STATE OF MICHIGAN

COURT OF APPEALS

JANICE LEWIS, individually and as Next Friend of RICHARD LEWIS and JESSICA LEWIS, Minors,

Plaintiff-Appellant,

v

JOHN MCKNIGHT, AGNES MCKNIGHT, KATHLEEN HOSKINS, EILISH M. MCKNIGHT, SEAN P. MCKNIGHT, KAREN R. MCKNIGHT, TIMOTHY P. MCKNIGHT, and CANDICE MCKNIGHT, d/b/a MCKNIGHT APARTMENTS,

Defendants-Appellees.

UNPUBLISHED
December 12, 1997

No. 197248
Jackson Circuit Court
LC No. 95-72849-CH

Before: Young, P.J., and Markman and Smolenski, JJ.

PER CURIAM.

Plaintiff appeals by right a verdict of no cause of action in a bench trial in this civil rights action. We affirm in part and reverse in part.

Plaintiff rented an apartment in defendants' twelve-unit apartment complex.[1] On the rental application, plaintiff listed herself and her boyfriend as occupants and crossed out the word "children."[2] In June 1994, plaintiff's children moved in with her and her boyfriend. Plaintiff contends that defendants wanted no children occupants because they were attempting to sell the complex. She alleges that in August 1994, Agnes McKnight forbade plaintiff from using the apartment address to enroll her children in the local school. Plaintiff's children lived with their father during the 1994-1995 school year. Plaintiff's boyfriend, Ronald Igoe, testified that in March 1995, he requested that the children be allowed to live in plaintiff's apartment but John McKnight informed him that the children could not return. However, plaintiff's children returned to live with her in June 1995. John McKnight testified that on June 16, 1995, he complained about loud music coming from plaintiff's apartment and saw plaintiff's children starting Igoe's truck. On June 19, 1995, defendants issued plaintiff a notice to quit, which stated that plaintiff's tenancy was being terminated due to "noise disturbance, tenant and property

endangerment, NO CHILDREN were to occupy the apartment per rental agreement." Plaintiff then filed the present

suit alleging, inter alia, that defendants violated provisions of Michigan's Civil Rights Act, MCL 37.2502; MSA 3.548(502). Defendants withdrew the notice to quit. In August 1995, plaintiff's son moved in with his father again but her daughter continued to live with plaintiff in the apartment at issue. Plaintiff and her daughter continued to reside there at the time of trial and apparently at the time of this appeal. After a bench trial, the trial court issued a verdict of no cause of action.

This Court reviews the findings of fact in an action tried without a jury for clear error. MCR 2.613(C). "A finding is clearly erroneous when, although there is evidence to support it, the reviewing court is left with a definite and firm conviction that a mistake was made." *Hofmann v Auto Club Ins Ass'n*, 211 Mich App 55, 98-99; 535 NW2d 529 (1995). However, the application of a statute to undisputed factual findings is a question of law. This Court reviews questions of law de novo. *Oakland Hills Development Corp v Lueders Drainage District*, 212 Mich App 284, 294; 537 NW2d 258 (1995).

Plaintiff first contends that the notice to quit violated MCL 37.2502(1)(f). Section 502(1)(f) states:

> (1) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person or a person residing with that person:
>
> * * *
>
> (f) Make, print, circulate, post, mail, or otherwise cause to be made or published a statement, advertisement, notice, or sign, or use a form of application for a real estate transaction, or make a record of inquiry in connection with a prospective real estate transaction, which indicates, directly or indirectly, an intent to make a preference, limitation, specification, or discrimination with respect to the real estate transaction.

Under this subsection, the issue is whether the notice indicates an intent to discriminate.

