

Cite as 2010 Ark. 327

SUPREME COURT OF ARKANSAS

No. 09-1098

CITY OF PINE BLUFF, THROUGH ITS
MAYOR, THE HONORABLE CARL
REDUS AND PINE BLUFF DISTRICT
COURT, THROUGH THE
HONORABLE WAYMOND BROWN,
APPELLANTS,

VS.

PINE BLUFF/JEFFERSON COUNTY
LIBRARY AND THE PINE
BLUFF/JEFFERSON COUNTY
LIBRARY BOARD OF TRUSTEES,
APPELLEES,

Opinion Delivered September 16, 2010

APPEAL FROM THE JEFFERSON
COUNTY CIRCUIT COURT,
NO. CV2008-656-2,
HON. TIM FOX, JUDGE,

AFFIRMED IN PART; REVERSED IN
PART.

JIM HANNAH, Chief Justice

City of Pine Bluff, through its Mayor, the Honorable Carl Redus, and Pine Bluff District Court, through the Honorable Waymond Brown¹ (“the City”), appeal a judgment entered in Jefferson County Circuit Court in an unlawful detainer action brought by the Pine Bluff/Jefferson County Library and the Pine Bluff/Jefferson County Library Board of Trustees (“the Library”). The City argues that the circuit court erred in failing to grant its directed-verdict motion because the Library failed to prove by substantial evidence that the City willfully or wrongfully held over on its lease, because the Library failed to provide substantial

¹The Honorable Waymond Brown has now been elected to the Court of Appeals.

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evidence of the fair market value of the lease, and because the Library was not entitled to triple damages under Arkansas Code Annotated section 18-60-309(b)(2) (Supp. 2007). Our jurisdiction is pursuant to Arkansas Supreme Court Rule 1-2(6). The circuit court found for the Library in unlawful detainer. The jury awarded \$16,501, and relying on section 18-16-309(b)(2) the circuit court tripled the damages.

Beginning in 1987, the Library and the City entered into an agreement that permitted the City to use a portion of the lower level of the library. The initial agreement was that in return for use of the space, the City paid an amount intended to assure that the Library did not incur any additional expense as a consequence of the City's use. On September 23, 1994, a new agreement was reached obligating the City to pay \$1100 per month to the Library for use of the space. In late 2001, the Jefferson County District Court moved into the rented space using the children's theater as a courtroom. In 2003, the City asked the Library to reduce its rent due to financial difficulties. The Library agreed to reduce the rent to one dollar per year for 2004 and informed the City that the City would need to reapply each year after 2004 if further reductions in rent were desired. The City asked for and was granted reduced rent of one dollar per year for years 2005, 2006, and 2007. In the spring of 2007, the Library notified the City that it was terminating the rental agreement. The City maintains that this was not possible because the Library had agreed to rent to the City until new facilities were available to house the district court. In November 2007, the Library notified the City that the reduced rent of one dollar per year would not be granted for 2008, that it still owed

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the one dollar for 2007, and that if it remained in the building in 2008 for a “short extension,” monthly rent would need to be paid.

The Library filed an unlawful detainer action on June 23, 2008. The Library asked the City to vacate the space because of close contact between alleged unsavory individuals present for court and young children attempting to use nearby children’s library facilities. Particular note was made of criminal defendants who were being arraigned. According to the Library, the summer children’s reading hour was sometimes disturbed by nearby unseemly behavior and cursing. There were also issues regarding parking and the City’s alleged unwillingness to comply with its agreement to accommodate library parking for patrons. The Library further noted that due to new security measures required by this court, children using the children’s library facilities would have to go through court security. At trial, the jury returned a verdict for damages in favor of the Library in the amount of \$16,501. Finding the property was commercial, the circuit court tripled the damages pursuant to section 18-60-309(b)(2).

