IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

MARK DOYLE and CAROLYN DOYLE, husband and wife, Respondents, v. JAMES GOUGHNOUR, Appellant.	No. 41538-1-II UNPUBLISHED OPINION

Worswick, A.C.J. — James Goughnour appeals from an order issuing a writ of restitution based on a show cause finding that he unlawfully detained Mark and Carolyn Doyle's residence. Goughnour claims that the trial court (1) erred in entering a default order, (2) denied him his right to present evidence, (3) erred in issuing a writ of restitution, and (4) erred in classifying this as an unlawful detainer action. We affirm and award costs and attorney fees to the Doyles.

Facts

On May 12, 2009, Mark Doyle and Jim Goughnour entered into a written rental agreement for property the Doyles owned in Grays Harbor County. The agreement provided that Goughnour would pay $1,000 per month, the Doyles would pay the utilities and Goughnour would reimburse them, and the amount of rent would never exceed the amount of the Doyles' mortgage payment.

On April 15, 2010, Mark Doyle and Goughnour entered into a new agreement. It provided:

> This Agreement supersedes all previous agreements, written or oral, including the Agreement of May 12, 2009. The parties agree that Tenant shall continue

> occupancy of the Subject Property subject to this Rental Agreement.
> 1. **Rent**: Monthly rent will be paid by Tenant according to the following schedule: Eight Hundred Dollars ($800) per month beginning May 1, 2010.
> [2. Omitted.]
> 3. **Utilities**: Tenant is released from all utility expenses incurred prior to April 1, 2010. Commencing April 1, 2010; responsibility for utilities are [sic] tenant's.
> 4. **Termination**: Tenant and Landlord may terminate this lease upon thirty (30) days notice to Landlord.

Clerk's Papers (CP) at 46. On August 12, 2010, Goughnour sent a letter to Mark Doyle explaining that because the rental agreement did not specify a due date, he would be making his payments on the 15th day of the month. On September 4, 2010, the Doyles sent a letter to Goughnour explaining that it was a 20-day notice to vacate the premises. In it, the Doyles explained:

> We have rented our home to you for less than we had originally asked to accommodate your wishes. We can not [sic] sustain our monthly financial obligations at the rent amount requested nor can we afford to have you not pay the rent until the 15th of each month as requested in your letter dated 8-12-10. What you wish for your convenience does make a difference for our schedule and time management as well. This is our final notice per latest rental agreement that you wrote for your own satisfaction on April 14, 2010 (copy enclosed).

CP at 48. On September 15, 2010, through an attorney, the Doyles sent Goughnour a notice of termination of tenancy, notifying Goughnour that the tenancy would terminate at midnight on October 15, 2010.

On October 18, 2010, since Goughnour continued to occupy the residence, the Doyles filed a complaint for eviction, asserting that Goughnour had failed to pay two months of rent and they had given him a 30- day notice to vacate. They requested a writ of restitution, a judgment for past rent, damages, attorney fees, costs, and disbursements. Attached to the summons was a document entitled, "RCW 59.18.375 Payment or Sworn Statement Requirement," informing

Goughnour that by October 29, 2010, he needed to pay his rent into the court registry or file a sworn statement that he did not owe the rent claimed due. That same day, the superior court issued an order to show cause why the court should not grant the relief the Doyles requested.

On October 29, 2010, Goughnour filed an answer and counterclaims to the Doyles' complaint. He denied the Doyles' allegations and asserted multiple affirmative defenses based on his claim that he made overpayments under the original agreement that applied to his current rental payment obligations under the new agreement.[1] Goughnour also filed a lengthy answer to the motion to show cause. On November 1, 2010, the trial court granted the show cause motion and issued a writ of restitution. Goughnour filed a request for the trial court to reconsider. By letter dated November 3, 2010, the trial court denied the motion, explaining in part that the court issued the writ of restitution based on the termination provision in the rental agreement. The trial court also explained that if Goughnour believed that the Doyles owed him money, he should file a contractual claim against them.

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[1] Specifically, he asserted:

> By way of affirmative defenses; Defendant asserts that Plaintiff's claims and allegations may be or are barred by the doctrine of failure to state a cause of action for which relief can be granted, jurisdiction, sufficiency of service, equitable estoppel, promissory estoppel, unclean hands, statute of frauds, unjust enrichment, frustration of purpose, breach by Plaintiff, attorney's fees not recoverable, improper notice of breach, offset, accord and satisfaction; Defendant asserts that he has a lease in fact to the the [sic] subject property; Defendant asserts that he has a constructive lease to the subject property, Defendant asserts Plaintiff's notice to vacate is fatally flawed. Defendant asserts Plaintiff's unlawful detainer is fatally flawed.

