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NOT TO BE PUBLISHED

Commonwealth of Kentucky

Court of Appeals

NO. 2013-CA-000985-MR

ELIZABETH COFFMAN — APPELLANT

v.

APPEAL FROM BULLITT CIRCUIT COURT
HONORABLE RODNEY BURRESS, JUDGE
ACTION NO. 11-CI-01415

REID BROTHERS, INC. — APPELLEE

OPINION
AFFIRMING

** ** ** ** **

BEFORE: KRAMER[1], MAZE, AND VANMETER, JUDGES.

VANMETER, JUDGE: Following a bench trial, a trial court's findings of fact are not to be set aside if supported by substantive evidence. In this case, we must determine whether Bullitt Circuit Court properly considered Elizabeth Coffman's damages claim against her landlord, Reid Brothers. Inc. ("Reid") for wrongful eviction. We hold that the trial court did not err and therefore affirm its judgment.

[1] ~~Judge Joy A. Kramer, formally Judge Joy A. Moore.~~

I. Factual Background

Coffman signed a residential lease with Reid in January 2011. She failed to pay rent for the months of May, June, and July. On July 6, 2011, Reid filed a forcible detainer action in the Bullitt District Court, which entered a judgment on July 19 in favor of Reid. However, before the judgment was entered, Reid's agents entered the apartment and disposed of Coffman's remaining property. Upon discovering this, Coffman filed a complaint in the Bullitt Circuit Court claiming compensatory damages in excess of $10,000 and punitive damages.

During a two-day bench trial, the trial court heard extensive and at times conflicting evidence from Coffman and her witnesses and Reid's witnesses regarding the items Coffman claimed had been lost due to Reid's actions. Coffman had been admittedly absent from the apartment for an extended period of time. At some point prior to the forcible detainer hearing, Curtis Warren, an agent of Reid, entered the premises as allowed by the rental agreement[2] but he did not remove any items. A notice of eviction was sent and received by Coffman about two (2) weeks prior to the forcible detainer hearing. At this time, Coffman, with the help of three friends, moved some of her belongings from the apartment.

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[2] Under the rental agreement between the parties, "[t]en days absence by Tenants with rent unpaid, or removal of substantial portion of the Tenants['] belongings without explanation . . . shall be deemed abandonment[.]" Rental Agreement §1.29. This section continued "[m]anagement may re-enter property immediately, take any action necessary to remove remaining property of the Tenants, and re-rent said premises, without responsibility for any damage incurred there from."

Coffman testified she tried to return to the apartment to continue moving her belongings, however, after her initial visit she could no longer access the apartment because the locks had been changed. By contrast, Reid's witnesses all testified that the locks were not changed, since its policy was not to do so. Furthermore, one of Coffman's witnesses testified to going with her to the apartment to move belongings on more than one occasion, contradicting Coffman's testimony.

Coffman went to the apartment to attempt to retrieve her belongings the morning of the forcible detainer hearing. At this time, she saw her belongings in the community dumpster. Coffman testified that she became distraught at seeing "all her worldly belongings" in a dumpster. Coffman presented a four-page list of clothing, toys, jewelry, cookware, furniture, and other personalty, totaling $10,773, which she claimed had been damaged or lost. Coffman also provided photos of a coffee table and printer.

By contrast, Reid's agents testified that all they saw in the apartment when they went to clean it out were clothes and trash on the floor along with a couch, coffee table, and printer. Reid's agents did admit to removing two (2) toy jeeps which they took to their shop. These jeeps were included in Coffman's inventory list and valued at $350.

The trial court made the following factual findings:

Mr. Warren testified that he was aided by Nathan Reid in removing items from the apartment. Mr. Warren testified that when he arrived there was clothing all over the floor, spare tire in the floor, other boxes with trash, a coffee table, and an old couch. He also testified that he found two small battery powered cars which were taken to a shop. While his testimony and the testimony of Nathan Reid differed in the amount of time it took to remove the items[,] both testified there was no furniture in the bedroom or other parts of the apartment other than the couch and coffee table.

Mr. Warren specifically testified that he saw no jewelry, vacuum, microwave, toaster, blender, dishes, cabinets, paintings, trunk, large entertainment center, stereo, computer and that the sofa condition was "pretty rough." Testimony from Mr. Reid and Mr. Warren showed that the contents of the clothing and trash on the floor were placed in the boxes or bags and deposited into a dumpster along with a printer, coffee table and couch.

