STATE OF MINNESOTA
IN COURT OF APPEALS
A16-1190

Claire Lee,
Appellant,

vs.

MSP Crossroads Apartments, LLC, et al.,
Respondents.

Filed June 26, 2017
Affirmed
Peterson, Judge

Hennepin County District Court
File No. 27-CV-HC-15-6142

Claire Lee, Bloomington, Minnesota (pro se appellant)

Christopher T. Kalla, Hanbery & Turner, P.A., Minneapolis, Minnesota (for respondents)

Considered and decided by Peterson, Presiding Judge; Cleary, Chief Judge; and Connolly, Judge.

U N P U B L I S H E D O P I N I O N

PETERSON, Judge

Pro se appellant-tenant challenges adverse rulings in her action against respondents for damages caused by the temporary interruption of gas service to her apartment. We affirm.

FACTS

Crossroads at Penn is a large apartment complex in Richfield owned by respondent MSP Crossroads Apartments, LLC (MSP Crossroads). Appellant Claire Lee, a long-time apartment tenant, had a month-to-month lease in December 2015 when she became embroiled in a dispute with MSP Crossroads and its property manager, respondent Soderberg Apartment Specialists, LLC (Soderberg).

In a letter dated September 30, 2015, Soderberg notified Lee that (1) MSP Crossroads had purchased Crossroads at Penn; (2) Lee's lease would terminate on December 31, 2015, if she did not re-apply to continue her tenancy; and (3) MSP Crossroads planned "community-wide renovations and upgrades."[1] A second letter from Soderberg, dated October 19, 2015, informed Lee that renovations would include apartment kitchens.

Lee received two notices about dates that respondents intended to shut off tenants' gas service in order to conduct the renovation work. On November 10, 2015, she received notice that respondents would temporarily shut off her gas on three dates between November 12 and November 16. The notice offered her the use of showers and toilets in other areas and promised "as little disruption as possible." Lee received another notice on November 23, which said that the gas shut-off would occur from 9:00 a.m. to 5:00 p.m. on December 7 through December 11. The notice advised Lee that contractors would need to

[1] Crossroads at Penn is now known as Concierge Apartments.

enter each apartment unit to reignite gas stoves and that contractors would be working in Lee's apartment on one of those dates.

Lee has a mental-health disability that entitled her to reasonable accommodations, including advance notice from respondents before they entered her apartment. Lee sent an e-mail to Eric Falkman, the chief operations officer for Soderberg, on Friday, December 4, informing respondents that their proposed interruption of her utility services was illegal. Falkman responded that the work was necessary to repair outdated "shut offs and/or regulators" and to install new appliances and that utilities needed to be shut off for health-and-safety reasons during the work. Respondents promised to reduce the duration of the gas-service interruption to three days and to minimize any disruption to Lee, and asked Lee if she needed any other accommodations. According to Falkman, respondents "made every effort to try to find a reasonable solution to [Lee's] objections to having the work done," including offering Lee a fully furnished apartment during the work, but Lee prohibited anyone from entering her apartment unless there was an emergency. Lee rejected respondents' attempts to accommodate her.

On December 9 through 11, Lee's gas was shut off for the approximate times that respondents had promised, which was from 9:00 a.m. to 5:00 p.m., but no work was done inside Lee's apartment unit. On December 11, Lee petitioned for emergency relief under the tenant remedies act, Minn. Stat. § 504B.381 (2014). The district court granted emergency relief and directed respondents "to repair and/or restore gas service to the subject property." Following two continuances, one requested by Lee and one requested by respondents, the case proceeded to a bench trial on the merits on March 25, 2016.

At trial, Lee testified that the loss of gas service to her apartment on December 9 affected her because she had "prepared a grilled cheese sandwich and then I had forgotten that they had turned off the gas, and then I went to use my stove to cook it and my stove didn't work." Lee also testified that she was "extremely cold" during the night of December 9 and had to wear her coat inside her apartment on December 10 and that the construction was "very disruptive" overall.

