NOT FOR OFFICIAL PUBLICATION

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

KAREN TOWNSEND, DONNA SHATTO,

Petitioners,

and

BRIAN DuBUC,

Petitioner/Appellant,

vs.

LINDA PRICHARD,

Defendant/Appellee,

and

APRIL PRICHARD and EUGENE PRICHARD,

Appellees,

and

APRIL WHITAKER, GENE WHITAKER and OTHER PETS,

Respondents.

Case No. 118,772

APPEAL FROM THE DISTRICT COURT OF
OKMULGEE COUNTY, OKLAHOMA

HONORABLE CYNTHIA D. PICKERING, TRIAL JUDGE

AFFIRMED

Brian DuBuc
Waldron, Arkansas

Pro Se

OPINION BY GREGORY C. BLACKWELL, JUDGE:

Brian DuBuc appeals a decision of the small claims court holding that he could not proceed with a forcible entry and detainer action because the defendants raised a claim of title at the hearing, divesting the court of jurisdiction. On review, we find that Mr. DuBuc has failed to show either that the small claims court's decision, which rests on a finding that the defendants invoked a colorable claim of title to the real estate at issue, was not supported by competent evidence or that the order was premised on any other legal error. Accordingly, we affirm.

BACKGROUND

The underlying dispute concerns Mr. DuBuc's attempt to remove the defendants from what Mr. DuBuc claimed as his rental property. To that end, in August 2014, Mr. DuBuc, and two other plaintiffs who have not appealed,[1] filed a small-claims action seeking immediate possession of the property, a judgment for alleged damages, and the immediate removal of a "WOLFE & ALL PETS"[2] from the premises. The defendants did not answer but did appear at the dispositive hearing, which occurred in September 2014. At that hearing, the court took sworn testimony and received exhibits into evidence. At the end of testimony, and after reviewing the exhibits, the court found the evidence suggested the

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[1] Neither of the additional plaintiffs, Karen Townsend and Donna Shatto, who entered into a subsequent contract to purchase the home in question from Mr. DuBuc, appealed the trial court's judgment. Although Mr. DuBuc claims in the petition in error to be Townsend and Shatto's "selected spokesman," no licensed attorney entered an appearance on their behalf, nor did either party enter an appearance in this appeal *pro se*. Mr. DuBuc, thus, stands alone as the appellant.

[2] Mr. Dubuc named said "Wolfe and all Other Pets" as defendants in the action. Service on these defendants is not indicated in the record.

plaintiffs had entered a contract to sell the real estate in question to the defendants. The court declined to rule on the merits of Mr. DuBuc's claim, but rather ruled that the case needed to be filed on the regular civil docket because the small claims court did not have jurisdiction to hear the title question. *See* 12 O.S.2011 and Supp. 2012, § 1751. Mr. Dubuc sought to vacate the order, but that request was denied.[3] Both orders denying Mr. DuBuc relief were eventually reduced to a written judgment, from which Mr. DuBuc now appeals.

STANDARD OF REVIEW

Although questions of law, which include the question of the jurisdictional power of the trial court to act, *Jackson v. Jackson*, 2002 OK 25, 45 P.3d 418, are properly reviewed *de novo*, a trial court's finding of facts necessary to the determination of the legal question are reviewed under the any-competent-evidence standard. *See, e.g., Reeds v. Walker*, 2006 OK 43, ¶ 10, 157 P.3d 100, 107 ("When there are no contested jurisdictional facts the question of subject matter jurisdiction is purely one of law which we review *de novo*." (footnote omitted)). The trial court's failure to vacate the first judgment upon Mr. DuBuc's motion is reviewed for an abuse of discretion. *Ferguson Enterprises v. Webb Enterprises*, 2000 OK 78, ¶5, 13 P.3d 480, 482.

[3] No transfer was ever made, however. In April 2019, Mr. DuBuc filed a "Petition to Quiet Title Foreclose Contract and Eject Tenant," as Okmulgee County Case CV-2019-34, which involved the same property. At the time of this opinion, that case appears to be pending.

ANALYSIS

"Disputed title raised in a forcible entry and detainer action requires the action to be moved from the Small Claims Docket and the action proceed as one in ejectment." *Rogers v. Bailey*, 2011 OK 69, ¶ 14, 261 P.3d 1150. "An action for Forcible Entry and Detainer may be brought only where the tenant is holding over and is a settler or occupier of lands and tenements without color of title. *See* 12 O.S.Supp.1990 § 1148.3." *Id.* An action in ejectment is not adjudicated in a small claims proceeding. *White v. Rakestraw*, 1977 OK 76, 563 P.2d 644.

