relating to the realty in question.” *In re Am. Nat’l Invs., Corp.*, 2017 WL 6503101, at \*2 (quoting *Lopez v. Sulak*, 76 S.W.3d 597, 605 (Tex. App.—Corpus Christi 2002, no pet.)).

To defeat the justice court’s or county court’s jurisdiction, the defendant must provide specific evidence of a genuine title dispute that is intertwined with the issue of immediate possession. *Osuna v. Barazani*, No. 05-23-00075-CV, 2024 WL 885170, at \*2 (Tex. App.—Dallas Mar. 1, 2024, no pet.) (mem. op.). 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.

“Title and possession issues are not inextricably intertwined 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.”” *Osuna*, 2024 WL 885170, at \*2 (quoting *In re Catapult Realty Capital, L.L.C.*, No. 05-19-01056-CV, 2020 WL 831611, at \*8 (Tex. App.—Dallas Feb. 20, 2020, orig. proceeding and no pet.) (mem. op.) (combined orig. proceeding and appeal)). A tenant-at-sufferance clause in a deed of trust separates the issue of possession from the issue of title. *E.g.*, *Catapult Realty Capital*, 2020 WL 831611, at \*8.

## **B. Standard of Review**

Subject-matter jurisdiction is essential to the authority of a court to decide a case and is never presumed. *Tex. Ass’n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). Issues of subject-matter jurisdiction may be raised for the first time on appeal. *In re United Servs. Auto. Ass’n*, 307 S.W.3d 299, 306 (Tex. 2010) (orig. proceeding). Whether a court has subject-matter jurisdiction is a question of law reviewed de novo. *Tex. Dep’t of Parks & Wildlife v. Miranda*, 133 S.W.3d 217, 226 (Tex. 2004). This includes, in an appeal from a county court’s forcible-detainer judgment, whether the right to immediate possession is so intertwined with title that the county court lacked authority to proceed. *Henderson v. Altura Realty LLC*, No. 05-21-00860-CV, 2023 WL 3860428, at \*2 (Tex. App.—Dallas June 7, 2023, no pet.) (mem. op.).

When determining whether subject-matter jurisdiction exists in a forcible-detainer action, we focus first on the plaintiff’s petition to determine whether the

facts pleaded affirmatively demonstrate that jurisdiction exists. *Id.*; see *Alamo Heights Indep. Sch. Dist. v. Clark*, 544 S.W.3d 755, 770 (Tex. 2018). The general standard of review for subject-matter jurisdiction requires the pleader to allege facts that affirmatively demonstrate the court’s jurisdiction to hear the cause. *Tex. Ass’n of Bus.*, 852 S.W.2d at 446. We examine the pleadings, construing them in the pleader’s favor and taking as true the facts pleaded, and determine whether those facts support jurisdiction in the trial court. *Id.* If the pleadings affirmatively demonstrate the court’s jurisdiction, to defeat the trial court’s subject-matter jurisdiction “the defendant must provide specific evidence of a genuine title dispute that is intertwined with the issue of immediate possession.” *Id.*; *In re Catapult Realty Capital*, 2020 WL 831611, at \*8. We may consider evidence relevant to jurisdiction and must do so when necessary to resolve the jurisdictional issue. *Heckman v. Williamson County*, 369 S.W.3d 137, 150 (Tex. 2012).

### **C. Analysis**

The Fofanahs argue that the issue of title is inextricably intertwined with the issue of immediate possession, so the justice and county courts did not have jurisdiction. We disagree. Possession and title are not intertwined because the allegations in the petition and evidence in the record demonstrate that the Fofanahs are tenants at sufferance under the deed of trust. See *Catapult Realty Capital*, 2020 WL 831611, at \*8.

In its original justice-court petition, which is its live petition, Rockwall Rental alleges that it purchased the Property in a foreclosure sale. It further alleges that the Fofanahs and all occupants are tenants at sufferance and that it gave them notice to vacate but that they have not vacated. Rockwall Rental attached to the petition a copy of the substitute trustee's deed, which contains the following recitations:

- that the Fofanahs had conveyed the Property to a trustee to secure payment of a note from the Fofanahs to Rockwall Rental,
- that the Fofanahs defaulted on the note,
- that Rockwall Rental accelerated the indebtedness and appointed a substitute trustee, and
- that the substitute trustee posted and advertised the Property for sale and then auctioned and sold the Property to Rockwall Rental.

Taking all Rockwall Rental's pleaded factual allegations as true and construing them in Rockwall Rental's favor, as we must, we conclude that these facts support subject-matter jurisdiction. *See Henderson*, 2023 WL 3860428, at \*2; Tex. Prop. Code § 24.004. Thus, for the lower courts to have been deprived of jurisdiction, the Fofanahs must have provided "specific evidence of a genuine title dispute that is intertwined with the issue of immediate possession." *See Henderson*, 2023 WL 3860428, at \*2; *Catapult Realty*, 2020 WL 831611, at \*8. However, the Fofanahs have not denied their status as tenants at sufferance under the deed of trust, nor is there any evidence in the record raising a fact issue as to their status. Moreover, Rockwall Rental submitted as an exhibit in support of its motion for summary judgment a copy of the deed of trust from the Fofanahs to Rockwall Rental. The

deed of trust contains a clause stating that the Fofanahs would become tenants at sufferance if they failed to vacate after the sale of any part of the Property under the deed of trust. This clause separates the issue of possession from the issue of title. *See Catapult Realty Capital*, 2020 WL 831611, at \*8; *Smith*, 2015 WL 6777828, at \*2. And, to the extent that the Fofanahs might claim defects in the foreclosure process or with the Rockwall Rental’s title as the foreclosure purchaser, those issues are not relevant to the forcible detainer action. *See Scott*, 90 S.W.2d at 818; *Rice*, 51 S.W.3d at 710. In summary, the Fofanahs’ allegations fall short of “specific evidence of a genuine title dispute that is intertwined with the issue of immediate possession.” *See Henderson*, 2023 WL 3860428, at \*2; *Catapult Realty*, 2020 WL 831611, at \*8.

Accordingly, we conclude that the justice court and the county court at law had subject-matter jurisdiction over this forcible-detainer action.

### **III. Conclusion**

We overrule the Fofanahs’ sole issue on appeal and affirm the judgment.

/Gino J. Rossini/  
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GINO J. ROSSINI  
JUSTICE



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

**JUDGMENT**

FODAY S. FOFANAH AND  
HAWA FOFANAH, Appellants

No. 05-24-01265-CV      V.

ROCKWALL RENTAL  
PROPERTIES, LP, Appellee

On Appeal from the County Court,  
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Trial Court Cause No. 24C-173.  
Opinion delivered by Justice Rossini.  
Justices Garcia and Breedlove  
participating.

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

It is **ORDERED** that appellee ROCKWALL RENTAL PROPERTIES, LP recover its costs of this appeal from appellants FODAY S. FOFANAH AND HAWA FOFANAH.

Judgment entered this 7th day of November 2025.