AFFIRMED and Opinion Filed June 22, 2021

In The
Court of Appeals
Fifth District of Texas at Dallas

No. 05-19-01213-CV

CHRISTOPHER WREH, Appellant
V.
ALEX GIANOTOS, BOSTEN GOLDSCHMIED, & BG INCORPORATED, Appellees

On Appeal from the County Court at Law No. 4
Dallas County, Texas
Trial Court Cause No. CC-19-05068-D

MEMORANDUM OPINION

Before Justices Partida-Kipness, Pedersen, III, and Goldstein
Opinion by Justice Goldstein

In this forcible-detainer action, pro se appellant Christopher Wreh appeals the trial court's judgment awarding possession of property to appellees. In two issues, Wreh asserts: (1) that the trial court lacked jurisdiction over this case because the party who signed the petition for eviction against him was neither the plaintiff nor the plaintiff's lawyer and therefore had no standing; and (2) that the trial court abused its discretion in failing to abate this case on the ground that a federal district court had dominant jurisdiction. We affirm the trial court's judgment. Because all issues are settled in law, we issue this memorandum opinion. TEX. R. APP. P. 47.4.

I. BACKGROUND

In 2004, Wreh purchased residential real property located in Richardson, Texas (the "Property"). Incident to that purchase, Wreh executed a deed of trust, which secured a note on the Property. The deed of trust named Ameriquest Mortgage Company ("Ameriquest") as the lender and trustee. Subsequently, Ameriquest sold the loan to Wells Fargo Bank, N.A., as Trustee for Park Place Securities, Inc. Asset-Backed Pass-Through Certificates, Series 2004-MCW1, Class A-1 Certificates ("Wells Fargo"). In 2017, Wells Fargo filed an application for judicial foreclosure, which was granted by the 162nd Judicial District Court of Dallas County on January 26, 2018. At the foreclosure sale, which took place nearly one year later on January 2, 2019, Wells Fargo purchased the Property and received a deed of trust.[1]

On May 21, 2019, Wells Fargo sold the Property, evidenced by a Special Warranty Deed with Vendor's Lien, to appellee BG Inc., which is owned by appellees Gianotas and Goldschmied. Appellees then retained Texas Eviction, LLC, to effectuate Wreh's eviction from the Property. On June 4, 2019, Texas Eviction sent a "30 Day Notice to Vacate" to Wreh that reflected it was being "submitted on

[1] According to Wreh, following the foreclosure, Wells Fargo filed an eviction action against him in justice court, and he filed a separate suit for wrongful foreclosure in district court against Wells Fargo. Wreh testified at trial in this case that he had a pending motion for temporary restraining order (seeking to enjoin Wells Fargo's eviction action) set for hearing on May 30, 2019. However, Wreh testified, in the days leading up to that hearing, Wells Fargo sold the property, nonsuited the eviction case, and removed his wrongful foreclosure case to federal court. The appellate record before us does not contain any records of, or cause number reference identifying, Wells Fargo's eviction suit or Wreh's wrongful foreclosure suit.

behalf of the Landlord, Alex Gianotas, Bosten Goldschmied & Bgincorporatedtx, by Texas Eviction."

On July 8, 2019, Texas Eviction filed a "Petition for Eviction" on behalf of appellees in Dallas County Justice Court Precinct 3, Place 1, styled *Alex Gianotos, Bosten Goldschmied & Bgincorporatedtx v. Christoher Wreh & all other occupants,* alleging Wreh and appellees had established a landlord-tenant relationship by "occupancy after foreclosure sale." (JP Eviction suit). In the JP Eviction suit, appellees were "Plaintiff(s)/Landlord(s)" and Wreh was "Defendant/Tenant." It further alleged that the eviction notice was delivered to Wreh on June 6, 2019, and that by failing to surrender the property by July 5, 2019, Wreh was committing a forcible detainer. The petition sought relief in the form of a writ of possession. At the bottom of the petition is a blank line labeled, "*Printed Name of Petitioner*." The blank is filled with: "Cheryl Guest / Texas Eviction, LLC / Agent." To the right of that blank line is a signature line, below which are the words: "*Landlord, Landlord's authorized Agent, or Landlord's Attorney*." That line bears the handwritten signature of Cheryl Guest, who is identified again as "agent."