The transcript of the 2014 hearing indicates that the parties were in fact engaged in a disputed question as to title to the involved property here. Indeed, the attachments to Mr. DuBuc's affidavit indicate the same.[4] The trial court found it did not have jurisdiction because the case required interpretation of a "real estate agreement, which is precluded under the small claims act." Mr. DuBuc has failed to show that this finding of an agreement rested on anything other than competent evidence or that the court's legal conclusion—that such a dispute cannot be settled in a forcible entry and detainer action—was incorrect.

Among the many and varied arguments raised by Mr. DuBuc in his submissions[5] is that this generally accepted view of small claims jurisdiction was

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[4] For example, attached to Mr. DuBuc's affidavit was a letter Mr. DuBuc apparently wrote to the defendants before filing suit. It states that the defendants are "now in default" in reference to a "promissory note lease opt to buy" because of, among other reasons, the defendants' "failure to pursue loan with First National Bank of Henryetta *which was the purchase plan not [the] rental plan.*" R. at 5 (capitalization altered) (emphasis supplied).

[5] Mr. DuBuc is an enthusiastic *pro se* litigant who makes only limited attempts to comply with the rules of pleading. His petition in error alone runs to some 160 pages of largely extraneous material. He also has a history of raising unsubstantiated allegations of

actually overruled in *Rogers*. Examining *Rogers*, the question in that case was whether a motion to transfer from small claims to the general docket on the grounds that a title question existed was timely. The small claims procedure, 12 O.S. § 1758, states that a request for transfer must be filed at least "forty-eight (48) hours prior to the time fixed in the order for defendant to appear or answer." The forcible entry and detainer statute, 12 O.S. § 1148.6, allows a transfer to be requested at any time before "the time for the trial of the cause." *Rogers* held that this statute was controlling over § 1758 and required the case to be transferred. *Rogers*, ¶ 20.

Relying on *Rogers*, Mr. DuBuc proposes that a question of title *can* therefore be tried in a small claims, forcible entry and detainer action *unless* the title issue is raised through a transfer request made *prior to the trial.* This conclusion does not follow from *Rogers* and is indeed contrary to the authority relied upon in that case. In addition to the direct statement noted above, *Rogers* notes that "[t]his Court has stated that a forcible entry and detainer proceeding is not for the purpose of trying title." *Id.*, ¶ 15. "For example, *in Dix v. Burkhard*, 1942 OK 110, 130 P.2d 837, we said, 'It has been repeatedly held by this court that the legal sufficiency of a questioned title to real estate cannot be determined in a forcible entry and detainer action.'" *Id.*

Rogers commented on the relationship between the forcible entry and detainer statute and the small claims statute in only one area where they might

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corruption against numerous state judges, and does so again in material attached to his petition in error in this case.

otherwise be in conflict. We find it clear, however, that *Rogers* did not override the longstanding rule that the legal sufficiency of a questioned title to real estate cannot be determined in a forcible entry and detainer action or in a small claims proceeding. As such, there was no legal error in the trial court's decision here.

CONCLUSION

We find that the small claims court was correct in finding that it had no jurisdiction to hear the forcible entry and detainer case here. The trial court's decisions ordering a transfer and denying the request to vacate are therefore affirmed.[6]

AFFIRMED.

BARNES, J., concurs, and WISEMAN, P.J., concurs in result.

December 2, 2021

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[6] We note that Mr. DuBuc filed some fifteen additional submissions with the Supreme Court before this case was assigned. These appear to have been addressed by the Supreme Court. After assignment, Mr. DuBuc filed a *Motion to Renew - Request for Default Judgment of Charlie Arnold before Supreme Court COA/Tulsa.* This motion is apparently based on a theory that default judgment is available in the appellate courts if a party does not answer a petition in error. It is well-settled that reversal on appeal is not automatic for failure to file an answer. *See, e.g., Hamid v. Sew Original,* 1982 OK 46, 645 P.2d 496. Instead, we will reverse only where the authorities in the appellant's brief reasonably sustain the assignments of error. *Harvey v. Hall,* 1970 OK 92, 471 P.2d 911. In this case, nothing in Mr. DuBuc's brief counsels reversal. The motion is therefore denied.