STATE OF MINNESOTA
IN COURT OF APPEALS
A08-1539

Signature Capital, Assignee of Charleston Manor, LLC,
Appellant,

vs.

Tara Thompson, et al.,
Respondents.

Filed May 19, 2009
Affirmed
Harten, Judge[*]

St. Louis County District Court
File Nos. 69DU-CV-07-3513; 69DU-CV-07-3518;
69DU-CV-07-3520; 69DU-CV-07-3522; 69DU-CV-07-3525

Carl Green, d/b/a Signature Capital, 601 Carlson Parkway, Suite 1050, Minnetonka, MN 55305 (pro se appellant)

Andrew J. Harrington, Gerlach Beaumier, Attorneys at Law, LLP, 610 Missabe Building, 227 West First Street, Duluth, MN 55802 (for respondents)

Considered and decided by Klaphake, Presiding Judge; Hudson, Judge; and Harten, Judge.

[*] Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

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

HARTEN, Judge

Appellant, a landlord's assignee, challenges the district court's denial of his motion to vacate summary judgment in favor of respondents, tenants. Because the district court did not abuse its discretion, we affirm.

FACTS

On 6 April 2007, landlord Charleston Manor LLC, and respondents Tara Thompson et al, tenants, entered into a residential lease from 1 June 2007 to 30 May 2008 for monthly rent of $1,620. On 18 June 2007, at respondents' request, a city inspector viewed the property. The inspector's report cited 26 housing-code violations, among them a lack of screens on the windows, insufficient screens on the door, a bathroom floor in need of replacement, a hose that could contaminate the drinking water supply, and "rain . . . pouring out from the boards of the ceiling of the front porch." At the end of June 2007, respondents vacated the property, which they considered uninhabitable.

Acting pro se, Carl Green, d/b/a appellant Signature Capital, the landlord's assignee, sued each of the five respondents in conciliation court. In October 2007, the conciliation court entered judgments for the respondents individually in the amount of $324 (one fifth of one month's rent) plus $60 court costs. Appellant then filed a demand for removal/appeal from conciliation court to district court; he also moved for reconsideration, consolidation of cases, and naming of the real party in interest. In

January 2008, he moved for summary judgment. In March 2008, respondents also moved for summary judgment.

In April 2008, the district court consolidated the cases, denied summary judgment to appellant, and awarded summary judgment to respondents, but stayed entry of judgment for 30 days under Minn. Gen. R. Pract. 125. On 7 May 2008, judgment was entered.

On 27 May 2008, appellant, now represented by an attorney, moved the district court to vacate the summary judgment. Following a hearing, on 2 July 2008, the district court denied the motion. On 23 July 2008, respondents served and filed written notice of the 2 July 2008 order.

Appellant, again pro se, appeals from the denial of the motion to vacate.[1]

D E C I S I O N

This court reviews the district court's denial of a motion to vacate under Minn. R. Civ. P. 60.02 to determine if the court abused its discretion. *Carter v. Anderson*, 554 N.W.2d 110, 115 (Minn. App. 1996), *review denied* (Minn. 23 Dec. 1996). Minn. R. Civ. P. 60.02 provides six grounds for relief from judgment, and a motion may be granted

[1] Parts of appellant's brief appear to challenge the summary judgment itself rather than the denial of his motion to vacate. But the time to appeal from the summary judgment expired on 2 September 2008 and this appeal was not filed until 3 September 2008. The time for appeal is "absolute and unambiguous." *Semanko v. Dep't of Employment Servs*., 309 Minn. 425, 430, 244 N.W.2d 663, 666 (1976). Appellant's pro se status would not entitle him to extend the time for appeal. *See Heinsch v. Lot 27, Block 1 For's Beach*, 399 N.W.2d 107, 109 (Minn. App. 1987) (holding that pro se litigants are held to the same standard as attorneys). Therefore, we construe this appeal to be from the denial of appellant's motion to vacate.

only if one of those grounds exists. *Id.* at 112-13. Only two grounds are applicable here: "(a) [m]istake, inadvertence, surprise or excusable neglect" and "(f) [a]ny other reason justifying relief from the operation of the judgment." *See* Minn. R. Civ. P. 60.02(a), (f). Relief under subdivision (f) is available only in "exceptional circumstances" that do not include the elements of subdivision (a). *Chapman v. Special Sch. Dist. No. 1,* 454 N.W.2d 921, 924 (Minn. 1990). The district court found that appellant was seeking relief under subdivision (a) because, in the affidavit supporting his motion, he said that he "did not understand at that time [i.e., the hearing on the summary-judgment motion] that [respondents] had also brought a motion for summary judgment and that I had to present evidence at that hearing that the apartment was habitable."

"A party seeking relief under Minn. R. Civ. P. 60.02 must establish: (1) a reasonable case on the merits; (2) a reasonable excuse for the failure to act; (3) action with due diligence after entry of judgment; and (4) lack of prejudice to the opposing party." *Reid v. Strodtman*, 631 N.W.2d 414, 419 (Minn. App. 2001). All four elements must be proved; however, a weak showing on one element may be offset by a strong showing on the others. *Id*. The district court concluded, and respondents do not dispute, that appellant made an adequate showing on the third and fourth factors: he hired an attorney who promptly filed a motion to vacate after summary judgment was entered, and respondents would not be severely prejudiced by granting the motion to vacate. But appellant's showings on the first and second factors are so weak that they are not counterbalanced by his showings on the third and fourth factors.