On July 30, 2019, after a trial, the justice court entered a judgment of possession in favor of appellees. Wreh then filed a de novo appeal to the County Court at Law No. 4 of Dallas County (hereinafter trial court), which scheduled trial for September 26, 2019. On the morning of trial, Wreh filed a "Motion for Abatement With Incorporated Memorandum of Law," in which he argued that the

federal court in which his wrongful foreclosure action was pending had dominant jurisdiction. In the midst of trial, Wreh urged his motion and requested that the trial court abate the case until resolution of the wrongful foreclosure action. The trial court orally denied the motion. At the conclusion of trial, the trial court entered a judgment of possession in favor of appellees.[2] This appeal followed.

II. DISCUSSION

Wreh raises two issues on appeal. First, he challenges the county court's jurisdiction over the case on the grounds that the person who signed the petition in the JP eviction suit, Cheryl Guest of Texas Eviction, was not appellees' authorized agent and had no standing to sue. Second, he contends that even if the trial court had jurisdiction, it abused its discretion in failing to abate this case until the resolution of the wrongful-foreclosure action against Wells Fargo.

A. Standard of Review

We review de novo a challenge to a trial court's subject matter jurisdiction. *See Willms v. Am. Tire Co., Inc.*, 190 S.W.3d 796, 808 (Tex. App.—Dallas 2006, pet. denied); *Reagan v. NPOT Partners I, L.P.*, No. 06–08–00071–CV, 2009 WL 763565, at *2 (Tex. App.—Texarkana Mar. 25, 2009, pet. denied) (mem. op.) (citing *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 928 (Tex. 1998)). Because standing

[2] As originally entered, the county court's judgment erroneously stated that it was signed on September 26, 2016. Noting the error, we directed Wreh to obtain from the county court a judgment nunc pro tunc with the error corrected. On January 24, 2020, the county court entered a "Nunc Pro Tunc Order Correcting Error," stating in part: "The *Judgment of Possession* is corrected as follows: by striking the year '2016' and by inserting in lieu thereof the year '2019.'" Henceforth, the Judgment of Possession, as modified by the nunc pro tunc order, will be referred to as the judgment.

is a component of subject matter jurisdiction, we review issues of standing de novo. *See Njuku v. Middleton*, 20 S.W.3d 176, 177 (Tex. App.—Dallas 2000, pet. denied).

We review a trial court's denial of a plea in abatement for an abuse of discretion. *See Lagow v. Hamon*, 384 S.W.3d 411, 415 (Tex. App.—Dallas 2012, no pet.) (citing *Wyatt v. Shaw Plumbing Co.*, 760 S.W.2d 245, 248 (Tex. 1988)). A trial court abuses its discretion when it acts in an unreasonable and arbitrary manner or without reference to any guiding rules or principles. *Id.* at 415. Further, an error in analyzing or applying the law is an abuse of discretion. *See Randle v. Deutsche Bank Nat'l Tr. Co.*, No. 05-14-01439-CV, 2016 WL 308711, at *3 (Tex. App.—Dallas Jan. 26, 2016, no pet.) (mem. op.).

B. Non-Party Agents' Authority to Sign Pleadings in Eviction Cases

1. Applicable Law

Eviction cases are governed by Chapter 24 of the Texas Property Code and Rules 500-507 and 510 of the Rules of Civil Procedure. *See* TEX. PROP. CODE ANN. §§ 24.001 *et seq.*; TEX. R. CIV. P. 500.3(d). Pursuant to Rule 500.4, a corporate plaintiff in an eviction case "may be represented by a property manager or other authorized agent." TEX. R. CIV. P. 500.4(b).