There are three plausible ways to interpret the "NO CHILDREN . . ." language in the notice at issue: 1) that plaintiff was being evicted because she had children; 2) that plaintiff was being evicted because she violated the rental agreement, which prohibited children; or 3) that plaintiff was being evicted because she made a misrepresentation regarding whether children would occupy the premises in her application. The first two interpretations indicate an intent to discriminate and therefore would violate § 502(1)(f). The third interpretation would not violate § 502(1)(f), as plaintiff's own counsel conceded during oral argument. Plaintiff's counsel further agreed that landlords may legitimately inquire whether children will occupy premises in order to make appropriate accommodations, such as restricting families with children to designated buildings within a complex. See *Dep't of Civil Rights v Beznos Corp*, 421 Mich 110, 122; 365 NW2d 82 (1984). Here, however, defendants' own testimony expressly negates the possibility that the "NO CHILDREN . . ." language in the notice referred to plaintiff's misrepresentation in the application.[3] Therefore, by defendants' own words, there is no non-

discriminatory rationale for including this language in the notice. Accordingly, we must find that inclusion of this language in the notice violates § 502(1)(f). The trial court erred in concluding otherwise.

Plaintiff next contends that defendants' actions violated § 502(1) (a) through (e), which state:

> (1) A person engaging in a real estate transaction, or a real estate broker or salesman, shall not on the basis of religion, race, color, national origin, age, sex, familial status, or marital status of a person or a person residing with that person:
>
> (a) Refuse to engage in a real estate transaction with a person.
>
> (b) Discriminate against a person in the terms, conditions, or privileges of a real estate transaction or in the furnishing of facilities or services in connection with a real estate transaction.
>
> (c) Refuse to receive from a person or transmit to a person a bona fide offer to engage in a real estate transaction.
>
> (d) Refuse to negotiate for a real estate transaction with a person.
>
> (e) Represent to a person that real property is not available for inspection, sale, rental, or lease when in fact it is so available, or knowingly fail to bring a property listing to a person's attention, or refuse to permit a person to inspect real property, or otherwise make unavailable or deny real property to a person.

Here, defendants did, in fact, lease an apartment to plaintiff; accordingly the only subrule that arguably applies is (b). In a nine page written verdict, the trial court set forth plaintiff's allegations and defendant's responses thereto. A review of the bench trial transcript indicates that the verdict accurately summarizes the evidence presented. The court further noted that credibility was an important consideration here. It determined that the real estate agent's testimony that the complex was taken off the market in July 1994, that he and defendants had not discussed children residing at the complex, and that it was obvious that children resided there because of the presence of toys, to be credible. The court concluded that this evidence indicated that Agnes McKnight had no motive in fall 1994 to forbid plaintiff from using the apartment address to enroll her children in school. The court further found Agnes and John McKnight credible and found their answers to the various allegations to set forth nondiscriminatory reasons for the actions taken. It disbelieved Igoe's testimony about requesting and being refused permission to have the children return to the apartment. In short, the court found that the incidents complained of did not occur as plaintiff alleged. Accordingly, it concluded that plaintiff failed to sustain her burden of proof. Particularly because the court was in a superior position to assess the witnesses' credibility, see MCR 2.613(C), we find no clear error in its factual finding that plaintiff failed to demonstrate discrimination by defendants. Accordingly, we affirm the trial court's verdict of no cause of action regarding alleged violations of § 502(1)(a)-(e).

For these reasons, we affirm the trial court's verdict of no cause of action regarding alleged violations of § 502(1)(a) - (e) but reverse regarding the alleged violation of § 502(1)(f) and remand for

determination whether the defendants, other than John and Agnes McKnight, are liable for this violation and for determination of any damages.[4] We do not retain jurisdiction.

/s/ Robert P. Young, Jr.
/s/ Stephen J. Markman
/s/ Michael R. Smolenski

[1] Except where specifically otherwise noted, the term "defendants" refers to John and Agnes McKnight. The other defendants are partial owners of the apartment complex but are not actively involved its management.

[2] The parties signed no written lease. The signed application form is the only written agreement at issue.

[3] During the bench trial, Agnes McKnight expressly testified that she did *not* believe that plaintiff violated the rental application by having the children live with her and that she and her husband had no objections to the children. John McKnight testified, "the reason I wanted them out was this noise disturbance, tenant and property endangerment. That's it." He testified that the children were not the reason.

[4] The trial court's determination of damages should take into consideration that plaintiff failed to demonstrate discrimination by defendants violative of § 502(1)(a)-(e), the fact that defendants withdrew the notice to quit, and the fact that plaintiff and her daughter *continue* to reside at the complex.