AFFIRMED and Opinion Filed June 5, 2020

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-00127-CV

TERRY JOHNSON, Appellant
V.
MAI DINH, Appellee

On Appeal from the County Court at Law No. 5
Dallas County, Texas
Trial Court Cause No. CC-18-05233-E

MEMORANDUM OPINION

Before Justices Bridges, Molberg, and Carlyle
Opinion by Justice Bridges

The trial court awarded possession of property in this forcible entry and detainer action to appellee Mai Dinh. Appellant Terry Johnson raises three issues on appeal. He argues (1) Dinh failed to make a proper pre-suit demand for possession; (2) the trial court erred by granting judgment in Dinh's favor because she did not have standing to prosecute the claim; and (3) the trial court did not have jurisdiction because of a defect in title. We affirm.

Background

In April 2017, Dinh purchased the property located at 1014 Monclova Court in Dallas, Texas at a foreclosure sale. A substitute trustee's deed was filed with the county on April 11, 2017. As evidenced by the deed, Dinh acquired the property as a result of the foreclosure of the lien created by the deed of trust executed by Johnson. Following the foreclosure sale, Johnson did not vacate the property.

On July 24, 2018, Dinh's attorneys served Johnson with a notice to vacate. The notice indicated he owed $18,900 in rent and provided him with eleven days to vacate the property after receipt of the notice. The notice stated failure to vacate could result in filing a suit for possession of the property.

After Johnson failed to vacate the property, Dinh filed a complaint for forcible entry and detainer. Dinh was awarded the property, and Johnson appealed to the county court. After a brief trial in which Dinh testified, the county court granted judgment in Dinh's favor.

The trial court entered findings of fact and conclusions of law. The trial court concluded (1) there was no genuine title dispute and Dinh was the sole legal owner of the property; (2) the notice to vacate fully complied with the property code; (3) all conditions precedent had been performed; and (4) Dinh was entitled to possession of the property. The trial court subsequently signed a final judgment. Johnson filed a motion for new trial that was overruled by operation of law. This appeal followed.

Compliance with Pre-Suit Demand

In his first issue, Johnson argues Dinh failed to comply with property code section 24.002(b), which requires a proper pre-suit demand for possession. Dinh responds her pre-suit demand for possession was statutorily sufficient, and Johnson's arguments to the contrary are attempts to expand requirements that do not exist within the plain language of the statute. We agree.

Texas Property Code section 24.002(b) requires that "[t]he demand for possession must be made in writing by a person entitled to possession of the property and must comply with the requirements for notice to vacate under Section 24.005." TEX. PROP. CODE ANN. § 24.002(b). Section 24.005(b) requires the landlord, if the occupant is a tenant at will or by sufferance, to give the tenant three days' written notice to vacate before the landlord files a forcible detainer suit unless the parties agreed to a shorter term. *Id*. § 24.005(b).

Johnson contends the statute required Dinh, herself, to make the pre-suit demand and she failed to do this in her own capacity or through any authorized person. We interpret Johnson's arguments as challenging the sufficiency of the evidence supporting finding of fact no. 9 ("On July 23, 2018, Plaintiff served Defendant and All Occupants of the Subject Property a written Notice to Vacate . . . via certified mail return receipt requested and regular mail to demand that they vacate the Subject Property.") and conclusion of law no. 3 ("The Notice to Vacate fully complied with the Texas Property Code.").

A trial court's findings of fact in a bench trial carry the same weight as a jury's verdict, and we review the evidence supporting them under the same standards for determining if sufficient evidence supports a jury answer. *Sheetz v. Slaughter*, 503 S.W.3d 495, 502 (Tex. App.—Dallas 2016, no pet.). Findings of fact supported by the evidence are binding if the appellate record contains a reporter's record. *Id*.