Under Rule 510.3, the petition for eviction must, among other things, be sworn to by the plaintiff. *See* TEX. R. CIV. P. 510.3(a). This requirement is not jurisdictional. *See Rosas v. Chih Ting Wang*, No. 05-18-01013-CV, 2019 WL 3986301, at *5 (Tex. App.—Dallas Aug. 23, 2019, no pet.) (mem. op.) ("[A] verification under Rule

510.3(a) is not jurisdictional"). Thus, failure to strictly comply with Rule 510.3 does not deprive the trial court of jurisdiction to hear the forcible detainer action. *See Johnson v. CitiMortgage, Inc.*, No. 05-16-00931-CV, 2017 WL 2871453, at *3 (Tex. App.—Dallas July 5, 2017, no pet.) (mem. op.) ("[A] verification signed by the bank's attorney, even if defective, does not deprive a county court of jurisdiction to hear a forcible detainer action."); *Randle*, 2016 WL 308711, at *6 ("[W]e conclude the petition in this case was not, as alleged by Randle, 'defective due to its failure to be sworn to by the plaintiff in conformity with TRCP 510.3(a).'").

2. Application of Law to Facts

In his first issue, Wreh complains that the county court lacked jurisdiction to hear appellees' eviction suit. He contends that neither Cheryl Guest nor Texas Eviction was an authorized agent of appellees and, therefore, could not sign the petition on their behalf. Wreh also challenges the trial court's jurisdiction on grounds that Texas Eviction and Guest did not have independent standing to bring suit.

To preserve an error for our review, the complaining party must present us with a record showing that the complaint was made to the trial court by a timely request, objection, or motion, and that the trial court either ruled on it or refused to rule and the complaining party objected to the refusal. *See* TEX. R. APP. P. 33.1(a). "If a party fails to do this, error is not preserved, and the complaint is waived." *Brown v. Kula-Amos, Inc.*, No. 2-04-032-CV, 2005 WL 675563, at *4 (Tex. App.—Fort Worth Mar. 24, 2005, no pet.) (mem. op.). Ordinary waiver rules do not apply,

however, to subject matter jurisdiction. "Subject matter jurisdiction is essential to the authority of a court to decide a case." *Tex. Ass'n of Bus. v. Tex. Air Control Bd.*, 852 S.W.2d 440, 443–44 (Tex. 1993). Accordingly, subject matter jurisdiction may be raised for the first time on appeal. *See id.* at 443–44 ("Subject matter jurisdiction is never presumed and cannot be waived."). The issue of standing is "implicit in the concept of subject matter jurisdiction." *Id.* A plaintiff's lack of standing deprives a court of subject matter jurisdiction and thus may be raised for the first time on appeal. *See id.* at 444–45.

Wreh cites no authority for the proposition that the failure to provide evidence of an agency relationship between the plaintiff and its authorized agent in a Petition for Eviction raises a jurisdictional issue, and we have found none. To the contrary, we have held that a complaint related to the verification of a petition for eviction raises a pleading defect that does not deprive the trial court of jurisdiction. *See Randle*, 2016 WL 308711, at *6; *Shutter v. Wells Fargo Bank, N.A.*, 318 S.W.3d 467, 469 (Tex. App.—Dallas 2010, pet. dism'd w.o.j.) (mem. op.) (overruling jurisdictional challenge based on pleading defect in forcible detainer action under former Rule 739, the predecessor to Rule 510.3). The only cases Wreh cites in support of his argument are *TCOE, Inc. v. SA Quad Ventures, LLC*, and *Norvelle v. PNC Mortgage*. Both *TCOE* and *Norvelle* align with our precedent that defects in the verification of a petition for eviction are not jurisdictional. *See TCOE, Inc. v. SA Quad Ventures, LLC*, No. 04-18-00266-CV, 2019 WL 2605635, at *2 (Tex. App.—

San Antonio June 26, 2019, no pet.) (mem. op.) ("[T]his court has recognized that a defective verification does not deprive a court of jurisdiction in a forcible detainer action."); *Norvelle v. PNC Mortgage*, 472 S.W.3d 444, 446 (Tex. App.—Fort Worth 2015, no pet.) ("This court has already held that a defective verification does not deprive a county court of jurisdiction to hear a forcible detainer action."). The following excerpt of the *TCOE* court's analysis is particularly instructive:

