STATE OF MINNESOTA
IN COURT OF APPEALS
A19-0297

Little Earth of United Tribes Housing Corp.,
Appellant,

vs.

Rose Marie Rojas,
Respondent,

John Doe, et al., Defendants.

Filed December 16, 2019
Affirmed
Ross, Judge

Hennepin County District Court
File No. 27-CV-HC-18-5042

Christopher T. Kalla, Douglass E. Turner, Hanbery & Turner, P.A., Minneapolis, Minnesota (for appellant)

Julia D. Zwak, Mid-Minnesota Legal Aid, Minneapolis, Minnesota (for respondent)

Considered and decided by Slieter, Presiding Judge; Ross, Judge; and Reilly, Judge.

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

ROSS, Judge

Little Earth of United Tribes Housing Corporation attempted to evict Rose Rojas after police raided her townhome on a search warrant, encountered ten people inside, discovered needles and a pipe but no drugs, and reported disorderly living conditions. The district court found Little Earth's key witness and documentary evidence unconvincing,

concluded that Little Earth failed to demonstrate any substantial noncompliance with the lease, and entered judgment for Rojas. Little Earth argues on appeal that the district court's findings are clearly erroneous and that it improperly required Little Earth to prove that Rojas knew there was drug paraphernalia in the home. We affirm because the district court's findings are not clearly erroneous and because it did not misapply the law.

FACTS

Tenant Rose Rojas entered into a residential rental agreement with landlord Little Earth of United Tribes Housing Corporation in April 2016. The United States Department of Housing and Urban Development (HUD) subsidized Rojas's rent. The lease agreement allowed Little Earth to terminate the lease for, among other things, "material noncompliance" with its terms or "drug[-]related criminal activity" at the home. The lease defined "material noncompliance" as "one or more substantial violations" or "repeated minor violations" that would disrupt livability; adversely affect health, safety, or quiet enjoyment; interfere with project management; or have an adverse financial effect on the project. And Rojas agreed to obey the "House Rules," which prohibited "illegal activity," including "possession of drug paraphernalia." The House Rules also provided that failing to maintain sanitary conditions or otherwise take care of the home could lead to eviction.

Little Earth filed an amended eviction complaint alleging generally that Rojas had violated the lease by making or selling drugs in the home, allowing illegal guns and drug paraphernalia in the home, having unauthorized or trespassed persons in the home, and failing to maintain an orderly home. A district court referee conducted a court trial on the complaint in December 2018. Little Earth withdrew its allegations as to "breach regarding

guns" and "actual drugs found on the premises." It rested its eviction on its allegations of "drug paraphernalia in and about the premises, maintaining a disorderly house, allowing trespassed persons, [and] failure to maintain basic housekeeping standards."

Minneapolis Police Officer Jason Schmitt testified that, in October 2018, he and other officers executed a search warrant on Rojas's home. The officers expected to find firearms and narcotics in relation to an investigation of Dominick Stevens, a man they believed was staying at Rojas's home. The warrant authorized officers to search for "[n]arcotics paraphernalia" and other illegal items.

Officers discovered ten people inside Rojas's home. Asked whether the officers found "any drug paraphernalia," Officer Schmitt answered, "Yes. . . . We found a great deal of hypodermic needles in various locations throughout the residence." Officers also found cotton balls and a glass pipe. The officers did not find any drugs, and they seized "nothing." Officer Schmitt testified that they would have seized anything relevant to the search warrant. He responded ambivalently to a question as to whether his observations of Rojas's home were "consistent or inconsistent with a house where drugs are used," answering, "It's a toss[-]up. It could go either way."

Officer Schmitt's written narrative described Rojas's living conditions as "disgusting," stated that the home had a "stifling" smell of body odor, and reported that it was littered with clothing, trash, and clutter. He also reported that "[h]ypodermic needles were found throughout the house" and that "[a] pipe was lying on the floor and other heroin[-]type paraphernalia such as mini cotton balls were located." His narrative indicated that police arrested Stevens for trespassing. A Minneapolis Police Department public

information report of the incident listed nine adults found inside. It associated Rojas's address with five of them.

The Little Earth Residents Association's president testified about Little Earth's Narcan distribution program. Under that program, Little Earth distributed Narcan kits to residents to curb drug overdoses. Each kit included two hypodermic needles.