The standard of review on denial of a directed-verdict motion is whether substantial evidence supports the verdict. *ConAgra Foods, Inc. v. Draper*, 372 Ark. 361, 364, 276 S.W.3d 244, 247–48 (2008). Substantial evidence is evidence of sufficient force and character that it will compel a conclusion one way or another. *Talley v. City of North Little Rock*, 2009 Ark. 601, ___ S.W.3d ___. Substantial evidence forces the fact finder to move beyond speculation and conjecture. *Id.* On appeal we review the evidence and all reasonable inferences in the light most favorable to the party against whom the verdict was rendered. *Id.*

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A party who peaceably and lawfully obtains possession of property but after receiving demand in writing to vacate, willfully and unlawfully refuses to vacate the property has unlawfully detained the property. *See* Ark. Code Ann. § 18-60-304(2) (Supp. 2007). Willfully means that the person intends to commit the act in question. The Library gave written notice to quit. The City refused to do so. *Farm Bureau Mut. Ins. Co. of Ark. v. Henley*, 275 Ark. 122, 127, 828 S.W.2d 301, 304 (1982). The City intended to remain in the space despite notice to quit. Thus, its conduct was willful. Nevertheless, the City argues it could not have been willful because it had a lease of the property until such time as facilities were available to house the district court. The City also argues that the Library withdrew its termination of the lease. These factual issues were presented to the circuit court. It is not the province of this court to try issues of fact, but rather we examine the record to determine whether substantial evidence supports the verdict. *Calvary Christian School, Inc. v. Huffstutler*, 367 Ark. 117, 129, 238 S.W.3d 58, 67 (2006). Substantial evidence supports the circuit court's finding of unlawful detainer.

The City also argues that the Library failed to put on substantial evidence of fair market value of the rental property. Pursuant to Arkansas Code Annotated section 18-60-309(a), damages include “rent due and agreed upon at the time of commencement of the action or, in the absence of an agreement, the fair rental value.” In its directed-verdict motion, the City argued that “there’s been no testimony as to market value.” The facts are that the Library agreed to lease the space to the City for monthly payment of \$1100. In 2003, the Library

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agreed to reduce the rent to one dollar per year for 2004, and agreed to reduce the rent to this same amount each year through 2007. But the Library refused to reduce the rent in 2008 to one dollar per year; therefore, the City was obligated to pay monthly rent. Because substantial evidence of the rent due was presented, there was no need for evidence of fair market value.

Finally, the City argues that the circuit court erred in awarding triple damages under section 18-60-309(b)(2). We agree. Section 18-60-309(b)(2) provides that where “the property sought to be recovered is used for commercial or mixed residential and commercial purposes, the plaintiff shall receive liquidated damages at the rate of three (3) times the rental value per month for the time that the defendant has unlawfully detained the property.” In *Sanders v. Keenan*, 244 Ark. 585, 587–88, 426 S.W.2d 399, 401 (1968), this court stated as follows regarding triple damages under the unlawful detainer statute:

The court was right in excluding the issue of triple damages. Under the statute such damages are recoverable only for the unlawful detention of property that is used either for commercial or for mixed residential and commercial purposes. Section 34-1516. Multiple damage statutes, being penal, must be strictly construed. *Missouri Pac. R.R. v. Lester*, 219 Ark. 413, 242 S.W.2d 714, 27 A.L.R.2d 1182 (1951). ‘Commercial’ means pertaining to commerce, which is ordinarily defined as the exchange or buying and selling of commodities. *Webster’s Second New International Dictionary; Random House Dictionary of the English Language.*^[2]

²Arkansas Statutes Annotated section 34-1516 (Repl. 1962) was nearly identical to the present statute and provided that “where the property sought to be recovered is used for commercial or mixed residential and commercial purposes the plaintiff shall receive liquidated damages at the rate of three (3) times the rental value per month for the time the defendant has unlawfully detained the property.”

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Pursuant to this court's precedent, the rented space at issue in this case was not used for any purpose pertaining to commerce. Because that requirement of commerce is not met, there was no entitlement to triple damages under section 18-60-309(b)(2). The judgment is reversed on the issue of triple damages and affirmed in all other respects. The circuit court is directed to modify the judgment in favor of the Library to reflect the \$16,501 awarded by the jury.