> [C]ourts should be "reluctant to conclude that a provision is jurisdictional, absent clear legislative intent to that effect." *City of DeSoto v. White*, 288 S.W.3d 389, 393 (Tex. 2009). This is because deeming a provision jurisdictional "opens the way to making judgments vulnerable to delayed attack." *Id.* Nothing in the plain language of Rule 510.3 demonstrates that the petition requirement is jurisdictional. *See Crosstex Energy Servs., L.P. v. Pro Plus, Inc.*, 430 S.W.3d 384, 391–92 (Tex. 2014) (reviewing statute's plain meaning to determine whether requirement is jurisdictional). Although the rule provides a petition must be sworn, "mandatory statutory duties are not necessarily jurisdictional." *Id.* at 391. Also, because the purpose of the rule is to maintain "a just, fair, equitable and impartial adjudication of the rights of the litigants ... at the least expense," deeming the provision to be jurisdictional defeats the rule's purpose. TEX. R. CIV. P. 1; *see Crosstex Energy*, 430 S.W.3d at 392 (considering purpose of statute when determining whether provision is jurisdictional).

TCOE, Inc., 2019 WL 2605635, at *2. Because the defect in appellees' petition was not jurisdictional, Wreh was required to preserve the issue by raising it in the trial court. *See Gutierrez v. Wright Lawfirm, PLLC*, No. 05-10-00725-CV, 2012 WL 1898950, at *2 (Tex. App.—Dallas Apr. 27, 2012, no pet.) (mem. op.) (rejecting appellant's argument that lack of capacity raises an issue of standing and can therefore be raised for the first time on appeal).

We find no evidence that Wreh preserved his first issue for appeal. After the county court entered judgment, Wreh filed a "Motion for New Trail [*sic*] and to Vacate Judgment of Possession," arguing in part that the county court wrongly ignored his motion to dismiss based on lack of jurisdiction. In the new trial motion, Wreh stated that he "expected that the [county] court would get the full record from the Justice (JP) Court . . . and consider the Motion to Dismiss Filed in the Justice court [*sic*]." Wreh's expectation was misguided. Although the justice court was required to send its record to the county court,[3] nothing in the rules required the county court to review the record and reconsider every ruling the justice court made. It was incumbent on Wreh to obtain a ruling on the motion to dismiss in order to preserve the issue for our review. *See* TEX. R. APP. P. 33.1(a); *Brown*, 2005 WL 675563, at *4. Wreh did not request a hearing on his motion to dismiss,[4] and he did not raise it during trial. The first time he raised this issue in the trial court was in his motion for new trial, and even then, he did not obtain a hearing on the new trial motion. *Cf. Godoy v. Wells Fargo Bank, N.A.*, 575 S.W.3d 531, 537 (Tex. 2019)

[3] Ordinarily, when a party appeals a justice court's ruling to the county court, the justice court must forward to the county court "a certified copy of all docket entries, a certified copy of the bill of costs, and the original papers in the case." TEX. R. CIV. P. 506.2. We cannot determine on this record whether Rule 506.2 was complied with, because we have only a partial record of the justice court proceedings. Importantly, the record includes no written version of Wreh's motion to dismiss. For the purpose of this appeal, we will assume the justice court complied with Rule 506.2.

[4] On several occasions, we have held that a party who fails to secure a hearing on a motion waives the issues raised therein for appeal. *See 5 Star Diamond, LLC v. Singh*, 369 S.W.3d 572, 580 (Tex. App.—Dallas 2012, no pet.) (motion for continuance); *Cooper v. Cochran*, 288 S.W.3d 522, 531 (Tex. App.—Dallas 2009, no pet.) (special exceptions); *Martin v. Estates of Russell Creek Homeowners Ass'n, Inc.*, 251 S.W.3d 899, 903 (Tex. App.—Dallas 2008, no pet.) (objections to summary judgment orders); *Jackson v. Crawford*, 727 S.W.2d 628, 631 (Tex. App.—Dallas 1987, no writ) (objections to special master).