Rojas testified that she lived in the home with only her daughter. She disputed the accusation that she maintained a disorderly house, saying that she hung clothing around the house because she had no dryer. She denied allowing unauthorized people to live or regularly stay in the home. She said that the people present the day of the search were visitors who had attended a family funeral the previous day. Rojas said that the needles found in the home came from any of three sources, none related to her allowing illegal drugs on the property: Little Earth's Narcan program, a methadone clinic, and the pockets of one of her guests whom police searched during the raid. She testified that needles provided through the clinic or the Narcan program were stored in plastic bags and "put up" around the home.

The referee found it significant that "the police took no property into custody and found none of the items listed on the [search] warrant," which included "narcotics paraphernalia." And she found Rojas and the association president credible in describing the Narcan program. She concluded that Little Earth failed to prove that Rojas committed any substantial noncompliance breach based on drug paraphernalia.

The referee also believed Rojas's representation about the condition of her home and found that Little Earth "presented no credible evidence that the property is

'disorderly.'" The referee rejected Officer Schmitt's description, characterizing it as "subjective," and she found that Little Earth failed to demonstrate any substantial noncompliance based on a disorderly home.

The referee characterized having unauthorized guests as a "minor violation" requiring repeated incidents to warrant eviction. She accepted Rojas's testimony that the occupants were guests and declined to infer from the association between these people and Rojas's address in the information report that they lived in Rojas's home, explaining, "An address provided on a document created by a police officer is not evidence that an individual is an unauthorized guest or that the individual is impermissibly residing on the premises." She concluded that Little Earth had failed to demonstrate a repeated minor violation based on unauthorized guests. The district court countersigned the referee's analysis and entered judgment for Rojas.

Little Earth appeals.

D E C I S I O N

Little Earth asks us to reverse the district court's dismissal of its eviction action. A landlord must prove grounds for eviction by a preponderance of the evidence. *Parkin v. Fitzgerald*, 240 N.W.2d 828, 832 (Minn. 1976). We will uphold a district court's findings of fact unless they are clearly erroneous. *Nationwide Housing Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. App. 2018), *review denied* (Minn. Mar. 28, 2018). We defer to a district court's credibility determinations. *See* Minn. R. Civ. P. 52.01. We consider whether there is reasonable evidence supporting the district court's findings and examine the evidence in the light most favorable to the judgment. *Rasmussen v. Two Harbors Fish*

Co., 832 N.W.2d 790, 797 (Minn. 2013). We review legal conclusions de novo. *Nationwide*, 906 N.W.2d at 907.

Rojas's status as a federal housing subsidy recipient brings the eviction within HUD restrictions because "HUD regulations apply to all participants in HUD-subsidized housing programs." *Manor v. Gales*, 649 N.W.2d 892, 894 (Minn. App. 2002). Landlords may terminate HUD-subsidized tenancies for material noncompliance with the lease agreement or criminal activity by covered persons, among other grounds. 24 C.F.R. § 247.3(a) (2019). Material noncompliance includes, in part, "[o]ne or more substantial violations of the rental agreement" and "[r]epeated minor violations" that disrupt livability, interfere with project management, have an adverse financial effect on the project, or adversely affect the health, safety, or quiet enjoyment of tenants. 24 C.F.R. § 247.3(c) (2019).

Little Earth argues that the district court's findings are clearly erroneous and that it misapplied the law. Rojas defends the district court's reasoning and maintains that we can affirm on an alternative, defective-notice theory. For the following reasons, we hold that the district court's findings are not clearly erroneous and that it did not misapply the law. We need not address Rojas's notice theory.

I

Little Earth argues that the district court clearly erred by finding that there was no drug paraphernalia in the home. Little Earth's House Rules prohibit drug-related illegal activity, including the "possession of drug paraphernalia" by residents or their guests. Little Earth argues that the district court clearly erred because the "presence of hypodermic needles is undisputed" and because Officer Schmitt's testimony and his narrative

"establish[] that drug paraphernalia was found in [Rojas's] home." We decline to reverse because the district court's findings are supported by the record.

We preface our review of the paraphernalia-related findings with the understanding that needles and glass pipes are not per se illegal drug paraphernalia. Knowingly or intentionally using or possessing drug paraphernalia is unlawful. Minn. Stat. § 152.092(a) (2018). The operative statute defines "drug paraphernalia" in relevant part as follows:

> [A]ll equipment, products, and materials of any kind, except those items used in conjunction with permitted uses of controlled substances under this chapter or the Uniform Controlled Substances Act, which are knowingly or intentionally used primarily in . . . injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance . . . .

