

STATE OF MICHIGAN
COURT OF APPEALS

JUDITH DUNBAR,

Plaintiff-Appellant,

v

FELICIA DUNBAR, a/k/a FELECIA WALKER,

Defendant-Appellee.

UNPUBLISHED

June 24, 2003

No. 232307

Wayne Circuit Court

LC No. 00-016580-AV

Before: Smolenski, P.J., and Talbot and Wilder, JJ.

PER CURIAM.

Plaintiff appeals by leave granted an order of the circuit court awarding damages to defendant in the amount of \$11,623.78. We affirm.

I.

In November 1998, plaintiff filed a complaint for summary proceeding against defendant, seeking to evict defendant from a rental house for nonpayment of \$1,455.00 in rent. Defendant answered the complaint, requested a jury trial, and placed \$1,504.05 in escrow. The matter proceeded forward to a bench trial, rather than a jury trial, without objection from defendant. Defendant testified that she and plaintiff had an oral agreement that defendant would initially reside in the house for free, and that, in exchange, defendant would repair the house and pay for the labor and supplies to do so. According to defendant, the oral agreement also contemplated that once the work was complete, the rent would be set at \$385 a month, and a lease agreement to this effect was not signed by she and plaintiff until after the work on the house was completed. Defendant acknowledged that she had not paid rent during her occupancy, but provided the district court with receipts totaling \$1,752.27 as evidence of the repairs, including labor and supplies, made on the unit. Plaintiff did not dispute the main thrust of defendant's assertion, that there had been an oral agreement that defendant would make repairs to the unit in exchange for forgiveness of rent, but claimed that the specific details of the agreement differed from those testified to by defendant.

At the close of proofs, the district court ruled orally from the bench and in the presence of both parties, finding that, because the repair costs exceeded the rent plaintiff claimed was owed, no rent was owed and the case would be dismissed. The district court added that plaintiff would be "unjustly enriched" if she was awarded the rent while retaining the benefit of the repairs to the

rental unit. The district court also ordered that the \$1,504.50 in escrow monies be returned to defendant.

Following the bench trial, an order dated December 16, 1998, was entered by the district court that was inconsistent with the district court's ruling from the bench. The order was contained on a State Court Administrative Office (SCAO) standard judgment form for landlord-tenant actions (form DC 105). The form contains, inter alia, a heading to identify whether the district court findings are being entered following a hearing, a default, or by consent, and numbered boxes under additional headings that announce the disposition of the court as a possession judgment or a money judgment. The district court wrote on the form, consistent with its rulings from the bench, that the escrow was to be returned to defendant and that the case was to be dismissed. However, the order contains three checked boxes that are inconsistent with the handwritten portion of the order. One of the boxes checked indicates that the district court found that plaintiff had a right to possession. A second box reflected a purported district court finding that plaintiff was owed rent and costs totaling \$1,504.50. A third checked box stated that "[a]n order evicting [defendant] (writ of restitution) will be issued unless you [defendant] pay the plaintiff or court the amount due . . . above or unless you move out on or before 12-29-98." Neither party filed objections to the entry of the judgment, despite the fact that the entry of a judgment awarding possession, rent, and costs to plaintiff was inconsistent with the trial court's findings and disposition on the record.

On December 30, 1998, plaintiff filed an application for an order of eviction, in which she attested that, to the best of her information, knowledge, and belief, the judgment in the case had awarded her possession of the premises, that defendant had not made payments on the judgment, that plaintiff had not received any rent, and that plaintiff had complied with all the terms of the judgment. The district court signed a writ of restitution the same day, and on January 21, 1999, the writ of restitution was executed, and defendant was evicted from the premises.

Defendant filed a motion for sanctions, damages, costs, and attorney fees for violation of the "anti-lockout statute," MCL 600.2918, and for defrauding the court. The district court heard arguments on defendant's motion and entered an order finding that plaintiff had obtained the writ of restitution despite having knowledge that the complaint had been dismissed and that, therefore, defendant would be awarded \$100 in damages, \$100 in court costs, and \$100 in attorney fees. The district court's order did not include factual findings establishing the basis for the amounts awarded. Defendant moved for reconsideration, seeking the opportunity to present testimony on the question of damages and urging the district court to rule on the request in her original motion for treble damages available under the anti-lockout statute, MCL 600.2918. The district court denied the motion, and defendant appealed the denial to the circuit court. The circuit court ordered the case reinstated and remanded for an evidentiary hearing.

On remand, the district court heard testimony describing the eviction and the resulting damages. Defendant testified that her daughter initially called to tell her that an eviction notice had been posted at the house, and that, later that day, defendant's daughter contacted defendant to tell her that she and defendant's other children were on the porch of the house while a bailiff was in the process of removing defendant's belongings from the house. Defendant also testified that she called the police and hurried home and that, when she arrived, the police were already there. According to defendant, she showed the December 16, 1998, order to the bailiff and

police, and after the officers spoke with the bailiff, the police decided that the bailiff could continue to enforce the writ and kept defendant from entering the premises during the eviction.