(holding that pleading defects could not be raised for the first time in a motion for new trial); *Shamrock Roofing Supply, Inc. v. Mercantile Nat. Bank at Dallas*, 703 S.W.2d 356, 357 (Tex. App.—Dallas 1985, no writ) (holding that issues raised in motion for new trial are waived unless the movant secures a hearing on the motion). Accordingly, we hold that Wreh failed to preserve his first issue for appeal.

Even assuming Wreh had preserved this issue for appeal, we would find no error in the trial court's judgment. Rule 510.3 requires that a petition for eviction be sworn by the plaintiff. *See* TEX. R. CIV. P. 510.3(a). Corporate plaintiffs "cannot literally appear in the flesh and sign anything," but rather must be represented by agents. *Norvelle*, 472 S.W.3d at 448 (petition for eviction was not defective despite being sworn to by the plaintiff's attorney and not the plaintiff itself). Rule 510.3 does not conflict with any other provision in the Rules, including Rule 500.4, which authorizes parties to be represented by their non-attorney agents. *See id.* at 447. In *Norvelle*, the court concluded that because the plaintiff's counsel acted as the plaintiff's "corporeal agent for purposes of instituting the action, this was sufficient to meet rule 510.3(a)'s requirements." *Id.* at 449.

In *Randle*, we adopted the *Norvelle* court's reasoning on substantially similar facts. *See Randle*, 2016 WL 308711, at *6. There, Randle's home was purchased by Deutsche Bank at a foreclosure sale. *See id.* at *1. The bank sued for eviction and Randle moved to dismiss, in part on the grounds that the bank did not sign the petition and therefore had no "standing." *See id.* at *2–3. The trial court entered

judgment of possession in the bank's favor, and we affirmed. Citing *Norvelle*, we concluded that the petition "was not, as alleged by Randle, 'defective due to its failure to be sworn to by the plaintiff in conformity with TRCP 510.3(a)." *Id.* at *6.

Although *Norvelle* and *Randle* involved petitions signed by the plaintiffs' attorneys, we see no reason to depart from their holdings where, as here, the authorized agent is not an attorney. *See* TEX. R. CIV. P. 500.4(b). In his brief, Wreh acknowledges that "[t]he law permits an 'authorized agent' to serve the notice to vacate and to verify the complaint" but contends his issue is not related to a defective verification, but rather "concerns a petition signed and verified by a third party with absolutely no standing whatsoever." We disagree. The petition identifies appellees as "*Plaintiff(s)/Landlord(s)*," and Texas Eviction, LLC, through Cheryl Guest, as agent, seeks Wreh's removal from the Property on their behalf. Guest identified herself as "petitioner," not "plaintiff," and signed the petition on a line requiring the signature of "*Landlord, Landlord's authorized Agent, or Landlord's Attorney*." Next to her signature, Guest wrote "agent." On these facts, we decline to hold that Guest and Texas Eviction were not authorized agents.[5] *See Holloway v. Paul O. Simms Co.*, 32 S.W.2d 672, 673 (Tex. Civ. App.—Austin 1930, no writ) ("[W]here an agent

[5] We also reject Wreh's arguments that an agency relationship can only be established through a power of attorney and that one agent cannot represent multiple principals. *Cf. Cmty. Health Sys. Prof'l Services Corp. v. Hansen*, 525 S.W.3d 671, 697 (Tex. 2017) (explaining that an agency relationship can be formed by written or oral agreement or simply by the parties' conduct); *Grant Thornton LLP v. Prospect High Income Fund*, 314 S.W.3d 913, 924 & n. 18 (Tex. 2010) (explaining that an agent can represent more than one principal at a time).

makes an affidavit under procedural statutes like the forcible detainer statutes, which do not require the agent to swear to his agency, the affidavit is sufficient if it reasonably appears therefrom that affiant is agent, and especially is this the rule where no attack is made upon the authority of the agent.").

We conclude that Wreh's first issue is not jurisdictional and he was therefore required to preserve error, which he failed to do. Even if error were preserved, the record demonstrates that Guest and Texas Eviction were appellees' agents. As agents, Guest and Texas Eviction were entitled to sign the petition for eviction on Appellees' behalf.