While the plaintiff was able to produce photographs of a coffee table and printer there are no photographs produced to document any damage to the couch which was available to be retrieved when [Coffman] returned.

The testimony of Curtis Warren showed that it was the policy of Reid Brothers not to "over lock" of the apartments and that [Coffman] would have had a key allowing her access to come and go from the apartment at all times.

. . .

. . . In this action [Coffman] has failed to show that any of the items claimed, other than the battery powered jeeps, coffee table, couch and printer were actually removed by agents of [Reid]. In addition, [Coffman] bears the burden of proving the damages to items which were not returned. Having observed the demeanor the witnesses and considered their testimony the Court finds

> the more credible testimony regarding items removed from the apartment to be presented by Curtis Warren.
>
> The Court therefore finds that the items wrongfully removed by Reid Brothers to be a couch, coffee table, printer and two battery powered cars and some items of clothing. However, there was no testimony of the clothing items deposited in the dumpster. Nor was there any evidence that the value of the clothing was in any way diminished.

Findings of Fact, Conclusions of Law and Judgment, 3-4.[3] The trial court rejected Coffman's claim that Reid had disposed of or damaged jewelry, a computer, antique trunk, or appliances.

Coffman's complaint demanded compensatory damages for the items listed in the inventory and punitive damages for the "cruel and unjust hardship" to which she felt Reid subjected her. The trial court largely rejected Coffman's claims to compensatory damages, limiting those damages only to the amount of $350, the value of the toy jeeps, plus $575, a damage deposit, for a total of $925, but offsetting that award against the amount of unpaid rent owed to Reid, $2,175. The court also rejected Coffman's claim to punitive damages. This appeal followed.

II. Standard of Review.

Following a bench trial, the factual findings of the trial court shall not be set aside unless clearly erroneous; that is, not supported by substantial evidence. *Moore v. Asente*, 110 S.W.3d 336, 354 (Ky. 2003). Substantial evidence is

[3] Record on Appeal, 47-48.

evidence, when taken alone or in light of all the evidence, has sufficient probative value to induce conviction in the mind of a reasonable person. *Id.* Furthermore, "due regard shall be given to the opportunity of the trial court to judge the credibility of the witnesses." CR[4] 52.01. Any questions of law that are resolved at trial are reviewed *de novo*. *Sawyers v. Beller*, 384 S.W.3d 107, 110 (Ky. 2012).

III. Issues on Appeal.

On appeal, Coffman presents four issues: (i) Reid violated the Uniform Residential Landlord and Tenant Act; (ii) Reid improperly entered Coffman's apartment prior to entry of a forcible detainer judgment; (iii) Reid improperly changed the apartment's locks so as to prevent Coffman from retrieving her possessions; and (iv) Reid removed Coffman's property from the apartment so as to deprive her of possession.

As to the applicability of the Uniform Residential Landlord and Tenant Act, KRS[5] 383.505 to 383.705 ("URLTA"), cities, counties and urban-county governments are authorized to enact the provisions of the URLTA "in their entirety and without amendment." KRS 383.500. Furthermore, "[n]o other ordinance shall be enacted . . . which relates to the subjects embraced in KRS 383.505 to 383.705." *Id.* The record is not clear as to whether the apartment in question is located within the city limits of Shepherdsville. The parties, however, have cited us to, and our research has uncovered, NO city or county ordinance by

[4] Kentucky Rules of Civil Procedure.

[5] Kentucky Revised Statutes.

which the City of Shepherdsville or the Bullitt County Fiscal Court or has adopted the URLTA. We conclude that the URLTA has no applicability to this action.

That said, and with respect to the legal conclusion underlying Coffman's claim for damages, *i.e.,* that Reid improperly entered the apartment and deprived Coffman of her possessions, the trial court held, as a matter of law, that "Kentucky law provides that a landlord does not have the right to enter premises and remove personal property until such time as a Writ of Forcible Detainer has been entered." The trial court thus afforded Coffman the opportunity to prove her damages.

