

COURT OF APPEALS OF TEXAS, SECOND DISTRICT, FORT WORTH

**Derrick Jimmerson v. Homecomings Financial LLC F/K/A
Homecomings Financial Network Inc.**

No. 2-07-305-CV · No. No. 2-07-305-CV · Decided July 3, 2008

SUMMARY

The Second Court of Appeals of Texas affirmed a county court judgment awarding possession of property to Homecomings Financial LLC following foreclosure and a forcible detainer action. The court held that Jimmerson waived complaints concerning notice to vacate and the property description by failing to raise them in the county court at law.

CASE DETAILS

COURT	Court of Appeals of Texas, Second District, Fort Worth
WRITING FOR THE COURT	Sue Walker; Dauphinot; Holman; Walker
JURISDICTION	Texas
DECIDED	July 3, 2008
DOCKET	No. 2-07-305-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Jimmerson appealed a county court at law judgment awarding possession of real property to Homecomings in a forcible entry and detainer action following foreclosure.
STANDARD OF REVIEW	Complaints not preserved by a timely request, objection, or motion stating specific grounds and obtaining a ruling are waived on appeal. The opinion also describes the trial court's ruling in the forcible entry and detainer proceeding as subject to abuse-of-discretion review.
PRECEDENTIAL VALUE	Nonprecedential memorandum opinion under Tex. R. App. P. 47.4
PARTIES	Derrick Jimmerson v. Homecomings Financial LLC F/K/A Homecomings Financial Network Inc.

TOPICS

eviction

default judgment

preservation of error

appellate procedure

foreclosure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether Jimmerson preserved his complaints that Homecomings failed to provide proper notice to vacate under the Texas Property Code.
2. Whether Jimmerson preserved his complaint that Homecomings inadequately described the property in its forcible detainer complaint.
3. Whether the county court judgment awarding possession to Homecomings should be affirmed.

HOLDINGS

1. Jimmerson waived both complaints by failing to make timely objections in the county court at law and obtain rulings on them.
2. A complaint that the property was insufficiently described in a forcible entry and detainer complaint cannot be raised for the first time on appeal when it was not presented to the trial court.
3. The record did not establish a preserved or meritorious challenge to the notice to vacate because Homecomings mailed the notice by first-class mail and Jimmerson neither objected nor presented controverting evidence that he failed to receive it.

KEY QUOTATIONS

“To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if they are not apparent from the context of the request, objection, or motion.”

“Accordingly, we hold that Jimmerson waived his complaints by failing to object in the county court at law to the notice and the description of the Property.”

FACTUAL BACKGROUND

Jimmerson executed a promissory note secured by a deed of trust on the property. After the property was sold to Homecomings at a foreclosure sale, Homecomings sent Jimmerson and other occupants a written notice to vacate by certified and first-class mail, allowing three days to vacate. Jimmerson remained in possession, and although he appeared at the county court hearing, he did not object to Homecomings's exhibits or present evidence supporting his alleged alternative mortgage arrangement.

PROCEDURAL HISTORY

Homecomings purchased the property at a foreclosure sale and sent Jimmerson a notice to vacate. After Jimmerson failed to vacate, Homecomings filed a forcible entry and detainer action in justice court, which entered a default judgment for Homecomings. Jimmerson appealed to the Denton County Court at Law, which awarded possession to Homecomings after a hearing. The court of appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Bushell v. Dean, 803 S.W.2d 711, 712 (Tex. 1991) (op. on reh'g)
- Granberry v. Storey, 61 Tex. Civ. App. 9, 127 S.W. 1122 (Tex. Civ. App. 1910, no writ)

OPINION

PER CURIAM.

COURT OF APPEALS SECOND DISTRICT OF TEXAS FORT WORTH NO. 2-07-305-CV DERRICK JIMMERSON APPELLANT V. HOMECOMINGS FINANCIAL LLC APPELLEE F/K/A HOMECOMINGS FINANCIAL NETWORK INC. FROM COUNTY COURT AT LAW NO. 2 OF DENTON COUNTY MEMORANDUM OPINION (footnote: 1) I. Introduction Appellant Derrick Jimmerson appeals the judgment awarding possession of 2624 King Arthur Boulevard, Lewisville, Texas 75056 (the Property), to Appellee Homecomings Financial, LLC. In two points, Jimmerson asserts, as best we can determine, (footnote: 2) that the trial court abused its discretion by awarding possession of the Property to Homecomings because (1) he was not given proper notice in compliance with the Texas Property Code, and (2) Homecomings failed to properly describe the Property in its complaint.

We will affirm. II. Factual and Procedural Background On September 15, 2005, Jimmerson signed a promissory note, secured by a deed of trust, for the Property in the amount of \$446,549 to Fremont Investment & Loan. Jimmerson testified that he filed for bankruptcy and had lined up a buyer, but the Property was ultimately sold at a foreclosure sale to Homecomings on June 5, 2007.

On June 8, 2007, Homecomings, after discovering that the Property was occupied, sent Jimmerson a notice to vacate the Property; this notice was sent by certified mail, return receipt requested and by first-class mail to Jimmerson and all other Occupants.

The notice gave Jimmerson three days to vacate the Property. Jimmerson did not vacate the Property within that time frame, and Homecomings brought a forcible entry and detainer action in the JP court in Denton County.