We overrule Wreh's first issue.

C. Jurisdiction and the Motion to Abate

1. Applicable Law

Chapter 24 of the Texas Property Code governs eviction cases, which include forcible detainer and forcible entry and detainer actions. TEX. PROP. CODE ANN. § 24.004(a). Under Chapter 24, justice courts have exclusive jurisdiction to hear eviction cases. *See Norvelle*, 472 S.W.3d at 446 (citing TEX. CONST. art. V, § 19 (exclusive jurisdiction of justice courts includes such jurisdiction "as may be provided by law"); TEX. PROPERTY CODE ANN. § 24.004 (providing that justice courts have jurisdiction over eviction suits)). County courts at law have appellate jurisdiction over eviction actions, but their appellate jurisdiction is confined to the jurisdictional limits of the justice court. *See Brooks v. Wells Fargo Bank, N.A.*, No.

05-16-00616-CV, 2017 WL 3887296, at *4 (Tex. App.—Dallas Sept. 6, 2017, no pet.) (mem. op.) (citing *Ward v. Malone*, 115 S.W.3d 267, 269 (Tex. App.—Corpus Christi 2003, pet. denied)). Thus, a county court has no jurisdiction over the appeal unless the justice court had jurisdiction. *See id.*

The sole issue in a forcible-detainer action is who has the right to actual possession of the property. *Marshall v. Hous. Auth. of San Antonio*, 198 S.W.3d 782, 785–86 (Tex. 2006). To prevail in a forcible detainer action, a plaintiff is not required to prove title, but is only required to show sufficient evidence of ownership to demonstrate a superior right to immediate possession. *Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). Thus, an eviction action may be brought and prosecuted concurrently with suits to try title in district court. *Id.*; *see also* TEX. PROP. CODE ANN. § 24.008 (providing that an eviction suit does not bar a separate suit for trespass, damages, waste, rent, or mense profits). However, where the right to immediate possession necessarily requires resolution of a title dispute, the justice court has no jurisdiction to enter a judgment and may be enjoined from doing so. *Rice*, 51 S.W.3d at 709; *see also Meridien Hotels, Inc. v. LHO Fin. P'ship I, L.P.*, 97 S.W.3d 731, 738 (Tex. App.—Dallas 2003, no pet.) ("Justice courts have no jurisdiction to determine title, and if the issue of possession necessarily requires the determination of a title dispute, then the justice court lacks jurisdiction to decide the forcible entry and detainer until the title issue has been resolved.").

To defeat the justice 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. *Hawkins v. Jenkins*, No. 05-18-01017-CV, 2019 WL 4051830, at *2 (Tex. App.—Dallas Aug. 28, 2019, no pet.) (mem. op.) (quoting *Yarto v. Gilliland*, 287 S.W.3d 83, 93 (Tex. App.—Corpus Christi 2009, no pet.)). Specific evidence of a title dispute exists if a party asserts a basis for title ownership that is not patently ineffective under the law. *Id.* When a defendant presents sufficient evidence to raise a genuine title issue, the trial court must determine whether possession can be determined without resort to title. *See id.* If the possession issue is inextricably intertwined with the title issue pending in a parallel action, the court cannot abate the case but rather must dismiss it for want of jurisdiction. *See Hayes v. Johnson*, No. 05-17-01116-CV, 2019 WL 2266390, at *3 (Tex. App.—Dallas May 28, 2019, no pet.) (mem. op.) (vacating a judgment of possession and dismissing the case for want of jurisdiction where title and possession issues were inextricably intertwined); *see also State v. BFI Waste Servs. of Tex., LP*, No. 03-10-00504-CV, 2011 WL 1086585, at *1 (Tex. App.—Austin Mar. 23, 2011, pet. denied) (mem. op.) ("[W]ithout jurisdiction, a trial court generally may not abate claims or take any other action as to those claims, other than dismissal.") (citing *In re John G. & Marie Stella Kenedy Mem'l Found.*, 315 S.W.3d 519, 522 (Tex. 2010); *Thomas v. Long*, 207 S.W.3d 334, 338 (Tex. 2006); *State v. Morales*, 869 S.W.2d 941, 949 (Tex. 1994)). If the possession and title issues are *not* so intertwined, then the justice