In reviewing the legal sufficiency of the evidence to support a trial court's finding of fact, we view the evidence in the light most favorable to the finding, crediting favorable evidence if a reasonable factfinder could and disregarding contrary evidence unless a reasonable factfinder could not. *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005). We must assume the trial court made all reasonable inferences in favor of its findings. *Ford Motor Co. v. Castillo*, 444 S.W.3d 616, 621 (Tex. 2014). In a factual sufficiency review, we examine all the evidence in the record, both supporting and contrary to the trial court's finding and reverse only if the evidence supporting the finding is so weak or the finding is so against the great weight of the evidence as to be clearly wrong and unjust. *Ortiz v. Jones*, 917 S.W.2d 770, 772 (Tex. 1996) (per curiam).

In a bench trial, the trial court, as factfinder, is the sole judge of witness credibility and the weight to be given testimony. *Sheetz*, 503 S.W.3d at 502. We may not substitute our judgment for that of the factfinder if the evidence falls "within the zone of reasonable disagreement." *See City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005); *Sheetz*, 503 S.W.3d at 502.

We review the trial court's conclusions of law de novo and will affirm if the trial court correctly drew the legal conclusions from the facts. *See BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002); *Sheetz*, 503 S.W.3d at 502. We will reverse the trial court's judgment only if the conclusions of law are erroneous as a matter of law. *Sharifi v. Steen Auto, L.L.C.*, 370 S.W.3d 126, 149 (Tex. App.—Dallas 2012, no pet.). We must uphold conclusions of law if "any legal theory supported by the evidence sustains the judgment." *Id*.

Johnson has not cited to any authority indicating that a demand letter sent by a landlord's attorney does not meet the statutory requirements of sections 24.002 and 24.005. To the contrary, attorneys routinely represent clients and send such letters on their behalf. At trial, Dinh testified she retained the Manning & Meyers law firm to send Johnson a notice to vacate. The law firm's July 23, 2018 notice to vacate "Re: 1014 Monclova Dallas, Texas 75217" was admitted into evidence. Johnson did not testify at trial or bring forth any contradictory evidence.

Moreover, to the extent he claims the letter is insufficient because it did not reference Dinh, section 24.005 does not impose any strict requirements regarding the language of the written demand, other than the three-day written notice requirement before filing a forcible entry and detainer suit if the occupant is a tenant at will or by sufferance. TEX. PROP. CODE ANN. § 24.005(b). The notice to vacate complied with these requirements. Accordingly, we conclude the evidence is both legally and factually sufficient to support the finding of fact and conclusion of law

in support of the trial court's judgment. *See, e.g., Serv. Corp. Int'l v. Guerra*, 348 S.W.3d 221, 228 (Tex. 2011) ("When direct evidence of a vital fact exists, a legal sufficiency challenge fails."); *Ortiz*, 917 S.W.2d at 772 (reversing for factual sufficiency only if the evidence supporting the finding is so weak or the finding is so against the great weight of the evidence as to be clearly wrong and unjust). We overrule Johnson's first issue.

Standing to Prosecute Claim

In his second issue, Johnson argues the trial court erred in rendering a final judgment because Dinh's forcible entry and detainer pleading was invalid for lack of standing to prosecute. In support of this argument, Johnson relies on an alleged (1) statutory non-compliant demand for possession, and (2) a lack of clear title that required resolution before a forcible entry and detainer action could proceed.

As explained above, Dinh complied with the property code's statutory notice requirements for possession. Johnson's remaining challenge to a title defect is without merit. A forcible detainer action is a procedure to determine the right to immediate possession of real property where there was no unlawful entry. *Williams v. Bank of New York Mellon*, 315 S.W.3d 925, 926 (Tex. App.—Dallas 2010, no pet.). It is intended to be a speedy, simple, and inexpensive means to obtain possession without resort to an action on the title. *Id*. at 926–27. To maintain simplicity, "the only issue shall be as to the right to actual possession; and the merits of the title shall not be adjudicated." *Id*. at 927.