Several witnesses testified for respondents regarding the work on the gas lines. James Glaros, a technician in charge of apartment maintenance, testified that the replacement of stoves was prompted by "[e]ither a nonfunctional stove or a gas smell in the apartment," and that, in some apartments, gas lines were bent or kinked, and some leaked. Glaros also testified that the separate gas boiler system that provided heat to Lee's apartment was operational from December 9-11, 2015, and that he received no heat-loss complaints from tenants on those dates. Greg Nase, a certified plumber, testified that the scope of work he was hired to do included "remov[ing] the valve[s] and add[ing] . . . drip tee[s]" (or sediment traps) as necessary to ensure that gas lines were up to code and not hazardous.

The project manager, Chris Kohler, testified that, in order to work on a gas line in an individual apartment unit, it was necessary to shut off the gas service to half of the building in which that unit was located, and crews accomplished their work as quickly as possible in order to minimize disruptions. He also testified that he honored tenants' requests not to enter their apartments. He further testified that respondents planned to

install new gas stoves in all apartment units eventually and that the renovated kitchens were part of the marketing plan for the property.

The district court found that the gas-line work was performed for two purposes: to correct safety concerns and to facilitate installation of new appliances. Consistent with Lee's testimony, the district court found that Lee's gas service was interrupted

> on December 9, 2015, from about 9 a.m. until 5:30 p.m.; on December 10, 2015, from about 9 a.m. until between 5:00 p.m. and 5:30 p.m.; and on December 11, 2015 from around 9 a.m. or 10 a.m. until sometime later in the day, the exact time of which [Lee] was unsure.

The district court found that, other than Lee's claim of being unable to use her stove on December 9 to make a grilled cheese sandwich, Lee identified no instance during which she was unable to use her stove. The district court found Glaros's testimony that the gas heat in Lee's apartment building was uninterrupted during gas-line repair work more credible than Lee's "subjective testimony that she was cold and that her apartment's heat was interrupted."

The district court concluded that Minn. Stat. § 504B.221(a)(3) (2014) applied and would permit an award of damages to Lee for her loss of gas service, but the court declined to award any damages and dismissed Lee's petition with prejudice. The district court awarded respondents $200 for statutory costs under Minn. Stat. § 549.02 (2014) and disbursements of $324 for the filing fee. Lee filed a notice of appeal raising several issues and appears pro se in this appeal.

D E C I S I O N

I.

Lee argues that the district court abused its discretion by refusing to award her damages under Minn. Stat. § 504B.221 (2014) for the interruption of her gas service from December 9 through December 11, 2015. It is unlawful for a landlord to interrupt a tenant's utilities, including gas service. *Id.* When a landlord causes such an interruption,

> the tenant may recover . . . treble damages or $500, whichever is greater, and reasonable attorneys' fees . . . . The tenant may recover only actual damages . . . if:
>
> . . . .
>
> (3) the interruption was for the purpose of repairing or correcting faulty or defective equipment or protecting the health and safety of the occupants of the premises involved and the service was reinstated or a good faith effort was made to reinstate the service or other remedial action was taken by the landlord, agent, or other person acting under the landlord's direction or control within a reasonable period of time, taking into account the nature of the defect, the nature of the service interrupted, and the effect of the interrupted service on the health, welfare, and safety of the tenants.

Id. at (a)(3).

Applying this statute, the district court ruled that section 504B.221(a)(3) entitled Lee to only actual damages because respondents interrupted her gas service "for the purpose of updating the stove appliances including changes to the gas piping and connections to the new stoves." The district court found that the changes to the connections "improved the safety of the appliances" and that "[t]he dual purpose of the work to both

promote safer delivery of natural gas and to allow installations of new appliances" [did] not negate application of Minn. Stat. § 504B.221(a)(3)."

