

**COURT OF APPEALS OF TEXAS, THIRTEENTH DISTRICT, CORPUS
CHRISTI-EDINBURG**

Michael Maldonado and Mary Maldonado v. Margo Properties, LLC

Maldonado v. Margo Properties · No. 13-15-00500-CV · Decided September 1, 2016

SUMMARY

The Texas Thirteenth Court of Appeals affirmed a judgment awarding possession of real property to Margo Properties, LLC following foreclosure. The court held that a challenge to Gus Montis's standing was moot because he was not a party in the county-court proceeding, that the capacity argument was waived, and that the challenge to Margo's amended petition was not preserved.

CASE DETAILS

COURT	Court of Appeals of Texas, Thirteenth District, Corpus Christi-Edinburg
WRITING FOR THE COURT	Gina M. Benavides; Chief Justice Valdez; Justice Benavides; Justice Perkes
JURISDICTION	Texas
DECIDED	September 1, 2016
DOCKET	13-15-00500-CV
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a county court at law judgment awarding Margo Properties, LLC possession of real property following foreclosure and an eviction proceeding.
STANDARD OF REVIEW	Standing implicates trial-court jurisdiction and may be raised for the first time on appeal. A capacity challenge must be raised by verified pleading and may be waived if not properly asserted. Preservation of error is governed by Texas Rule of Appellate Procedure 33.1(a).
PRECEDENTIAL VALUE	The opinion is identified in the provided metadata as published, but the document itself is styled a memorandum opinion and contains no reporter or neutral citation.
PARTIES	Michael Maldonado, Mary Maldonado v. Margo Properties, LLC

TOPICS

eviction

standing

motion to amend

preservation of error

appellate procedure

PRACTICE AREAS

civil procedure

appellate procedure

real estate

remedies

QUESTIONS PRESENTED

1. Whether any alleged lack of standing by Gus Montis in the justice-court eviction proceeding rendered the county court judgment void or otherwise required reversal.
2. Whether the Maldonados preserved their challenge to Montis's legal capacity to sue.
3. Whether Margo's amended petition was invalid because it was filed without leave of court or a conference with opposing counsel, and whether the Maldonados preserved any claim of surprise.

HOLDINGS

1. Any challenge to Montis's standing was moot because the county-court proceeding was a trial de novo, Margo's amended petition named only Margo as plaintiff, and Montis was not a party to the county-court judgment.
2. The court declined to reach the merits of the capacity challenge because the Maldonados did not raise it in a verified pleading before the trial court.
3. The challenge to Margo's amended petition was not preserved because the Maldonados did not object, assert surprise, or move to strike the amended petition in the trial court. In any event, the record did not support surprise because Margo had already been named as a plaintiff in the original justice-court petition.

KEY QUOTATIONS

“When an appeal is taken from justice court to county court, a “trial de novo” means a new trial, “in which the entire case is presented as if there had been no previous trial.”” (at 3)

“As a general rule, parties may amend their pleadings subject only to the opposing party’s right to show surprise.” (at 4)

FACTUAL BACKGROUND

Margo Properties, LLC purchased the Whitemarsh Drive property at a nonjudicial foreclosure sale on August 5, 2014. Margo and its agent, Gus Montis, filed an eviction petition in justice court, which ruled in their favor. On appeal for a trial de novo, Margo filed an amended petition naming only itself as plaintiff; after a hearing at which testimony and documentary evidence were admitted, the county court awarded possession of the property.

PROCEDURAL HISTORY

Margo Properties, LLC and its agent Gus Montis initially filed an eviction petition in justice court after Margo purchased the property at a nonjudicial foreclosure sale. After the justice court ruled for Margo and Montis, the Maldonados appealed for a trial de novo in the county court. Margo filed an amended petition naming only itself

as the plaintiff, and the county court awarded possession to Margo or Montis. The Maldonados appealed, challenging standing, capacity, and the amendment to the petition.

DISPOSITION

affirmed

CASES CITED

- Nootsie, Ltd. v. Williamson Cnty. Appraisal Dist., 925 S.W.2d 659, 661–62 (Tex. 1996)
- Searcy v. Sagullo, 915 S.W.2d 595, 596 n.1 (Tex. App.—Houston [14th Dist.] 1995, no writ)
- Greenhalgh v. Svc. Lloyds Ins. Co., 787 S.W.2d 938, 940 (Tex. 1990)

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