Terrence Couch, a bailiff for the district court who executed the writ of restitution with his crew, testified that he was in the process of removing defendant's belongings from the house when defendant arrived and that, because defendant was upset, hostile, and enraged, he called the police and requested backup assistance. Officer Couch also testified that during other evictions he had conducted, he had the evicted tenant "restrained" because the tenant was upset and enraged.

Defendant testified that she and her children suffered emotional trauma, embarrassment, and humiliation because of the eviction; that some of her personal property was damaged; that she incurred hotel expenses for substitute housing; that she lost income when she missed work to look for new housing; that she incurred additional expenses transporting her children to school because of the eviction; and that she paid \$3,000 in attorney fees. In closing arguments, plaintiff conceded that defendant was entitled to modest reimbursement for damages directly related to the eviction. However, plaintiff challenged defendant's entitlement to treble damages under MCL 600.2918, asserting that the eviction was not "forceful" within the meaning of the statute. Plaintiff also asserted that, even if defendant was entitled to treble damages under MCL 600.2918, lost wages, hotel expenses, and damages for emotional distress or humiliation are not included in the category of damages that may be trebled under the act. Plaintiff also argued that defendant was entitled to recover no more than a nominal statutory attorney fee.

The district court found that the eviction was unlawful, that defendant incurred actual damages in the amount of \$2,531.26, and that defendant was entitled to an award of treble damages pursuant to MCL 600.2918. The district court also awarded defendant \$2,500 for emotional distress and \$3,000 for attorney fees. The district court also found that defendant owed rent for the months of December 1998 and January 1999, thus reducing the amount of the award to defendant by \$770. A final judgment was entered by the district court in favor of defendant in the amount of \$12,323.78.

Plaintiff appealed the judgment to the circuit court, challenging the amount of actual damages awarded to defendant and challenging the treble damages award. The circuit court affirmed the district court's finding that defendant was entitled to actual damages, but found that the actual damages incurred by defendant totaled \$2,231.26 instead of \$2,531.26. The circuit court also found that treble damages were appropriate because plaintiff, being aware that the district court had actually ruled that the summary proceeding action was dismissed, proceeded to intentionally and wrongfully seek the writ of restitution and obtained defendant's eviction, nevertheless. The circuit court affirmed the award of \$2,500 for emotional distress and found that the \$3,000 award of attorney fees was warranted because of plaintiff's intentional wrongdoing. The circuit court entered an order affirming the district court's judgment and remitting the award from the amount of \$12,323.78 to \$12,193.00.¹ After rehearing, a subsequent order reduced the damages awarded to defendant by \$700 to \$11,623.78, reflecting

¹ While the amounts awarded by the circuit court total \$12,193.78 rather than \$12,193.00, it is unclear from the record why the \$.78 was not reflected in the order.

the two month's rent that the district court found that defendant owed.² This appeal ensued.

II.

Plaintiff asserts two claims on appeal. Plaintiff first claims that defendant is not entitled to treble damages under MCL 600.2918 because defendant's eviction was not "forcible and unlawful" as required by the statute. We conclude that defendant's eviction was accomplished with force within the meaning of the statute and agree that although plaintiff's conduct was reprehensible, defendant's eviction was not "unlawful" within the meaning of the statute. Nevertheless, we affirm the circuit court's conclusion that defendant was entitled to treble damages because defendant was "held and kept out" of the house by force, in violation of MCL 600.2918(1).

Resolution of this case requires us to first interpret MCL 600.2918 as it applies to the facts presented. Questions of statutory interpretation are reviewed *de novo*. *Omelenchuk v City of Warren*, 466 Mich 524, 527; 647 NW2d 493 (2000). In our interpretation of the statute, we seek to reflect the intent of the Legislature and enforce clear and unambiguous language as it is written. *Id.* at 528. The circuit court's factual findings are reviewed for clear error. MCR 2.613(C); *Christiansen v Gerrish Twp*, 239 Mich App 380, 384, 387; 608 NW2d 83 (2000).

MCL 600.2918 provides in relevant part:

(1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, *or being out is afterwards held and kept out*, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or \$200.00, whichever is greater, in addition to recovering possession.

(2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or \$200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. Unlawful interference with a possessory interest shall include:

(a) The use of force or threat of force.

(b) The removal, retention, or destruction of personal property of the possessor.

(c) A change, alteration, or addition to the locks or other security devices on the property without forthwith providing keys or other unlocking devices to the person in possession.

(d) The boarding of the premises which prevents or deters entry.

² Although the record establishes that rent for two months totaled \$770, plaintiff only requested a \$700 adjustment in the award to defendant on rehearing.

(e) The removal of doors, windows, or locks.

(f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

(g) Introduction of noise, odor or other nuisance.

(3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:

(a) Acted pursuant to court order [Emphasis added].