The district court declined to award Lee her claimed actual damages of $267, which was Lee's share of her rent for December 2015.[2] The district court reasoned:

> Other than general loss of gas service to her apartment for the daytime hours of December 9, 2015 to December 11, 2015, the only specific damages [Lee] points to was her inability to cook a grilled cheese sandwich on one of the three days. [Lee] did not provide any additional evidence to indicate the specific damages she incurred as a result of the shut offs, or otherwise provide testimony or other evidence regarding specific damages resulting from her inability to use her stove [on those dates]. . . . [Lee's] stove was operational during the early mornings, evenings, and night during the three days. The Court will not speculate as to the damages incurred by [Lee] as a result of the gas interruption to [Lee's] stove and declines to award actual damages to [Lee].

In civil cases, "the plaintiff has the burden of proving every essential element of his case, including damages[,] by a fair preponderance of the evidence." *Wick v. Widdell*, 276 Minn. 51, 53-54, 149 N.W.2d 20, 22 (1967). "Generally, damages need not be proved with absolute certainty nor with mathematical precision. Sufficient proof must be given, however, to avoid speculative awards." *Bethesda Lutheran Church v. Twin City Constr. Co.*, 356 N.W.2d 344, 348 (Minn. App. 1984), *review denied* (Minn. Feb. 5, 1985). The law does not require proof "with absolute precision," but damages "must . . . be ascertainable with reasonable exactness and may not be the product of benevolent speculation." *Faust v. Parrott*, 270 N.W.2d 117, 120 (Minn. 1978). This court reviews "a

[2] Lee received a rent subsidy through the section 8 Housing Choice Voucher Program.

district court's decision to award or not award damages for an abuse of discretion." *In re Minnwest Bank Litig. Concerning Real Prop.*, 873 N.W.2d 135, 141 (Minn. App. 2015).

To support a damages award, Lee asserted that she was unable to grill a cheese sandwich. But she offered no evidence of the value of this claimed item of damages. Although Lee alleges that she was also greatly affected by the disruption caused by the renovations in her apartment building, her damages claim under section 504B.221(a)(3) was limited to damages caused by the gas-service interruption.

The district court rejected Lee's claim that the gas-service interruption caused a reduction of heat in her apartment and specifically found credible respondents' evidence that the separate gas heating system for Lee's apartment was not affected by the gas-line work. The district court found that Lee produced no evidence that she was unable to use her laundry facilities during the gas-service interruption. Credibility determinations are for the factfinder, and this court must affirm such rulings if there is evidence to support them. *Gada v. Dedefo*, 684 N.W.2d 512, 514 (Minn. App. 2004) (stating that an appellate court will "neither reconcile conflicting evidence nor decide issues of witness credibility, which are exclusively the province of the factfinder."). We therefore affirm the district court's rulings that Lee's gas heating and laundry service were not interrupted and conclude that the district court's decision to not award damages was not an abuse of discretion.

II.

Lee argues that the district court "intentionally delayed action" on her petition, which prejudiced her. This claim is not supported by any citation to the record or authority. *See State v. Palmer*, 803 N.W.2d 727, 741 (Minn. 2011) (waiving issue when it was not

supported by citation to legal authority); *In re Irwin*, 529 N.W.2d 366, 373 (Minn. App. 1995) (issues deemed waived because they were not adequately argued or briefed), *review denied* (Minn. May 16, 1995). Also, the district court record does not demonstrate a delay in the processing of Lee's claim. Lee petitioned for relief in December 2015, and the district court held a court trial on the matter within approximately three months, during which time each side asked for and received one continuance. And even if the proceeding was delayed, the record does not support Lee's assertion that the district court caused or intended to cause the delay in order to permit respondents to obtain a witness.

III.

