

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN

Merit Management Partners I, L.P. (Formerly Known as Merit Partners, L.P.); Merit Energy Partners III, L.P.; and Merit Energy Partners D-III, L.P. v. Walter D. Noelke, as General Partner of the NF5 Family Limited Partnership

Merit Management Partners · No. 03-07-00058-CV · Decided October 3, 2008

SUMMARY

In this dissenting opinion, Justice Diane M. Henson would have held that the county court had jurisdiction over a contract dispute involving reimbursement, attorney's fees, and liquidated damages under a Consent to Assignment. The dissent reasons that any title issues were merely incidental because the plaintiff did not need to establish title to recover the requested damages. It would have overruled the appellant's jurisdictional challenge and reached the remaining issues on appeal.

CASE DETAILS

COURT	Texas Court of Appeals, Third District, at Austin
WRITING FOR THE COURT	Diane M. Henson; Justice Puryear; Justice Waldrop; Justice Henson
JURISDICTION	Texas
DECIDED	October 3, 2008
DOCKET	03-07-00058-CV
DISPOSITION	other
PROCEDURAL POSTURE	Merit appealed from a Tom Green County Court at Law order or judgment involving the county court's jurisdiction over Noelke's breach-of-contract claim. The dissent would have held that the county court had subject-matter jurisdiction because any title issues were merely incidental to the contract dispute.
PRECEDENTIAL VALUE	dissenting
PARTIES	Merit Management Partners I, L.P. (formerly known as Merit Partners, L.P.), Merit Energy Partners III, L.P., Merit Energy Partners D-III, L.P. v. Walter D. Noelke, as general partner of the NF5 Family Limited Partnership

TOPICS

subject matter jurisdiction

breach of contract

real estate

civil procedure

appellate procedure

PRACTICE AREAS

civil procedure

contracts

real estate

commercial litigation

appellate procedure

QUESTIONS PRESENTED

1. Whether a county court has subject-matter jurisdiction over a contract action concerning real property when the plaintiff seeks contractual damages but does not need to establish title to obtain relief.
2. Whether issues of title that are merely incidental to a contract dispute require the action to be brought in district court.

HOLDINGS

1. In the dissent's view, the county court properly exercised jurisdiction because Noelke sought contractual damages under the Consent to Assignment and was not required to establish title to recover those damages.

KEY QUOTATIONS

"Rather, we must review 'the nature of the relief sought by plaintiff and what plaintiff is required to establish before being entitled to said relief,' in order to determine whether the county court has jurisdiction."

"Where, as here, 'the question of title comes incidentally into the case,' the county court 'does not adjudicate or settle the title to the land nor the right to recover it, but simply determines that the plaintiff is or is not entitled to recover the thing sued for, within the jurisdiction.'"

FACTUAL BACKGROUND

Noelke sought damages under a provision of a Consent to Assignment that entitled him to reimbursement for expenses, time, and attorney's fees, as well as related costs and liquidated damages. It was undisputed that Noelke held title to the surface estate at issue and that Merit had used the property and paid rent since 2003. The dissent reasoned that Noelke did not need to establish title to recover the contractual damages and that any title questions were tangential to the contract dispute.

PROCEDURAL HISTORY

The case originated in County Court at Law No. 2 of Tom Green County, Texas, before Judge Penny Anne Roberts. Noelke sought attorney's fees, costs, rental-related amounts, and liquidated damages under a provision of a Consent to Assignment. Merit challenged the county court's jurisdiction, apparently contending that the suit involved recovery of land or adjudication of title. The dissent would have overruled Merit's first appellate issue and reached the three remaining issues, but the provided text does not state the majority's disposition.

DISPOSITION

other

CASES CITED

- Doggett v. Nitschke, 498 S.W.2d 339, 339 (Tex. 1973)
- Chambers v. Pruitt, 241 S.W.3d 679, 684 (Tex. App.--Dallas 2007, no pet.)
- Coughran v. Nunez, 127 S.W.2d 885, 887 (Tex. 1939)
- Carter v. Gray, 81 S.W.2d 647, 648 (Tex. 1935)
- Kegans v. White, 131 S.W.2d 990, 993-994 (Tex. Civ. App.--Eastland 1939, writ ref'd)
- Peek v. Equipment Serv. Co., 779 S.W.2d 802, 804 (Tex. 1989)
- Martinez v. Daccarett, 865 S.W.2d 161, 163 (Tex. App.--Corpus Christi 1993, no writ)
- Henslee v. Boyd, 107 S.W. 128, 129 (Tex. Civ. App.--Dallas 1908, no writ)
- City of Victoria v. Schott, 29 S.W. 681, 681 (Tex. Civ. App.--Houston 1895, no writ)

OPINION

PER CURIAM.

TEXAS COURT OF APPEALS, THIRD DISTRICT, AT AUSTIN NO. 03-07-00058-CV Merit Management Partners I, L.P. (formerly known as Merit Partners, L.P.); Merit Energy Partners III, L.P.; and Merit Energy Partners D-III, L.P., Appellants v. Walter D. Noelke, as general partner of the NF5 Family Limited Partnership, Appellee FROM COUNTY COURT AT LAW NO. 2 OF TOM GREEN COUNTY NO. 05C160-L2, HONORABLE PENNY ANNE ROBERTS, JUDGE PRESIDING D I S S E N T I N G O P I N I O N Because I would hold that issues of title are merely incidental to the contract dispute presented in this case and therefore that the county court properly exercised its jurisdiction, I respectfully dissent.