Coffman bore the burden to provide evidence in support of her claims of damage to her property. *See* CR 43.01(2)(stating "[t]he burden of proof . . . lies on the party who would be defeated if no evidence were given on either side[]"). Professor Lawson states "the burden of proof concept called *risk of nonpersuasion* is used to describe the obligation of a party to persuade the ultimate decision maker . . . of the existence of facts still in dispute." Robert G. Lawson, The Kentucky Evidence Law Handbook § 9.00[3][a] (5th ed., Lexis Nexis 2013). Kentucky cases have long recognized that "[t]he measure of damages . . . for injuries to personal property is the difference between the reasonable market value immediately before and immediately after the injury." *Ecklar-Moore Express, Inc. v. Hood*, 256 S.W.2d 33, 34 (Ky. 1953); *see also Brummett v. Cosson*, 302 Ky. 618, 622, 195 S.W.2d 301, 303 (1946) (tenant's damages for wrongful eviction are "based on the difference in the value of [property] immediately before and immediately after its

removal[]"). A tenant, however, is not entitled to recover damages for a landlord's removal of the property if the tenant fails to show any specific damage resulting from the removal. *Brummett*, 302 Ky. at 622, 195 S.W.2d at 303. In other words, Coffman's obligation in this case was to prove (1) the specific personal property in the apartment; (2) Reid wrongfully either damaged her property or deprived her of it;[6] and (3) the measure of damage to her property.

Other than the clothes, couch, coffee table, printer, and two toy jeeps, the trial court found Coffman failed to prove loss of the items claimed in her inventory. The trial court held Coffman failed to present testimony as to the clothing in the dumpster or its value, or as to the diminution in value of the couch, coffee table or printer. The preponderance standard requires only that the evidence lead the trier of fact to "believe" or be "satisfied." *Hardin v. Savageau*, 906 S.W.2d 356, 359 (Ky. 1995).[7] The trial court, which had the opportunity to observe the witnesses and their demeanor, believed the testimony of Warren and Nathan Reid over that of Coffman and her witnesses. Though the testimony was conflicting, the trial court found Reid's witnesses more credible and made its findings of fact accordingly. We may not substitute our judgment for that of the

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[6] Under the terms of the Rental Agreement between the parties, *supra,* note 1, Reid had the contractual right to enter a tenant's abandoned apartment. In the context of a commercial lease, a landlord's contractual right of re-entry upon default of rent payment without instituting judicial proceedings has been upheld. *Stoll Oil Ref. Co. v. Pierce*, 337 S.W.2d 263, 265 (Ky. 1960). The obligations of a landlord with respect to the disposition of an abandoning tenant's property and the interplay between abandonment and the filing of a forcible detainer are interesting questions, but ones that we need not decide based on the trial court's findings of fact.

[7] Kentucky courts have resisted the urge to define "preponderance of evidence." Lawson, The Kentucky Evidence Law Handbook § 9.00[3][b].

trial court. *See Truman v. Lillard*, 404 S.W.3d 863, 868-69 (Ky. App. 2012) (stating "[i]f the testimony before the trial court is conflicting, as in this case, we may not substitute our decision in place of the judgment made by the trial court[]").

Finally, as to Coffman's claim for punitive damages, such damages require a showing by clear and convincing evidence that Reid and its agents acted with "oppression, fraud or malice." KRS 411.184(2). In a proper case, punitive damages may be awarded for wrongful eviction. *See Maddix v. Gammon*, 293 Ky. 540, 169 S.W.2d 594 (1943) (holding landlord's actions of physically removing tenants while half dressed, assaulting one of the children, and breaking their belongings entitled tenant to punitive damages). In Kentucky, the assessment of punitive damages is a factual determination to be made by the fact-finder. *See Owens-Corning Fiberglas Corp. v. Golightly*, 976 S.W.2d 409, 412 (Ky. 1998) (holding "the jury is to consider not only the defendant's conduct, but the relationship of that conduct to the injury suffered by this particular plaintiff[]"); *see also R.O. v. A.C. ex rel. M.C.*, 384 S.W.3d 185 (Ky. App. 2012) (upholding punitive damage award made by trial court following a bench trial).

In this case, the trial court noted that Coffman had been vacant from the premises for an extended period, had notice of eviction and many opportunities to remove her belongings. While Reid's agents may have entered prior to the entry of writ of forcible detainer, Coffman knew the rental agreement allowed them this

right as well as the right to begin removing her belongings. The trial court, as fact finder, did not err in refusing to assess punitive damages.

IV. Conclusion.

The trial court correctly assessed the damages of the parties and the amounts to which each are entitled. Since Coffman's total damages were less than the amount of her indebtedness to Reid, Coffman's claims were properly adjudicated. The Bullitt Circuit Court's judgment is affirmed.

ALL CONCUR.

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