Lee contends that she was prejudiced by the withdrawal of her attorney nearly a month after the bench trial ended but before the district court ruled on the merits. Lee's counsel's notice of withdrawal does not state the reason for withdrawal, and Lee did not object to the withdrawal or raise any issue related to the withdrawal in the district court. Because this issue was not raised in the district court, we will not consider it on appeal. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (reviewing court will generally consider only those issues that record shows were presented and considered by district court in deciding matter before it); Minn. R. Civ. App. P. 110.01 (stating that "[t]he papers filed in the trial court, the exhibits, and the transcript of the proceedings, if any, shall constitute the record on appeal in all cases.").

IV.

Lee argues that she was prejudiced because respondents notified her on the day before trial that her lease would be terminated. She alleges that she "was very depressed and upset about this," which made it "nearly impossible for [her] to testify." This issue is also deemed waived because Lee's brief includes no citations to the record or references to legal authority, and the record does not show that the issue was brought to the district court's attention. *See Thiele*, 425 N.W.2d at 582-83. Furthermore, the record shows that Lee first received notice in September 2015 that respondents intended to terminate her lease.[3] The documentary evidence shows that on December 4, 2015, respondents sent Lee the last written communication about the gas-service work. Nothing in the record shows that Lee received notice of termination of her lease on the day before trial.

V.

Lee argues that the district court abused its discretion by awarding respondents $524 in statutory costs and disbursements as the prevailing party. A district court's decision regarding costs and disbursements is discretionary and will be reversed only for an abuse of discretion. *Jonsson v. Ames Constr., Inc.*, 409 N.W.2d 560, 563 (Minn. App. 1987), *review denied* (Minn. Sept. 30, 1987).

"Costs and disbursements shall be allowed as provided by law." Minn. R. Civ. P. 54.04(a). Minn. Stat. § 549.02, subd. 1 (2016), provides that the district court "shall" award

[3] The district court specifically found that Lee was notified on September 30, 2016, that respondents intended to terminate her lease. But the district court cited Exhibit 2 as the basis for this finding, and Exhibit 2 is a letter dated September 30, 2015. The 2016 date in the district court's finding is obviously a typographical error.

costs of $200 to a defendant "when judgment is rendered in the defendant's favor on the merits." Minn. Sat. § 549.04, subd. 1 (2016), provides that the "prevailing party" "shall" be awarded "reasonable disbursements paid or incurred." Filing fees constitute "disbursements." *See Katz & Lange, Ltd. v. Beugen*, 356 N.W.2d 733, 734 (Minn. App. 1984).

The district court did not abuse its discretion in awarding respondents $200 for statutory costs and $324 in disbursements for the court filing fee. The district court found that respondents were the prevailing party, and its award included only the two items that were properly identified in respondents' affidavit of costs and disbursements.

The district court also specifically considered Lee's "individual fiscal circumstances" and reasoned that even though she might be unable to satisfy the award, "this does not make the granting of statutory costs and filing fees to the prevailing party in this case either unjustified or unreasonable." The district court does not have discretion to deny the prevailing party's application for costs and disbursements even if a nonprevailing party has in forma pauperis status and payment of costs would cause that party a financial hardship. *Dukowitz v. Hannon Sec. Servs.*, 841 N.W.2d 147, 155-56 (Minn. 2014).

Lee argues that the district court erred by failing to hold a hearing before awarding costs and disbursements. Minn. R. Civ. P. 54.04 does not specifically require the district court to hold a hearing before determining costs and disbursements, and the district court conformed to the requirements of the rule. Because the costs and disbursements awarded were mandatory and reflected the minimum amounts required by law and respondents' affidavit supported the award, the district court did not abuse its discretion by declining to

hold a hearing before awarding costs and disbursements. *See Buller v. A.O. Smith Harvestore Prods., Inc.*, 518 N.W.2d 537, 543 (Minn. 1994) (ruling that district court "was not required to conduct an evidentiary hearing" on costs and disbursements when the district court's determination conformed with rule 54.04 and the district court record and findings supported the award).

Affirmed.