The government code provides that a county court does not have jurisdiction in "a suit for the recovery of land." Tex. Gov't Code Ann. § 26.043(8) (West 2004); see also Doggett v. Nitschke, 498 S.W.2d 339, 339 (Tex. 1973) ("A county court does not have jurisdiction to try questions of title to land.").

The mere fact that a contract dispute is based on a contract regarding real property does not necessarily preclude a county court from exercising jurisdiction. See Chambers v. Pruitt, 241 S.W.3d 679, 684 (Tex. App.--Dallas 2007, no pet.) (holding that cause of action for breach of contract to sell real property "did not involve determination of title" and therefore county court had jurisdiction to decide case).

Rather, we must review "the nature of the relief sought by plaintiff and what plaintiff is required to establish before being entitled to said relief," in order to determine whether the county court has jurisdiction. Coughran v. Nunez, 127 S.W.2d 885, 887 (Tex. 1939); see also Carter v. Gray, 81 S.W.2d 647, 648 (Tex. 1935) (holding that county court had jurisdiction because, where petition "clearly shows an intention to elect to sue only for the debt" on vendor's lien note, rather than to

challenge enforceability of lien, "no technical construction of the pleading should be invoked to defeat such intention.").

As the majority observes in quoting *Kegans v. White*, 131 S.W.2d 990 (Tex. Civ. App.--Eastland 1939, writ ref'd), "The dividing line between the classes of cases, cognizable solely in the respective courts, is not always so apparent." 131 S.W.2d at 993. Where a party's pleadings do not affirmatively demonstrate an absence of jurisdiction, a doubtful case will be presumed in favor of jurisdiction.

Peek v. Equipment Serv. Co., 779 S.W.2d 802, 804 (Tex. 1989); *Martinez v. Daccarett*, 865 S.W.2d 161, 163 (Tex. App.--Corpus Christi 1993, no writ). In the present case, Noelke seeks relief based on a sole provision of the Consent to Assignment--the provision entitling Noelke to reimbursement for expenses, time, and attorney's fees.

(1) As the county court noted in the hearing on the plea to the jurisdiction, any potential dispute regarding title to land would necessarily be "[b]ased not on the clause that [Noelke and NF5] are suing under, but under other parts of the document or other subsequent documents."

As the county court also observed at the hearing, the crux of this dispute is that Noelke and NF5 "wish to enforce a clause in the Consent to Agreement for damages for attorney's fees and rentals." Because it is undisputed that Noelke has title to the surface estate in question, he is not obligated to establish title in order to recover the damages sought. Furthermore, it is undisputed that, at the time Noelke presented Merit with his demand letter under the Consent to Assignment, Merit had been using and paying rent on the property in question since 2003.

As a result, the present case is distinguishable from past cases in which Texas courts have held that a county court lacks jurisdiction because the plaintiff could not obtain his requested relief without proving his ownership of real property. See *Coughran*, 127 S.W.2d at 887 (holding that, where it was necessary for plaintiff to "allege his right and title to the easement claimed by him" in order to recover, suit involved adjudication of title and therefore county court had no jurisdiction); *Kegans*, 131 S.W.2d at 994 (holding that county court had no jurisdiction because "before the appellees may recover the sum prayed for, or any part thereof, they must first establish their right and title to the land, and this can only be done by a suit in the district court"); *Henslee v. Boyd*, 107 S.W.

128, 129 (Tex. Civ. App.--Dallas 1908, no writ) ("In order for the appellant to recover he must necessarily prove his easement... and a cause which requires proof of title to real estate the County and Justice Courts are without jurisdiction to try."). Unlike the plaintiffs in *Coughran*, *Kegans*, and *Henslee*, Noelke is not required to establish his right and title to any real property in order to recover on his claim for damages.

He merely seeks the recovery of attorney's fees, costs, and liquidated damages pursuant to a provision of the Consent to Assignment. While issues regarding title may be tangentially involved,

they are incidental to the primary issue of resolving a contract dispute between the parties. Where, as here, "the question of title comes incidentally into the case," the county court "does not adjudicate or settle the title to the land nor the right to recover it, but simply determines that the plaintiff is or is not entitled to recover the thing sued for, within the jurisdiction."

City of Victoria v. Schott, 29 S.W. 681, 681 (Tex. Civ. App.--Houston 1895, no writ). The proceedings in the present case merely determine Noelke's right to recover damages under the Consent to Assignment. The resolution of this breach-of-contract claim in county court does not serve to adjudicate title to the land in question, as this issue may only be resolved in district court.

Regardless of what Noelke may have represented to the district court in Irion County, under the reasoning of *Schott*, the county court's judgment in this case does not preclude Merit from seeking to adjudicate title in district court.

Because I would overrule Merit's first issue on appeal, hold that the county court properly exercised its jurisdiction over this suit, and address the merits of the three remaining issues, I respectfully dissent. _____ Diane M. Henson,
Justice Before Justices Puryear, Waldrop and Henson Filed: October 3, 2008 1. While Merit initially brought a counterclaim seeking a declaratory judgment that the Consent to Assignment was invalid in its entirety, this counterclaim was nonsuited prior to trial.