Under MCL 600.2918(1), an eviction is forcible if the landlord obtains possession by stratagem or trick, carried out under a false pretense, and the tenant is prevented by force from reentering the premises. *Pelavin v Misner*, 241 Mich 209, 213-214; 217 NW 36 (1928). Although the evidence does not support a finding that defendant was forcibly removed from the premises by the bailiff,³ consistent with the first clause of subsection (1), the evidence does support the finding that, in violation of the second clause of subsection (1), defendant was held and kept out of the premises by force. Plaintiff testified that the police kept her from entering the premises during the eviction. Officer Couch testified that the circumstances of defendant's eviction were similar to other evictions where the tenant was "restrained" from entering the premises during the eviction. We find that these facts support the conclusion that defendant, being out of her premises, was "afterwards held and kept out . . . by force" in violation of MCL 600.2918(1). The trial court did not clearly err in finding that defendant was entitled to treble damages as the result of the eviction.⁴

³ The testimony was inconclusive as to whether there had been a forcible entry of the premises. Defendant testified that she was told by her daughter that the daughter and defendant's other children were on the porch while the bailiff removed items from the premises, but the testimony did not establish whether the children were inside or outside of the premises when the bailiff arrived, nor did it establish how the children ended up on the porch.

⁴ While not necessary to our conclusion here, we note that the eviction was "lawful" only because there is no evidence that Officer Couch had any knowledge when he executed the writ of restitution that the district court had in fact dismissed the summary proceeding rather than granting possession to plaintiff. Rather, the evidence showed that, to his knowledge, the writ of restitution was a valid order of the court. Thus, his enforcement of that order was lawful, regardless of the legal soundness of the order. *Robinson v Michigan Consolidated Gas Co, Inc*, 918 F2d 579, 590 (CA 6, 1990). But see *People v Sobczak-Obetts*, 463 Mich 687, 699; 625 NW2d 764 (2001), citing *People v Galnt*, 235 Mich 646; 209 NW 915 (1926), for the proposition that where a search warrant failed to recite material facts and therefore was void, the resulting search was "unlawful."

III.

Plaintiff also asserts that even if defendant is entitled to treble damages under MCL 600.2918, the statute permits defendant to recover only damages resulting to her personal property during the eviction, and does not permit the recovery of lost wages, hotel expenses, or exemplary damages as actual damages. We disagree. Plaintiff's reliance on *Carman v Scott*, 172 Mich 44; 137 NW 655 (1912), is misplaced. In that case, the Supreme Court interpreted a predecessor statute to MCL 600.2918, Comp. Laws. 1857, § 4717, which provided that upon a violation of the statute the aggrieved tenant "shall recover therein three times the amount of damages assessed by the jury"

The present statute provides that the tenant is entitled to recover "3 times the amount of his *actual* damages." At common law, the term actual damages includes economic loss and non-economic loss, including compensation for shame, mortification, mental pain, and anxiety. *Veselenak v Smith*, 414 Mich 567, 573-574; 327 NW2d 261 (1982). Exemplary damages, which allow for compensation for injury to feelings, are a class of compensatory damages. *McPeak v McPeak*, 233 Mich App 483, 487; 593 NW2d 180 (1999). While there must be a basis in the statute for awarding exemplary damages, the language of the statute should be read in light of the common law, which is not abolished by implication. *B & B Investment Group v Gitler*, 229 Mich App 1, 6-7; 581 NW2d 17 (1998). We conclude that the term "actual damages" as used in MCL 600.2918 encompasses all forms of compensatory damages that are the natural and probable consequences of the trespass and eviction, including exemplary damages. See *Shaw v Hoffman*, 21 Mich 151, 156-157 (1872); Black's Law Dictionary (4th ed) p 467.

Plaintiff also claims that the language of the statute does not permit an award of attorney fees. Even if plaintiff is correct, attorney fees were properly awarded here. The record shows that plaintiff intentionally pursued defendant's eviction while knowing that the district court had denied this relief and dismissed the case. This conduct by plaintiff was flagrant and fraudulent.

We reject as unsupported by the record plaintiff's claims that she was instructed to proceed with the eviction by the staff of the district court. Specifically, plaintiff claims that she attempted to file a summons and complaint to recover rent owed for December 1998 and January 1999, but that the district court staff would not permit her to do so and instructed her that because she had prevailed in the summary proceeding, she should obtain a writ of restitution. Plaintiff does not explain, however, why she did not attempt to file another summary proceeding action, using the same SCAO form she used to file the first summary proceeding action, rather than a summons and complaint. Further, plaintiff offers no explanation for how the January 1999 rent could be past due on December 30, 1998, or why the summons and complaint contains a 1999 case number (99-100070) when she purportedly attempted to file this new action on December 30, 1998, the date she obtained the fraudulent eviction order.

We conclude from this record that plaintiff was guilty of an abuse of process and that the award of attorney fees was consistent with the inherent authority of the district court to impose sanctions against plaintiff because of this misconduct. *Persichini v William Beaumont Hosp*, 238 Mich App 626, 639-641; 607 NW2d 100 (2000).

IV.

For the reasons outlined herein, we affirm the order of the circuit court awarding damages to defendant in the amount of \$11,623.78.

/s/ Michael R. Smolenski

/s/ Michael J. Talbot

/s/ Kurtis T. Wilder