CP at 21.

ANALYSIS

I. Unlawful Detainer

This was an unlawful detainer action under chapter 59.18 RCW. Thus, the superior court's jurisdiction was limited to the right of possession. As Division One of this court explained in *Phillips v. Hardwick*:

> Unlawful detainer actions under RCW 59.18 are special statutory proceedings with the limited purpose of hastening recovery of possession of rental property, and the superior court's jurisdiction in such action is limited to the primary issue of the right of possession, plus incidental issues such as restitution and rent, or damages. Any issue not incident to the right of possession within the specific terms of RCW 59.18 must be raised in an ordinary civil action.

29 Wn. App. 382, 385-86, 628 P.2d 506 (1981). There, the Phillips filed both an unlawful detainer action and a tort claim against the Hardwicks. 29 Wn. App. at 385. The superior court dismissed the unlawful detainer action after the Hardwicks surrendered possession of the residence. 29 Wn. App. at 385. When the Hardwicks sought dismissal of the tort claim based on res judicata, the superior court denied the motion, ruling that one cannot bring tort claims in an unlawful detainer proceeding but must pursue such remedies in a separate cause of action. 29 Wn. App. at 385-86. Division One agreed. 29 Wn. App. at 389. For this same reason, the appellate court denied the Phillips an award of attorney fees as their claim for outrageous conduct was not under chapter 59.18 RCW and thus the attorney fees provision in RCW 59.18.290 (2) did not apply. 29 Wn. App. at 389.

As we discuss in detail below, here, the trial court properly limited its consideration to who had the right to possess the residence. As noted in its order denying reconsideration, the trial court considered the parties' pleadings before conducting a show cause hearing and it provided

the parties an opportunity to show why it should or should not issue a writ of restitution.

II. Default Order

Goughnour first argues that the trial court erred in entering a default order when he filed an answer and counterclaims and appeared at the show cause hearing. He relies on the trial court's show cause order, that states: "Defendant does not appear by adequate written response or in person . . . . 1. Defendant failed to adequately appear and is in default." CP at 93. The Doyles disagree with Goughnour's characterization of the trial court's order, arguing that the trial court was merely finding that Goughour was in default of the rental agreement, not entering a CR 55 default judgment.

We agree with the Doyles that this was not a default judgment but, rather, a show cause order finding Goughnour in wrongful possession of the property. While the Doyles' attorney could have drafted this order more precisely, the record shows that the trial court considered Goughnour's answer and provided an opportunity for him to speak at the show cause hearing. Thus, what the trial court found was that Goughnour wrongfully possessed the residence under the terms of his rental agreement and therefore was in default of that agreement. There was no reversible error.

III. Presenting Evidence

Goughnour argues that the trial court denied him an opportunity to present evidence and argue from it and therefore violated his right of due process. Citing *Leda v. Whisnand*, 150 Wn. App. 69, 207 P.3d 468 (2009), he argues that under Title 59.18 RCW, the trial court's failure to swear him in and consider oral testimony was an abuse of discretion and, as such, reversible error.

At the show cause hearing, the trial court did not have Goughnour's answer to the summons and complaint. The trial court asked Goughnour, "Do you have an answer to this? I have no documents of any nature." Report of Proceedings (RP) at 3. Goughnour then provided a copy of his pleadings to the court, stating, "I have my answer in a sworn statement to this." RP at 3. The trial court then took a recess to consider Goughnour's answer. The trial court reconvened the case and explained:

> THE COURT: Doyle and Goughnour. I have reviewed the file. And I note the clerk dropped on my desk the paperwork. Here's your paperwork back, Mr. Goughnour. It apparently was left at the clerk's office at 4:58 on Friday afternoon, so it was stamped 5:03.
>
> . . . .
>
> I have reviewed the documents in this matter. And your issues involving this matter, Mr. Goughnour, are matters of a financial dispute apparently, according to your allegations, between the landlord and you basically.
>
> Those are not a defense under the contract that was signed that I note on I believe it's April 10th and then your correspondence on the 15th.
>
> This matter is a landlord/tenant matter. If you have a contractual dispute that he owes you money in other areas, that's your problem.
>
> . . . .
>
> At this point in time, you're entitled to your writ of restitution. If the gentleman wishes to sue, he's entitled to sue. It's up to him.

RP at 4-5.

