IN THE COURT OF APPEALS OF IOWA

No. 7-570 / 05-1405
Filed September 6, 2007

CITY OF DES MOINES MUNICIPAL HOUSING AGENCY,
Plaintiff-Appellant/Cross-Appellee,

vs.

CHARMAINE HUNTER and All Other Occupants,
Defendants-Appellees/Cross-Appellant.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge.

Housing agency appeals district court decision dismissing its forcible entry and detainer action on summary judgment. **AFFIRMED.**

Michael Kelley, Assistant City Attorney, Des Moines, for appellant/cross-appellee.

Robert W. Wright, Jr., of Wright and Wright, Des Moines, for appellees/cross-appellants.

Considered by Huitink, P.J., and Vogel and Baker, JJ.

HUITINK, P.J.

The Des Moines Municipal Housing Authority (DMMHA) appeals from a district court judgment dismissing its forcible entry and detainer action (FED) on summary judgment. We affirm.

I. Background Facts and Prior Proceedings

Charmaine Hunter has been a tenant in federally subsidized public housing owned and managed by DMMHA since 1988. Her original lease was for a thirty-day period and provided for automatic renewal for successive thirty-day periods. The lease gave DMMHA the right to terminate the lease for serious or repeated violations of material terms of the lease. Under the lease, DMMHA was required to give Hunter thirty-day written notice of its intention to terminate the lease. It also gave Hunter the right to an administrative hearing to resolve disputes with DMMHA about termination or nonrenewal of the lease.

On April 27, 2001, DMMHA presented Hunter with written notice that the lease was terminated as of May 31, 2001, because of material violations of the terms of the lease. The notice did not inform Hunter that she had seven days to cure the alleged violations and avoid termination of the lease. *See* Iowa Code § 562A.27(1) (2001).

Hunter requested an administrative hearing. The hearing officer upheld the termination notice, finding Hunter was in violation of the lease for failing to report gambling income and for having an unauthorized person living in her residence from 1995 until 2000.

Hunter refused to vacate the property, so DMMHA filed an FED action in small claims court on June 12, 2001. The small claims court ruled on the FED

action and ordered Hunter to vacate the property. Hunter appealed this decision to the district court. The district court found it did not have jurisdiction to hear the case because DMMHA had failed to provide notice of the right to cure, as required by Iowa Code section 562A.27(1). Accordingly, the district court reversed the decision of the small claims court and dismissed the FED action. DMMHA filed a request for discretionary review with the Iowa Supreme Court. This request was denied on January 2, 2002.

On January 16, 2002, DMMHA issued Hunter a second lease termination/nonrenewal notice based on the same grounds as the first notice but citing a different statutory provision. *See* Iowa Code § 562A.34(2). Again, the notice did not give Hunter the right to cure the alleged violations. Hunter requested another administrative hearing. This hearing officer upheld the January 16 notice on the grounds that Hunter failed to report gambling income and had an unauthorized person living in the residence from 1995 to 2000. Hunter did not vacate the residence, so on December 6, 2002, DMMHA filed a second FED action in Polk County District Court. The district court dismissed the action, noting it did not have jurisdiction to hear the case because, once again, DMMHA did not notify her that she had seven days to cure the alleged violation as required by section 562A.27(1).

In 2003 the Iowa Legislature amended section 562A.27 by adding a new subsection. 2003 Iowa Acts, ch. 154 § 2. The amendment, labeled section 562A.27(5), provided that:

> a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a

> federal regulation governing the tenant's eligibility for or continued participation in a public housing program. *The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.*

Id. After this statute became effective, DMMHA served Hunter with written notice that her lease was terminated as of September 30, 2003. As before, this notice did not inform her that she had the right to avoid termination by remedying the alleged allegations. Hunter requested her administrative hearing, and the hearing officer once again upheld the notice by relying on the information from the previous hearings to find that she had committed material violations of the lease between the years of 1995 and 2000. Hunter refused to vacate the premise, so DMMHA filed the present FED action in district court on April 21, 2004.

Hunter responded to the action with a motion for summary judgment. Hunter made two claims: (1) she was in peaceable possession of the property for an eighty-six-day period between the January 26, 2004 decision by the hearing officer and the April 21, 2004 FED action and (2) the dismissal of the two previous FED actions are now the law of the case and binding on the present action.

The district court rejected the peaceable possession argument, but granted the motion for summary judgment under the principles of res judicata and the separation of powers doctrine. DMMHA filed a motion to enlarge and amend, noting that the previous dismissals were based on a lack of jurisdiction and were not judgments on the merits. *See* Iowa R. Civ. P. 1.946 ("All dismissals

not governed by Rule 1.943 or not for want of jurisdiction or improper venue, shall operate as adjudications on the merits unless they specify otherwise."). DMMHA also argued the amended statute was procedural in nature, and therefore was effective retroactively.

In its ruling on the motion to enlarge and amend, the district court acknowledged the previous FED rulings were not adjudications on the merits. Accordingly, it amended its original ruling to remove its reliance on the doctrine of res judicata. However, the court reaffirmed its decision to grant summary judgment, noting the new statute could not be applied retroactively because it affected Hunter's substantive rights to cure the lease violations.

DMMHA appeals, arguing the amended statute was procedural in nature and therefore effective retroactively.[1] Hunter cross-appeals, claiming the summary judgment ruling could be upheld on the additional grounds urged before the district court.