Minn. Stat. § 152.01, subd. 18(a) (2018). We have held that "[i]tems found to have the physical characteristics necessary to meet the statutory definition of drug paraphernalia must also be intended for use as drug paraphernalia, that is, with controlled substances; a finding of the intent is necessary." *City of St. Paul v. Various Items of Drug Paraphernalia*, 474 N.W.2d 413, 416 (Minn. App. 1991). Naloxone (Narcan) is excluded as a Schedule II controlled substance. Minn. Stat. § 152.02, subd. 3(b)(1)(i)(G) (2018). The district court here implicitly and appropriately recognized the distinction between needles intended to inject illegal substances and needles intended to inject legal substances.

Because of the distinction, we conclude that the district court's no-paraphernalia finding is adequately supported by the evidence. The juxtaposition of the search warrant's directive and the officer's description of the items seized reasonably influenced the district court's finding. The search warrant directed officers to search the apartment for "narcotics

paraphernalia," and Officer Schmitt testified that the warrant would have led the searching officers to seize anything "relevant" to the warrant. But the officers seized "nothing" during their search. These circumstances suggest that the officers found nothing that fits the label, "narcotics paraphernalia." Officers found no illegal drugs in the home, and Officer Schmitt believed it was only a "toss-up" as to whether drugs were being used in the home, meaning that he supposed it just as unlikely as likely that the home was a site for illegal drug use. This puts in perspective the officer's report that the home contained "heroin[-]type paraphernalia such as mini cotton balls," because cotton balls are of course used for many purposes not involving heroin injection. And the record does not suggest that officers found any drug residue or other indications that the needles or pipe had been used to ingest illegal drugs. The district court's finding that no drug paraphernalia was in the home is therefore not clearly erroneous.

Little Earth urges that its interpretation of the facts is more reasonable. We can say only that a fact-finder might have been persuaded that the needles and the pipe were more likely associated with illegal rather than legal substances. But our review does not involve second-guessing the district court on disputed matters of fact, and we will leave its factual findings intact even if we were to view the evidence differently. *See Rogers v. Moore*, 603 N.W.2d 650, 656 (Minn. 1999). Our question now is only whether the evidence is sufficient to support the district court's findings, and we hold that it is.

Little Earth also poses a legal question concerning the drug-related evidence, arguing that the district court erred by requiring it to prove that Rojas knew, or had reason to know, that there was drug paraphernalia in the home. The district court stated in passing

that Rojas did not violate Minnesota Statutes section 504B.171 (2018), because she did not know about any prohibited activity. The district court's statement is irrelevant to our review because that statute does not apply here. The statute requires that every lease of residential property include the covenant that neither the landlord nor the tenant will "unlawfully allow controlled substances" on the premises. Minn. Stat. § 504B.171, subd. 1(a)(1)(i). The statute covers possession of controlled substances, not drug paraphernalia. And Little Earth expressly withdrew allegations about controlled substances from its bases of eviction at the start of trial. Whether or not the district court accurately opined about a scienter element in the statutorily required anti-controlled-substance covenant is therefore not a question we must answer.

II

Little Earth argues that the district court clearly erred by concluding that it failed to prove that Rojas's home was disorderly. Little Earth's House Rules provide that failing to maintain a sanitary home may be sufficient cause for eviction. Little Earth argues in essence that Officer Schmitt's perception of a "stifling" smell, "disgusting" conditions, numerous needles, and clutter compels (not just permits) a finding that Rojas's home was in a condition that warranted eviction. We believe the argument again asks us to play the role of fact-finder, and we decline to do so.

The district court made explicit credibility determinations about the competing accounts of the condition of the home, clearly rejecting Officer Schmitt's testimony. "When evidence relevant to a factual issue consists of conflicting testimony, the district court's decision is necessarily based on a determination of witness credibility, which we

accord great deference on appeal." *Alam v. Chowdhury*, 764 N.W.2d 86, 89 (Minn. App. 2009). The district court found that Little Earth "presented no *credible* evidence that the property is 'disorderly.'" (Emphasis added.) It reasoned that "Officer Schmitt was at the property one[] time" and that he had "a subjective view of what constitutes 'disorderly.'" It credited Rojas's explanations regarding any alleged disorder. Little Earth insists that the district court should have dismissed Rojas's explanations as unreasonable. But the district court had little more than conclusory testimony on the issue because neither party offered photographic evidence or detailed and specific descriptions of the conditions in the home. The officer's testimony presented mostly his own generalizations. An officer's characterizing the smell inside as "stifling" without describing any observable effects on occupants or on the officers is far too thin to count as evidence that compels a finding of an eviction-justifying condition in the home. Similarly, the officer's conclusory perception that the conditions were "disgusting" might have constituted persuasive evidence if it had included details that would lead a reasonable fact-finder to share in the conclusion. The record includes far more support for the district court's credibility findings discounting the officer's conclusions than for Little Earth's contention that we should replace them with our own.