1. Reasonable Case on the Merits

The district court found that appellant did not have a reasonable case on the merits. Minn. Stat. § 504B.161 (2008) requires every landlord to covenant "that the premises and all common areas are fit for the use intended by the parties [in this case, residential use]," that the landlord will "keep the premises in reasonable repair during the term of the lease," and that the landlord will "maintain the premises in compliance with the applicable health and safety laws of the state, and of the local units of government . . . ." Minn. Stat. § 504B.131 (2008) permits tenants of a premises that "becomes uninhabitable or unfit for occupancy" to vacate it.

In their summary judgment motion, respondents asserted that they had vacated the premises because it was uninhabitable. In support of their argument, they submitted a report of a city inspection done while they were living in the premises. It cited 26 violations of the housing code; some were trivial but others were significant, including rain water coming through a porch ceiling, windows that had no screens, doors that had inadequate screens and could not be left open for ventilation, unsafe electrical outlets, and a hose that could contaminate the drinking water supply.

Appellant presented no evidence at the summary judgment hearing that the property was habitable; but, at the hearing on the motion to vacate, he offered the affidavit of the city inspector who had inspected the premises. She opined that, notwithstanding all the code violations, the premises had been habitable at the time of her 18 June 2007 inspection and her subsequent inspections, which occurred after respondents vacated the premises. The district court noted that "habitability" within the

meaning of Minn. Stat. § 504B.131 means compliance with "the terms set forth in Minn. Stat. § 504B.161, including that the premise[s] comply with all applicable health and safety laws and that it is fit for its intended use" and stated that "[t]here is no dispute in this case that the premises at issue did not comply with the applicable health and safety laws of the State and/or the City . . . ."

Appellant relies on *Fritz v. Warthen*, 298 Minn. 54, 213 N.W.2d 339 (1973) to support his argument that respondents were obligated to pay rent despite the housing code violations. *Fritz* was an appeal from an order for writs of restitution in actions for a tenant's unlawfully detaining an apartment after failing to pay rent. *Fritz* rejected the common law principle that a tenant's covenant to pay rent is independent of a landlord's covenant to repair and maintain the premises and held that these covenants, when imposed by statute, are not independent but rather mutually dependent. *Id.* at 57-58; 213 N.W.2d at 341. Thus, *Fritz* does not support appellant's view that, regardless of the condition of the premises, respondents were obliged to pay rent. Nor does *Fritz* support appellant's view that a liberal construction of the statute means that a landlord's partial compliance with the requirements of Minn. Stat. § 504B.161 is sufficient.

> As a part of tenants' rights legislation enacted by the 1971 legislature, a landlord is now held, by virtue of [the predecessor to Minn. Stat. § 504B.161], to covenant to keep leased residential premises in reasonable repair, fit for their intended use and maintained in compliance with applicable health and safety laws.

Id. at 56, 213 N.W.2d at 340-41. *Fritz* neither says nor implies that partial compliance with this statutory covenant is acceptable; such a construction would conflict with the statute itself. *See* Minn. Stat. § 504B.161, subd. 1(b) (providing that parties to a lease

may not waive or modify statutory covenants); Minn. Stat. § 504B.161, subd. 3 (providing that tenant's opportunity to inspect premises before concluding lease shall not defeat statutory covenants). Appellant cites no caselaw supporting his view that numerous violations of the city health and safety codes are irrelevant to compliance with the statutory covenants.

The district court's finding that appellant did not present a reasonable defense on the merits is supported by the record and consistent with the law.

2. Reasonable Excuse for Failure to Act

Appellant implied that his lack of an attorney was a reasonable excuse for his failure to oppose respondents' argument on habitability at the summary judgment hearing. He stated, "I did not understand at that time [of the summary judgment hearing] that [respondents] had also brought a motion for summary judgment and that I had to present evidence at that hearing that the apartment was habitability [sic]." The district court did not find this statement credible because "[Appellant] clearly had read some of [respondents'] submissions, in that [he] had then supplied a reply brief to this Court before the [summary judgment] hearing."

The reply brief appellant supplied claimed that "[Respondents'] argument misses the point." Appellant must have read respondents' motion for summary judgment to be able to assert that their argument on the inhabitability of the premises missed what he regarded as "the point." The record supports the district court's finding that "[t]hroughout this matter, [appellant] has served motions, legal memoranda in support of

his positions, and a responsive memorandum of law, citing statutes, procedural rules and case law."

The decision to appear unrepresented does not qualify as "[m]istake, inadvertence, surprise, or excusable neglect" nor does it provide the "exceptional circumstances" needed to "any other reason justify[ing] relief from the operation of judgment." *See* Minn. R. Civ. P. 60.02 (a), (f).

The district court did not abuse its discretion in denying appellant's motion to vacate because appellant presented neither a reasonable defense on the merits nor a reasonable excuse for failing to act.

Affirmed.