II. Standard of Review

We review the district court's ruling on a motion for summary judgment for correction of errors at law. *Walderbach v. Archdiocese of Dubuque, Inc.*, 730 N.W.2d 198, 199 (Iowa 2007). Summary judgment is appropriate where there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. *Id.* We may resolve a case on summary judgment when the

[1] It is unclear whether the court's ruling on the motion to enlarge disaffirmed its reliance on the separation of powers doctrine. Therefore, DMMHA also argues there was no violation of this doctrine. Because we affirm the court's decision on the prospective nature of the statutory amendment, we need not address this issue on appeal.

only dispute concerns legal consequences flowing from undisputed facts. *Kragnes v. City of Des Moines*, 714 N.W.2d 632, 637 (Iowa 2006).

III. Merits

DMMHA claims the district court erred because the amended Iowa statute operates retroactively and therefore DMMHA had no obligation to give Hunter notice of her right to cure the alleged violations. This argument is based on DMMHA's claim that the statute is a "purely procedural" amendment that merely alters a rule governing the procedural steps in a FED action. Implicit in this argument is DMMHA's assumption that, even under the previous statute, Hunter had "no right to cure her long-term fraud on the public housing system." The district court rejected this argument, finding the amended statute was substantive and not merely procedural.

Our legislature has provided a statutory general rule that determines the applicability of its laws. Iowa Code section 4.5 (2003) provides, "A statute is presumed to be prospective in its operation unless expressly made retrospective." The preference of the legislature for prospectivity is further stated in Iowa Code section 3.7(6): "Unless retroactive effectiveness is specifically provided for in an Act or resolution, an Act or resolution which is enacted after an effective date provided in the Act or resolution shall take effect upon the date of enactment." However, if the act or resolution is procedural or remedial, it is not limited to prospective application, even in the absence of clear legislative intent. *Schuler v. Rodberg,* 516 N.W.2d 902, 904 (Iowa 1994); *Smith v. Korf, Diehl, Clayton & Cleverley*, 302 N.W.2d 137, 138 (Iowa 1981). "In contrast to substantive legislation, procedural legislation applies to all actions—those that

have accrued or are pending and future actions." *Dolezal v. Bockes*, 602 N.W.2d 348, 351 (Iowa 1999). The retrospective application proscribed by the general rule is one which "takes away or impairs vested rights acquired under existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability in respect to transactions or considerations already past." *Smith*, 302 N.W.2d at 138 (citations omitted).

On its face, section 562A.27(1) appears to be a procedural statute:

> if there is a material noncompliance by the tenant with the rental agreement . . . the landlord may deliver a written notice to the tenant specifying the acts and omissions constituting the breach and *that the rental agreement will terminate upon a date not less than seven days after receipt of the notice if the breach is not remedied in seven days,* and the rental agreement shall terminate as provided in the notice subject to the provisions of this section.

(Emphasis added.) However, two subsequent cases interpreting section 562A.27 have shown that this statute contains both procedural and substantive components.

In *Symonds v. Green*, 493 N.W.2d 801, 802 (Iowa 1992), our supreme court considered a dispute over a written month-to-month residential rental agreement. When the tenant fell behind in her rent, the landlord served her with a standard three-day notice to quit. *Symonds*, 493 N.W.2d at 802. This form did not give the tenant the opportunity to pay the delinquent rent prior to termination of the rental agreement. *Id.* The landlord commenced a FED action and the tenant responded by arguing that the FED action could not be maintained because the landlord had failed to serve her with a three-day written notice to cure before terminating the lease. *Id.* The district court rejected this argument, noting the landlord's service of the three-day notice to cure was a "technical

error" that did not prejudice the 'substantial rights' of the parties in the absence of evidence that [the tenant] offered or attempted to cure the defect." *Id.* On appeal, the supreme court reversed the district court, holding:

> The landlord must notify the tenant in writing of nonpayment of rent and inform the tenant of the *right to cure* the nonpayment prior to terminating the rental agreement. . . .
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> . . . .
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> . . . Because [the landlord] failed to notify [the tenant] of *her right to cure* the nonpayment of rent prior to termination of the rental agreement, the trial court lacked jurisdiction to hear [the landlord's] forcible entry and detainer action.

Id. at 802-03 (emphasis added).

In *Liberty Manor v. Rinnels*, 487 N.W.2d 324, 326 (Iowa 1992), a landlord claimed it had no duty to provide the tenant with a notice of the right to cure because the tenant's prior aggressive and intimidating conduct was a breach of the lease and thus not remediable within the meaning of section 562A.27(1). The supreme court rejected this argument, noting that the notice to cure must still be given because, after the notice is given, the question of "[w]hether the tenant has remedied the breach then becomes a fact question for the trial court." *Liberty Manor*, 487 N.W.2d at 326-27.

We can draw two conclusions from these cases: (1) a residential tenant has the right or opportunity to attempt to cure the violation before the lease is terminated and (2) the landlord has an obligation to inform the tenant of that right.

The following language from the 2003 amendment, as codified in section 562A.27(5), did away with both the notice requirement and the tenant's opportunity or right to cure the alleged violation:

> The municipal housing agency *shall not be required to provide the tenant with a right or opportunity to remedy the violation* or to give

> any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

(Emphasis added.) Because this amendment eliminates the tenant's existing right or opportunity to try and remedy an alleged violation, as set forth in *Symonds* and *Liberty Manor*, we find this statute is clearly substantive in nature. *See Dolezal*, 602 N.W.2d at 351 ("Because substantive legislation cannot extinguish vested rights, such legislation can only operate prospectively.").

As noted above, substantive legislation is given a prospective application unless retroactive effectiveness is specifically provided for in the act or resolution. Iowa Code § 3.7(6); *Smith*, 302 N.W.2d at 138. Because the new legislation was substantive and the legislature did not make it effective retroactively, the district court properly refused to apply it to the violations that allegedly occurred years before its enactment. Accordingly, we affirm the district court's decision to grant summary judgment in this case.

AFFIRMED.