Even if we were tempted to disregard the district court's credibility determinations (we are not), key portions of the record are not nearly as convincing as Little Earth asserts. For instance, Little Earth asserts that Officer Schmitt's testimony that needles inhibited the officers' search is proof of disorder. But the officer testified only that police found needles "in various locations throughout the residence." This testimony is consistent with an

extensive needle-distribution program and Rojas's testimony that she had "put up" the Narcan needles in "every room." Little Earth offered no evidence about where the officers found the needles—in bags? cupboards? drawers?—such that the presence of needles might support a finding of a disorderly home.

Our review of the record reveals nothing that would have compelled the district court to find the disputed facts in Little Earth's favor. By choosing to rely almost entirely on generalized characterizations rather than to present specific descriptions, video-recording evidence, or photographic evidence of the home's condition, Little Earth did not develop a sufficient record for us to even consider reversing the district court's factual findings on the question of the home's alleged disorder.

III

Little Earth argues that the district court clearly erred by finding that Rojas did not repeatedly allow unauthorized guests in her home. The lease agreement defined "material noncompliance" to include "*repeated* minor violations." (Emphasis added.) The lease does not say what constitutes a minor violation or classify allowing unauthorized persons as either minor or major. HUD treats unauthorized occupants as only a minor violation. *See* U.S. Dep't of Hous. & Urban Dev., *HUD Handbook 4350.3: Occupancy Requirements of Subsidized Multifamily Housing Programs* § 8-13.A.4 (2013), https://www.hud.gov/sites/documents/43503HSGH.PDF. Little Earth argues the district court's conclusion is clearly erroneous because Dominick Stevens had been previously trespassed and because a public information report associated Rojas's address with several people in her home at the time of the raid. Neither theory leads us to reverse.

Evidence concerning Dominick Stevens's alleged trespassing did not compel the district court to find repeated minor violations. Officer Schmitt's narrative stated that Stevens "was booked . . . for [t]respassing," but the officer acknowledged that it was only his "understanding" that Stevens had been trespassed. The officer qualified his understanding by saying that he "could not testify" to the accuracy of it. Officer Schmitt's search-warrant application indicated that it was a different officer who saw Stevens at Rojas's home and believed he was residing there. That officer did not testify in the eviction proceeding. Little Earth's property manager testified that she did not issue trespass notices, and Little Earth presented no individual-specific notice at trial. Little Earth offered little evidence on which the district court could find that Rojas repeatedly violated the rules based on her allegedly allowing trespassed guests on the premises, and that sparse evidence is certainly not sufficient for us to reverse the district court's finding that Little Earth failed to justify eviction on that basis.

Little Earth's reliance on a Minneapolis Police Department "General Offense Public Information Report" is also uncompelling. The report lists the names of the individuals whom police located inside Rojas's home. Rojas's address appears next to five names. Little Earth unpersuasively implies that this is compelling evidence that those individuals were living in Rojas's home. The record itself nowhere declares that the listed addresses indicate the named individuals' actual residences, and Little Earth offered no testimony even attempting to make that point. Nor does the record say how the police gathered those addresses, who made the report, or how the report was generated. The district court was not bound to fill in details omitted by Little Earth's presentation of evidence or to draw

inferences in favor of eviction. Little Earth emphasizes that Rojas "did not present any of these individuals as witnesses" and did not "offer any testimony or evidence for where these five individuals lived." The argument assumes that it was Rojas's burden to disprove the bases of eviction, when in fact it was Little Earth's burden to prove them. *See Parkin*, 240 N.W.2d at 832. The district court was not required by the information report to find that Rojas had been allowing the listed individuals to live in her home.

It might be, as Little Earth asserts as a matter of fact, that Rojas allowed paraphernalia in the home for illegal drug use, maintained a disorderly home, and accepted trespassed or unauthorized individuals to live there. But in this appeal, we do not ask whether these things might have occurred or even attempt to decide whether they in fact did occur; we ask instead only whether the evidence in the record so compellingly proves that they occurred that the district court's contrary finding is necessarily mistaken. Our review of the record leads us to conclude that the district court's findings on each eviction ground are not manifestly contrary to the weight of the evidence. *See Rogers*, 603 N.W.2d at 656. Nor did the district court misapply the law in deciding Little Earth's complaint.

Affirmed.