

NOT DESIGNATED FOR PUBLICATION

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NUMBER 2006 CA 0962

JARRELL P. MELANCON, SR.

VERSUS

TIMOTHY O'DOWD

Judgment Rendered: March 23, 2007

Appealed from
The City Court of Houma, Parish of Terrebonne,
State of Louisiana
Docket Number 06-00589Q

Honorable Jude Thaddeus Fanguy, Judge Presiding

Jarrell P. Melancon, Sr.
Houma, LA

Plaintiff/Appellee,
In Proper Person

Timothy O'Dowd
Houma, LA

Defendant/Appellant,
In Proper Person

BEFORE: CARTER, C.J., WHIPPLE AND McDONALD, JJ.

WHIPPLE, J.

Timothy O'Dowd, the tenant, appeals from a judgment of eviction rendered on March 31, 2006 from the City Court of Houma in favor of his landlord, Jarrell P. Melancon, Sr.

We have thoroughly reviewed the record and testimony adduced by both parties herein and the reasons set forth by the trial court. As correctly noted by the trial court, pursuant to the provisions of the lease agreement the parties entered into with the Terrebonne Parish Consolidated Government's Section 8 Housing Program ("Section 8"), the monthly rent was \$460.00, with the tenant responsible for the remaining rental balance owed after Section 8 paid its portion. During the pertinent time at issue, Section 8 was paying \$377.00 per month to Melancon in rent on behalf of O'Dowd, leaving a balance of \$83.00 per month to be paid by O'Dowd.

Melancon testified that O'Dowd only paid a total of \$100.00 in rent from June of 2005 through March of 2006. O'Dowd testified that aside from the \$100.00 payment, he attempted to pay Melancon \$23.00 per month in rental payments in accordance with an alleged oral agreement with Melancon to reduce the rent to \$400.00 per month, all of which Melancon denied.¹

The trial court determined that because Melancon denied any such oral agreement to alter the written lease agreement, the lease was required to be altered in writing, which it was not. Thus, the court stated, even if it were to find that the parties had agreed to reduce the rent to \$377.00 per month, under the terms of the lease agreement, O'Dowd still owed \$83.00 per month as his portion of the remaining rental balance. The court further noted that O'Dowd had acknowledged in his testimony only paying \$100.00 for October of 2005.

¹We note that contrary to his sworn testimony at trial, in his brief to this court O'Dowd contends that he attempted to pay his landlord \$83.00 per month in rent.

Thus, the trial court concluded, O'Dowd had not paid his portion of the rent for at least the months of November, December, January, February, and March. Accordingly, the trial court determined that Melancon was entitled to a judgment of eviction for non-payment of rent.

The standard of review for factual findings in a civil action is a two-part test: (1) the appellate court must find from the record there is a reasonable factual basis for the finding of the fact finder, and (2) the appellate court must further determine the record establishes the finding is not clearly wrong (manifestly erroneous). Mart v. Hill, 505 So. 2d 1120, 1127 (La. 1987). Factual findings should not be reversed on appeal absent manifest error. Rosell v. ESCO, 549 So. 2d 840, 844 (La. 1989). If the trial court's findings are reasonable in light of the record reviewed in its entirety, the court of appeal may not reverse. Sistler v. Liberty Mutual Insurance Company, 558 So. 2d 1106, 1112 (La. 1990). Consequently, when there are two permissible views of the evidence, the fact finder's choice between them cannot be manifestly erroneous. Stobart v. State, Department of Transportation and Development, 617 So. 2d 880, 883 (La. 1993).

Given the evidence and testimony before us and applying the above jurisprudential standard of review, we find that the trial court did not abuse its discretion and did not err as a matter of law, nor does the record demonstrate that the trial court was clearly wrong or manifestly erroneous in rendering a judgment of eviction.

Thus, we affirm the March 31, 2006 judgment of the trial court in accordance with Uniform Rules – Courts of Appeal, Rule 2-16.2A (5), (6), (7), and (8). Costs of this appeal are assessed to the appellant, Timothy O'Dowd.

AFFIRMED.