An exception exists when a question of title is so intertwined with the question of possession that the court cannot determine which party is entitled to possession without first resolving the question of title. *See, e.g., Mohammed v. D. 1050 W. Rankin, Inc.*, 464 S.W.3d 737, 740 (Tex. App.—Houston [1st Dist.] 2014, no pet.).

To the extent Johnson contends there is a title defect that must first be resolved as evidenced by documents referred to in his motion for new trial, such documents are neither attached as exhibits to a verified motion for new trial nor appear anywhere else in the record. Instead, the documents are simply referred to in an unverified motion for new trial. *See In re T.L.T.*, No. 05-16-01367-CV, 2018 WL 1407098, at *4 (Tex. App.—Dallas Mar. 21, 2018, no pet.) (mem. op.) ("In order to introduce evidence outside the record, a motion for new trial must be verified.). We cannot consider such alleged evidence. As such, Johnson has not presented a title defect so intertwined that it required resolution prior to a forcible entry and detainer action.

Instead, Dinh needed only to present sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Lenz v. Bank of Am., N.A.*, 510 S.W.3d 667, 671 (Tex. App.—San Antonio 2016, pet. denied). Pursuant to section 24.002, a plaintiff must show (1) it owned the property by virtue of a substitute trustee deed after the foreclosure sale; (2) the defendant became a tenant at sufferance when the property was sold under the deed of trust; (3) the plaintiff gave proper notice to the defendant requiring him to vacate the premises; and (4) the

defendant refused to vacate the premises. *Id*. As discussed above, Dinh gave proper notice to vacate thereby satisfying the third element, and the trial court found that Dinh put forth sufficient evidence of the remaining elements. Johnson has not challenged those remaining findings on appeal. Any unchallenged findings of fact that support the judgment will preclude reversal of the case. *Zagorski v. Zagorski*, 116 S.W.3d 309, 319 (Tex. App.—Houston [14th Dist.] 2003, pet. denied). As a result, we conclude the trial court's findings support the conclusions of law that Dinh is entitled to possession of the property.

Accordingly, Johnson's second issue is overruled.

Statute of Limitations

Finally, Johnson argues in his last issue that the trial court erred in granting judgment for possession because there was an apparent defect of title based on the statute of limitations. *See* TEX. CIV. PRAC. & REM. CODE ANN. § 16.035(b) (sale of real property under a power of sale in a mortgage or deed of trust that creates a real property lien must be made not later than four years after the day the cause of action accrues). As explained above, title is not determined in a forcible entry and detainer suit but should be brought as a separate suit. S*ee Williams*, 315 S.W.3d at 926. Moreover, limitations is an affirmative defense that is waived if not pleaded. *See Hollingsworth v. Hollingsworth*, 274 S.W.3d 811, 814–15 (Tex. App.—Dallas 2008, no pet.). Even if Johnson could raise his defect in title argument in a forcible entry and detainer action, which he cannot, nothing in the record indicates he pleaded a

statute of limitations defense. *See Woods v. William M. Mercer, Inc.*, 769 S.W.2d 515, 517 (Tex. 1988) ("The defendant thus bears the initial burden to plead, prove, and secure findings to sustain its plea of limitations."). Accordingly, we overrule Johnson's third issue.

Conclusion

The judgment of the trial court is affirmed.

/David L. Bridges/
DAVID L. BRIDGES
JUSTICE

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JUDGMENT

TERRY JOHNSON, Appellant		On Appeal from the County Court at Law No. 5, Dallas County, Texas
No. 05-19-00127-CV	V.	Trial Court Cause No. CC-18-05233-E.
MAI DINH, Appellee		Opinion delivered by Justice Bridges. Justices Molberg and Carlyle participating.

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

It is **ORDERED** that appellee MAI DINH recover her costs of this appeal from appellant TERRY JOHNSON.

Judgment entered June 5, 2020.