STATE OF MINNESOTA
IN COURT OF APPEALS
A07-1222

Scott County Housing and Redevelopment Authority,
Respondent,

vs.

Alexis Phongsavat,
Appellant.

Filed October 14, 2008
Affirmed
Toussaint, Chief Judge

Scott County District Court
File No. 70-CV-07-10565

Linda K. Thompson, Robert A. Alsop, Kennedy & Graven, Chartered, 470 U.S. Bank Plaza, 200 South Sixth Street, Minneapolis, MN 55402 (for respondent)

Alexis Phongsavat, 16638 Franklin Trail, #121, Prior Lake, MN 55372 (pro se appellant)

Considered and decided by Toussaint, Chief Judge; Shumaker, Judge; and Stoneburner, Judge.

U N P U B L I S H E D O P I N I O N

TOUSSAINT, Chief Judge

Appellant Alexis Phongsavat challenges the district court judgment evicting her from public housing. Because the district court's factual findings were not clearly

erroneous and supported its decision to evict appellant, we affirm.

D E C I S I O N

On review of a district court judgment in an eviction action, we defer to the district court's findings of fact and credibility determinations, and the findings will be upheld unless they are clearly erroneous. *See Minneapolis Cmty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985) (stating standard of review in unlawful-detainer action, now statutorily replaced by eviction action), *review denied* (Minn. Feb. 19, 1986); Minn. R. Civ. P. 52.01. But statutory and regulatory construction presents a question of law, which we review de novo. *See Hibbing Educ. Ass'n v. Pub. Employment Relations Bd.*, 369 N.W.2d 527, 529 (Minn. 1985).

A landlord may recover possession of a property by an eviction action when a tenant "holds over . . . contrary to the conditions or covenants of the lease." Minn. Stat. § 504B.285, subd. 1(2) (2006). A landlord's right to evict "is complete upon a tenant's violation of a lease condition," and "[s]ubsequent remedial action by a tenant cannot nullify a prior lease violation." *Smallwood*, 379 N.W.2d at 556.

I.

A lease for public housing may be terminated for: *"[s]erious or repeated violation of material terms of the lease*, such as . . . [f]ailure to make payments due under the lease," or "[o]ther good cause" including "[d]iscovery of *material false statements* or fraud by the tenant in connection with an application for assistance." 24 C.F.R. § 933.4(l)(2)(i)(A), (iii)(C) (2006) (emphasis added). The district court's factual findings as to appellant's three serious and repeated breaches of material terms of the lease (her

failures to make timely rent payments, to occupy the premises when ordered to do so, and to accurately report her income) are not clearly erroneous.

Appellant's lease specifically listed failure to make three consecutive timely rent payments as a ground for lease termination; this was a material provision of the lease. It is undisputed that appellant failed to pay her rent on time for three consecutive months. She argues, however, that this was merely a "de minimis" violation but cites no legal authority for her argument.

Appellant also claims that she was not aware of this policy because she did not read the lease, but the Housing and Redevelopment Authority (HRA) sent her numerous notices about the consequences of her failure to pay rent on time. The notices were ultimately returned to the HRA by the postal service, but the HRA was not responsible for ensuring that appellant picked up her mail. Absent misrepresentation, trick, or artifice, if a party to a written contract has the ability to read the contract and fails to do so, the party is still bound by it. *Currie State Bank v. Schmitz*, 628 N.W.2d 205, 210 (Minn. App. 2001). Appellant's ignorance of the late-rent provision does not excuse her failure to comply with her public-housing lease.

Appellant's lease also listed failure to occupy the apartment as a principal residence as grounds for lease termination; this was also a material provision of the lease. The HRA notified appellant that she was required to move into the apartment by November 30, 2006. The record establishes that appellant slowly moved into the apartment and was not living there continually until January or February of 2007. Therefore, appellant breached the lease provision requiring her to occupy the apartment

as her principal place of residence. She claims that her failure to occupy the premises should be excused due to her own and her daughter's disabilities, specifically, anxiety over the move. Again, she offers no legal support for this argument.

Because the amount of appellant's monthly rent payments was calculated based on the income that she reported on her public-housing applications, her lease provided that misrepresentation of income was grounds for lease termination; this was a material term of the lease. After its review of appellant's bank statements indicated unexplained deposits, the HRA concluded that appellant had misrepresented her income when she applied for public housing. "Annual income" includes "regular contributions or gifts received from . . . persons not residing in the dwelling." 24 C.F.R. § 5.609(b)(7) (2006). "Annual income" does not include "[t]emporary, nonrecurring or sporadic income (including gifts)." *Id.*, (c)(9) (2006).

Appellant and her mother testified that the extra money deposited into appellant's bank account either was not used by appellant or was a sporadic gift. But nothing in the record corroborates this testimony, and the record indicates that appellant frequently accepted monetary gifts from her mother's former boyfriend. These deposits were frequent, not sporadic; they therefore constituted income. By not reporting them, appellant misrepresented her income.[1]

[1] Appellant argues that the unreported income did not make her ineligible for public-housing assistance, but this argument is irrelevant. The issue is whether appellant accurately reported her income, not whether she is ultimately eligible for public-assistance housing.