Leda v. Whisnand, 150 Wn. App. at 69, is instructive. There, the tenant tried to present

testimony orally to show that the period of tenancy ran from the 15th of each month rather than from the first day of each month and therefore the landlord had provided defective notice. 150 Wn. App. at 81. The trial court refused to consider this testimony or allow Whisnand to present any evidence to support this defense. 150 Wn. App. at 75-77. Division One of this court agreed with the tenant, explaining that when a defendant presents a viable defense to the request for a writ of restitution, "RCW 59.18.380 imposes an affirmative duty on the trial court to ascertain the merits of defenses raised for the first time during an unlawful detainer show cause hearing by examining the parties and any witnesses." 150 Wn. App. at 81. The court further explained:

> [T]he proper procedure by which a trial court should conduct a RCW 59.18.380 show cause hearing is as follows: (1) the trial court must ascertain whether *either* the defendant's written or oral presentations potentially establish a viable legal or equitable defense to the entry of a writ of restitution; and (2) the trial court must then consider sufficient admissible evidence (including testimonial evidence) from parties and witnesses to determine the merits of any viable asserted defenses. Because RCW 59.18.380 contemplates a resolution of the issue of possession based solely on the show cause hearing, the court must either manage its examination in a sufficiently expeditious manner to accommodate its calendar while still preserving the defendant's procedural rights, or it must briefly set the matter over for a longer show cause hearing in which those rights are respected.

150 Wn. App. at 83 (footnote omitted).

Here, the trial court did not deprive Goughnour an opportunity to present a defense. It considered his pleadings, found that he had failed to present a viable defense, and granted the writ of restitution. This was all RCW 59.18.380 required the trial court to do. *See also Carlstrom v. Hanline*, 98 Wn. App. 780, 789-90, 990 P.2d 986 (2000) (summary proceedings under RCW 59.18.380 do not violate due process).

IV. Writ of Restitution

Goughnour argues that the trial court erred in not considering the rent overpayments he had made under the May 12, 2009 agreement. He argues that the Doyles had a duty to apply these rent overpayments and therefore he was not in default. He argues that the Doyles could not terminate his tenancy when they still held eight months of advanced rent. He also argues that the trial court misinterpreted the April 15, 2010 rental agreement in finding that it allowed for unilateral termination of the lease.

We find no error. The April 15, 2010 rental agreement explicitly states that it supersedes all previous agreements, including the May 12, 2009 agreement. The only issue then before the trial court was whether the Doyles could show that Goughnour was unlawfully detaining their property. The rental agreement states, "Tenant and Landlord may terminate this lease upon thirty (30) days notice to Landlord." CP at 46. The phrase "and Landlord" was penciled in at the time the parties executed the agreement. We find Goughnour's interpretation flawed because it would essentially allow Goughnour a perpetual agreement that only he could terminate. The only reasonable interpretation is that both parties had the right to terminate the lease upon proper notice. Further, not only does the April 15, 2010 agreement state that it supersedes all prior agreements but it states that Goughnour's obligation to pay rent commenced on May 1, 2010. Noticeably absent is any mention of advance rent payments.

To show an unlawful detainer, the Doyles had to show that the rental agreement gave them the right to terminate the tenancy and that they provided Goughnour proper notice. They did both of these things and thus the trial court did not err in issuing a writ of restitution.

V. Unlawful Detainer

Goughnour also argues that the trial court erred in considering this only as an unlawful detainer action because it involves other properly pleaded claims. Citing *Honan v. Ristorante Italia, Inc.*, 66 Wn. App. 262, 832 P.2d 89 (1992), he argues that his pleadings establish the integral nature of the rent overpayments to the landlord-tenant relationship and thus the trial court should have considered his counterclaims.

But *Honan* does not support Goughnour's claim. There, Honan filed a complaint seeking judgment for unpaid rent, the amount due on a sales contract plus damages, or possession of the property free of any other claim. 66 Wn. App. at 269. Further, Honan used a 20-day summons, not an unlawful detainer summons, thereby invoking the superior court's general jurisdiction. 66 Wn. App. at 269. In light of this, and because the trial court treated the complaint as one for multiple types of relief, we held that the trial court erred in treating the case as one for unlawful detainer. 66 Wn. App. at 269.

Here, the Doyles filed a summons and complaint for unlawful detainer under chapter 59.18 RCW and thereby invoked only the limited statutory jurisdiction of the superior court. The trial court, therefore, did not have jurisdiction to consider any claims other than those encompassing the right to possession and, as we noted above, Goughnour's claims were outside that scope. Goughnour's claim fails. *Honan*, 66 Wn. App. at 269; *Phillips v. Hardwick*, 29 Wn. App. at 385-86.

Attorney Fees

The Doyles request attorney fees and costs on appeal under RCW 59.18.290(2). As they are the prevailing party in this appeal, they are entitled to attorney fees and costs. A commissioner will determine an amount upon the Doyles' compliance with RAP 18.1.

We affirm.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.

Worswick, A.C.J.

We concur:

Armstrong, J.

Van Deren, J.