court cannot abate the case but rather must proceed to judgment on the possession issue. *See Gober v. Bulkley Props., LLC*, No. 06-18-00031-CV, 2019 WL 321326, at *4 (Tex. App.—Texarkana Jan. 25, 2019, pet. denied) (mem. op.) ("Where a decision on the right to possession does not depend on resolution of a title dispute, a justice court's action to abate the possession case until the title case is finalized abuses the justice court's discretion.") (citing *Meridien Hotels*, 97 S.W.3d at 737–38).

2. Application of Law to Facts

Wreh contends that the trial court abused its discretion in failing to abate the underlying proceedings because his first-filed suit for wrongful foreclosure must be resolved first.[6] Appellees contend that the county court did not err in denying Wreh's motion, because the deed of trust in this case contains a clause creating a landlord-tenant relationship. As such, appellees argue, their eviction action can be resolved independently from the wrongful foreclosure action.

As an initial matter, the record reflects that Wreh did not present the trial court with sufficient evidence to raise a genuine title dispute. Wreh did not verify his

[6] Although Wreh couches this issue in terms of dominant jurisdiction, we hold that doctrine does not apply here. The issue of dominant jurisdiction arises when lawsuits involving the same dispute are filed in separate courts with concurrent jurisdiction. *See In re Puig*, 351 S.W.3d 301, 305 (Tex. 2011). Generally, the court in which the lawsuit was first filed acquires jurisdiction to the exclusion of all other courts. *See id.* In forcible detainer actions, however, a justice court has *exclusive* jurisdiction to determine a possession issue and *no* jurisdiction to determine a title issue. *Norvelle*, 472 S.W.3d at 446; *Rice*, 51 S.W.3d at 709. Therefore, a justice court deciding a possession issue does not have concurrent jurisdiction with a district court deciding a title issue, even if the two issues relate to the same property and the same dispute. Because Wreh asserts that this case is "inherently interrelated" to his wrongful foreclosure action, which he argues must be resolved first, we construe his complaint as challenging the justice and county courts' jurisdiction.

motion to abate, attach any evidence to it, or introduce any evidence when he presented the motion to the trial court. Other than the judgment of foreclosure entered by the 162nd District Court, we do not have before us any records from Wells Fargo's judicial-foreclosure action, Wells Fargo's eviction action, or Wreh's wrongful-foreclosure action.[7] Nor do we have before us any other "specific evidence of a title dispute." *See Hawkins*, 2019 WL 4051830, at *2. We cannot determine, based on the record before us, whether Wreh's wrongful foreclosure action in federal court raises a genuine issue of title. This lack of evidence is fatal to Wreh's second issue. *See id.*; *see also Chowdhury v. Kingdom Grp. Invs.*, No. 05-18-00716-CV, 2019 WL 1856683, at *2 (Tex. App.—Dallas Apr. 25, 2019, pet. denied) (mem. op.) ("The record contains no evidence of the TRO or any other evidence regarding the district court action. Chowdhury's brief claims the county court had specific evidence of the district court action, but cites only his motion to dismiss, plea to abate, and plea to the jurisdiction, which is not evidence to support his assertions that the county court lacked jurisdiction. . . . Accordingly, we must conclude the county court retained jurisdiction to consider the right to immediate possession of the Property.").

[7] In the trial court, Wreh stated that he "ha[s] copies of" Wells Fargo's federal court filings and that "they are also on the court website." To the extent Wreh intended to rely on these documents to advance his claim that there is a genuine title issue, we hold that the federal court records were not properly before the trial court. *See In re A.R.*, 236 S.W.3d 460, 477 (Tex. App.—Dallas 2007, no pet.) (explaining that a trial court cannot take judicial notice of another court's records unless it is presented with those records).