The district court did not clearly err in determining that appellant failed to timely pay her rent, to occupy the premises, and to accurately report her income. Therefore, appellant breached her lease and was subject to eviction.

II.

Appellant argues that, because she is disabled and entitled to a reasonable accommodation, her breaches of the lease should not subject her to eviction. *See* 24 C.F.R. § 966.7(a) (2006) ("handicapped person shall be provided reasonable accommodation to the extent necessary to provide the handicapped person with an opportunity to use and occupy the dwelling unit equal to a non-handicapped person"); *see also* 42 U.S.C. § 3604(f)(3)(B) (2006) (providing that it is discrimination for landlord to refuse to make "reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such [handicapped] person equal opportunity to use and enjoy a dwelling"); Minn. Stat. § 363A.10, subd. 1(2) (2006) (stating identical language).

Appellant's argument is unpersuasive for two reasons. First, she is not disabled within the meaning of the relevant laws and, second, the accommodation she requested, that the HRA disregard her breaches of the lease, was not reasonable.

A "handicap" is defined as "a physical or mental impairment which substantially limits one or more of such person's major life activities." 42 U.S.C. § 3602(h)(1) (2006); *see also* Minn. Stat. § 363A.03, subd. 12 (2006) (defining "disability" as "any condition or characteristic that renders a person a disabled person," and defining "disabled person" as any person who "has a physical, sensory, or mental impairment which materially limits

one or more major life activities").[2] Major life activities include, but are not limited to, "caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working." 29 C.F.R. § 1630.2(i) (2006). The major life activity of working is materially or substantially limited if an individual is "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills and abilities." 29 C.F.R. 1630.2(j)(3)(i) (2006).

Appellant specifically denied that she or her daughter were disabled in the application process, and the evidence did not establish that they were unable to care for themselves, perform manual tasks, walk, see, hear, speak, breathe, or learn because of their alleged disabilities. Although appellant was unemployed, she testified that she did not work because she "can't afford to work" and has to seek emergency treatment when she has migraines. But nothing in the record establishes that appellant's migraines significantly restricted her ability to perform "either a class of jobs or a broad range of jobs" as compared to the average worker with comparable abilities. The district court did not err in concluding that appellant is not disabled.

Moreover, even if appellant were disabled and entitled to a reasonable accommodation, the accommodations she requested (being allowed to breach the lease by paying rent after the monthly date, moving into her public-housing apartment over

[2] Although the federal adjective is "substantially" and the state adjective is "materially," this does not change the analysis. The factors and considerations are viewed in a less stringent light under Minnesota law, but they nevertheless remain the same. *See Hoover v. Norwest*, 632 N.W.2d 534, 543 n.5, n.6. (Minn. 2001).

several months while occupying another residence, and not treating extra deposits in her bank accounts as income for purposes of calculating rent) were not reasonable accommodations.

To prevail on her reasonable-accommodations claim, appellant must have made a "prima facie showing that the accommodation she seeks is reasonable on its face." *Hinneberg v. Big Stone County Hous. & Redev. Auth.*, 706 N.W.2d 220, 226 (Minn. 2005). Appellant must show that her requested accommodations are: (1) "linked to her disability-related needs;" (2) "necessary to afford her an equal opportunity to enjoy" public-housing benefits; and (3) "possible to implement." *Id.* (citing *Huberty v. Washington County Hous. & Redev. Auth.*, 374 F. Supp. 2d 768, 773 (D. Minn. 2005)).

Nothing in the record establishes that appellant's breaches of the lease were related to her anxiety caused by the move. *See Smallwood*, 379 N.W.2d at 556 (holding that tenant's lease violations of keeping pets and disrupting neighborhood bore no relation to handicap of muscular dystrophy). Analogously, appellant's failure to make timely rent payments and to disclose the full extent of her income were not related to her anxiety, and no causal connection was established between her anxiety and failing to occupy the apartment as ordered. Appellant's requested accommodations were not necessary to afford her an equal opportunity to enjoy public-housing benefits. The HRA does not allow non-disabled applicants to breach their leases.

In terms of implementation, appellant must show "that the accommodation is feasible or plausible" for the HRA to implement. *Id.* at 228. Because appellant failed to make a prima facie case that her requested accommodations were necessary to afford her

an equal opportunity to enjoy public-housing benefits, making the accommodation was not feasible or plausible. The district court did not err when it determined that appellant was not entitled to accommodations because of a disability.

III.

Appellant claims that the district court erred by failing to consider mitigating circumstances. In public-housing cases, federal regulations "do not empower trial courts to consider external circumstances in eviction proceedings." *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). The district court must "find only whether the facts alleged in the complaint are true." *Id.*

It is true that the HRA *may* consider mitigating circumstances before terminating a public-housing lease, but the federal regulations do not require the district court to do so in eviction proceedings.

> [T]he PHA *may* consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder in the offending action, the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

24 C.F.R. § 966.4(l)(5)(vii)(B) (2006) (emphasis added). "May" is permissive, not mandatory. *Cf.* Minn. Stat. § 645.44, subd. 15 (2006). Neither the district court nor this court could conclude that the HRA acted arbitrarily and capriciously by not considering factors that it is not required to consider.

Affirmed.