The JP court signed a default judgment in favor of Homecomings, and Jimmerson appealed the default judgment to the county court at law in Denton County. Jimmerson appeared at the forcible entry and detainer hearing held in the county court at law and stated that he had no objections to the documents admitted into evidence by Homecomings. Jimmerson testified briefly, mentioning that he had an alternative arrangement with a mortgage company that should have allowed him to circumvent the foreclosure process.

Jimmerson, however, did not offer any evidence that supported his contention. The county court at law signed a judgment awarding the Property to Homecomings. This appeal followed. III. Foreclosure Was Proper In two points, Jimmerson contends that he was not given proper notice to vacate the Property and that Homecomings did not adequately describe the Property in the complaint.

Jimmerson also argues that he did not waive his right to complain of the Property description by failing to object at trial. Homecomings responds that it did give proper notice and did adequately describe the Property pursuant to the Texas Property Code. Homecomings, however, argues that this court need not address either issue because Jimmerson failed to raise these arguments at trial.

To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion that states the specific grounds for the desired ruling, if they are not apparent from the context of the request, objection, or motion. Tex. R. App. P. 33.1(a); see also Tex. R. Evid. 103(a)(1). If a party fails to do this, error is not preserved, and the complaint is waived.

Bushell v. Dean, 803 S.W.2d 711, 712 (Tex. 1991) (op. on reh'g). The objecting party must get a ruling from the trial court. Tex. R. App. P. 33.1(a)(2). This ruling can be either express or implied. Tex. R. App. P. 33.1(a)(2)(A). If the trial judge refuses to rule, an objection to the refusal to rule is sufficient to preserve error. Tex. R. App. P. 33.1(a)(2)(B) During the proceedings in the county court at law, Homecomings offered into evidence five documents, including the deed of trust, the assignment of the deed of trust, and the notice to vacate with the completed delivery portion of the return receipt from the certified mail card. (footnote: 3) The county court at law also had before it on file Homecomings's "First Amended Original Petition for Forcible Detainer." The front page of the amended petition described the Property as follows: BEING LOT 12, IN BLOCK A OF CASTLE HILLS, PHASE II - SECTION D, AN ADDITION TO THE EXTRA-TERRITORIAL JURISDICTION OF THE CITY OF LEWISVILLE, DENTON COUNTY, TEXAS, ACCORDING TO THE PLAT THEREOF RECORDED IN CABINET R, SLIDE 360, PLAT RECORDS, DENTON COUNTY, TEXAS.

This description matched the description in the deed. When the county court at law judge asked Jimmerson whether he had any objections to the exhibits offered by Homecomings, Jimmerson stated that he did not have any objections. Jimmerson admits that he failed to object to the Property description at trial but argues that he nonetheless did not waive his right to complain.

He attempts to use Granberry v. Storey, 61 Tex. Civ. App. 9, 127 S.W. 1122 (Tex. Civ. App. 1910, no writ), to support his proposition that "[a]n objection that the property sought to be recovered in forcible entry and detainer was insufficiently described in the complaint can be first made on appeal." The Granberry court, however, did not allow a complaint about the sufficiency of a property description.

Instead, the Granberry court stated, The objection to the judgment, made for the first time in the motion now being considered, that the description in appellee's complaint of the premises in controversy was insufficient, if meritorious, which we do not concede it to be, comes too late. It should have been made, in the first instance, by an exception to complaint urged in the trial court, where, had it been found to be well taken, the complaint could have been amended.

61 Tex. Civ. App. at 14, 127 S.W. at 1125. Accordingly, we hold that Jimmerson waived his complaints by failing to object in the county court at law to the notice (footnote: 4) and the description of the Property. See *id.* We therefore overrule his two points. IV. Conclusion Having overruled Jimmerson's two points, we affirm the trial court's judgment. SUE WALKER JUSTICE PANEL F: DAUPHINOT, HOLMAN, and WALKER, JJ. DELIVERED: July 3, 2008 FOOTNOTES 1:See Tex. R. App.

P. 47.4. 2:Jimmerson appears pro se, as he did in the county court at law. The only document filed on Jimmerson's behalf by an attorney appears to be the motion to set the amount of bond. 3:The top of the notice to vacate stated in all caps, "CERTIFIED MAIL, RETURN RECEIPT REQUESTED " and "FIRST CLASS REGULAR MAIL." 4:Jimmerson's notice argument is difficult to follow because it states, in contravention of the evidence presented, that Homecomings "did not give [him] written notice pursuant to section 24.001 et [s]eq. o[f] the Texas Property Code, by certified mail, return receipt requested, and U.S. First class mail, postage prepaid, to vacate [the] property within (3) days after the delivery of the notice." Our best interpretation of Jimmerson's argument is that the JP court abused its discretion by entering a default judgment against Jimmerson on July 12, 2007, prior to Jimmerson's signing the certified mail receipt on July 23, 2007.

However, because the record reveals that Homecomings also mailed the notice to vacate by first-class mail on June 8, 2007, and because there is no evidence that Jimmerson did not receive the notice to vacate by first-class mail prior to his retrieval of the certified mail, Jimmerson failed to object or present controverting evidence that Homecomings failed to comply with the Texas Property Code in giving notice.

See Tex. Prop. Code Ann. § 24.005(b), (f) (Vernon 2000) (mandating that a written notice to vacate be sent, "at least three days" before a forcible entry and detainer suit is filed, to a tenant by regular mail, registered mail, or by certified mail, return receipt requested).