Assuming that Wreh had presented sufficient evidence to raise a genuine title issue, we conclude that the trial court had jurisdiction to decide the possession issue. 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." *In re Catapult Realty Capital, L.L.C.*, No. 05-19-00109-CV, 2020 WL 831611, at *8 (Tex. App.—Dallas Feb. 20, 2020, no pet.) (mem. op.). "A tenant-by-sufferance clause separates the issue of possession from the issue of title." *Id.* Under such a provision, "a foreclosure sale transforms the borrower into a tenant by sufferance who must immediately relinquish possession to the foreclosure-sale purchaser." *Id.* Thus, "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." *Id.*

At trial in the county court, appellees introduced the 2004 deed of trust into evidence. Section 22 of the deed of trust provides that the lender shall have a lien on the property, which may be enforced by foreclosure and sale of the Property in the event of the borrower's breach. Section 22 further provides that in the resulting foreclosure sale:

> Trustee shall deliver to the purchaser . . . a trustee's deed conveying indefeasible title to the Property with covenants of general warranty from Borrower. . . . The recitals in the Trustee's deed shall be prima

> facie evidence of the truth of the statements made therein. . . . 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.

Appellees also introduced the 2019 foreclosure sale deed showing that the Property was purchased at foreclosure by Wells Fargo. This deed was filed in the Dallas County Records along with the Notice of Foreclosure Sale and the judicial foreclosure order entered by the 162nd District Court the previous year. Finally, appellees introduced into evidence the 2019 special warranty deed conveying title to the Property—"together with all and singular the rights and appurtenances thereto"—to appellee BG Inc. Wreh did not object to the introduction of these documents into evidence, and they were properly admitted. Together, these documents were sufficient to show that, upon foreclosure, the status of the relationship between Wreh and Wells Fargo changed from that of a mortgagee and mortgagor to that of a landlord and tenant at sufferance. *See Catapult Realty*, 2020 WL 831611, at *8. Accordingly, "the justice court and county court [could] resolve possession without resort to title." *See id.*

We hold that Wreh did not present sufficient evidence in the trial court to raise a genuine title issue in the trial court. We further hold the trial court had jurisdiction to enter a judgment of possession and therefore did not abuse its discretion in denying Wreh's motion to abate. We reject Wreh's argument that the trial court's

denial of his motion to abate effectively moots his federal court wrongful foreclosure action. *See Marshall*, 198 S.W.3d at 787 ("Judgment of possession in a forcible detainer action is not intended to be a final determination of whether the eviction is wrongful; rather, it is a determination of the right to immediate possession."); *Rice*, 51 S.W.3d at 709. ("Forcible detainer actions in justice courts may be brought and prosecuted concurrently with suits to try title in district court.").

We overrule Wreh's second issue.[8]

III. CONCLUSION

We hold that the pleading defect issue was not properly preserved for appeal, and even if it were, we find no defect in the pleadings. We further hold that Wreh failed to present sufficient evidence to raise a genuine title issue and that the trial court had jurisdiction to enter judgment of possession.

We affirm the judgment of the trial court.

/Bonnie Lee Goldstein/
BONNIE LEE GOLDSTEIN
JUSTICE

191213F.P05

[8] Our decision here is not to be construed as a ruling on the merits of Wreh's wrongful foreclosure action; only a ruling that the two cases may proceed concurrently.

Court of Appeals
Fifth District of Texas at Dallas

JUDGMENT

CHRISTOPHER WREH, Appellant	On Appeal from the County Court at Law No. 4, Dallas County, Texas
No. 05-19-01213-CV V.	Trial Court Cause No. CC-19-05068-D.
ALEX GIANOTOS, BOSTEN GOLDSCHMIED, & BG INCORPORATED, Appellees	Opinion delivered by Justice Goldstein. Justices Partida-Kipness and Pedersen, III participating.

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

It is **ORDERED** that appellee ALEX GIANOTOS, BOSTEN GOLDSCHMIED, & BG INCORPORATED recover their costs of this appeal from appellant CHRISTOPHER WREH.

Judgment entered June 22, 2021.