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**STATE OF MINNESOTA
IN COURT OF APPEALS
A19-2045**

Aaron Reimringer,
Appellant,

vs.

Bart Anderson,
Respondent.

**Filed September 21, 2020
Affirmed
Johnson, Judge**

Wright County District Court
File No. 86-CV-19-5686

Dean Treftz, Mid-Minnesota Legal Aid, Minneapolis, Minnesota (for appellant)

Jayne E. Esch, Alex T. Mastellar, Rinke Noonan, St. Cloud, Minnesota (for respondent)

Considered and decided by Johnson, Presiding Judge; Reyes, Judge; and Frisch, Judge.

UNPUBLISHED OPINION

JOHNSON, Judge

A landlord required a tenant to move out of a rental home after the tenant had lived there for one month without paying any rent and without paying a security deposit, as required by a written lease agreement. The tenant commenced this action in the district court. He alleged, among other things, an unlawful ouster and sought damages for the

expenses he incurred when he and his family moved into a hotel. After an evidentiary hearing, the district court denied the claim on the ground that the landlord did not act in bad faith. We conclude that the district court did not clearly err by finding that the landlord did not act in bad faith. Therefore, we affirm.

FACTS

On August 1, 2019, Aaron Reimringer and Bart Anderson entered into a written lease agreement. Anderson agreed to rent to Reimringer a single-family home on 40 acres in Monticello for a 12-month term beginning on September 1, 2019, at a rate of \$2,500 per month. The lease agreement stated that Reimringer had paid the first month's rent, the last month's rent, and a security deposit, for a total of \$7,500. But the parties agree that Reimringer did not actually pay those amounts when he signed the lease. Reimringer also did not pay those amounts before the beginning of the lease term. Nonetheless, Reimringer moved into the home on September 1 with his girlfriend, Sarah Schmidt, their four children, and three pets.

On September 30, 2019, Anderson visited the property. Reimringer was not at home. Anderson asked Schmidt for payment of the unpaid rent and security deposit. Schmidt did not have it. Anderson required Reimringer and Schmidt to move out of the home that evening. Anderson arranged for the family to stay at a hotel for two nights at Anderson's expense, thereby giving Reimringer an additional opportunity to make the payment. Anderson stored Reimringer's property in a large, locked container on the property and told Reimringer where he could find the key to gain access to the container.

Anderson paid for a third night at the hotel when Reimringer and his family did not check out. Reimringer did not ever make the \$7,500 payment to Anderson.

On October 11, 2019, Reimringer petitioned the district court for, among other things, possession of the property pursuant to the so-called “lock-out” statute, Minn. Stat. § 504B.375 (2018), and damages pursuant to the ouster statute, Minn. Stat. § 504B.231 (2018). The district court denied an *ex parte* request for possession of the property but ordered Anderson to allow Reimringer to collect his personal property. The district court reserved the issue of damages and scheduled an evidentiary hearing. The evidentiary hearing was held on the morning of November 18, 2019. Three witnesses testified: Reimringer, Schmidt, and Anderson.

Reimringer and Schmidt testified as follows: In July 2019, they began searching for a rental home for themselves, their four children, and three pets. They viewed Anderson’s property and decided to rent it. Reimringer understood that, upon signing the lease agreement, he owed Anderson \$7,500, but Anderson told him that he could have additional time to find the money and could pay it after moving in. Reimringer considered withdrawing money from a retirement account but decided to borrow money from a friend who was waiting on payment of a court judgment. Anderson said that the house keys would be on the kitchen counter. On September 1, 2019, Reimringer found the keys there and moved into the home. Anderson visited the property a few times in September to pick up mail and other items.

Reimringer and Schmidt further testified that, on September 30, 2019, at approximately 8:00 p.m., Anderson and his girlfriend visited the home without advance

notice. Anderson asked Schmidt if she had a check for \$7,500. Schmidt responded in the negative. Anderson's girlfriend told Schmidt that the family must vacate the home immediately. Anderson contacted Reimringer, who was at a meeting, saying that he needed to pay the deposits immediately "or be out." Reimringer returned to the home and told Anderson that he must follow the procedures for an eviction. The discussion became heated, and Anderson stepped toward him and asked whether he wanted to "take this outside." Reimringer feared that the situation would escalate, so he and Schmidt quickly packed, and the family left the home at approximately 9:30 p.m. Anderson told Reimringer and Schmidt that he would pay for their stay at a hotel that night. The family moved into a hotel and stayed for nearly two months.

Anderson testified as follows: He understood that Reimringer would pay him \$7,500 before moving into the home. He believed that the lease was not valid until that amount was paid. He first became aware that Reimringer and his family had moved into the home when he visited on September 8, 2019, to pick up mail. When he saw that the family was already living in the home, he asked Reimringer to pay the \$7,500 that was owed under the lease agreement. Reimringer agreed to do so by withdrawing money from a retirement account. Anderson did not require the family to move out at that time because they had "already moved in and I didn't know what else to do." After the Reimringer family left the home on September 30, 2019, Anderson rented a storage container and hired people to move personal property into the container. Anderson agreed to pay for the family's first two nights at the hotel, during which time Reimringer had an opportunity to make the \$7,500 payment. He also was charged for the family's third night at the hotel.

In December 2019, the district court filed an eight-page order in which it denied Reimringer’s petition with respect to both his claim for possession of the premises and his claim for damages. With respect to Reimringer’s claim for possession, the district court reasoned that Reimringer was not a “residential tenant,” which is a prerequisite of his lock-out claim, because he had not paid any money required by the lease agreement. With respect to Reimringer’s claim for damages, the district court reasoned that Reimringer did not prove that Anderson acted in bad faith, which is a prerequisite of his ouster claim. Reimringer appeals.

D E C I S I O N

Reimringer argues that the district court erred by denying his claim for damages under section 504B.231.¹ He begins by contending that the district court erred by finding that he was not a “residential tenant,” a term used in section 504B.375. The term “residential tenant” is defined by statute. Minn. Stat. § 504B.001, subd. 12 (2018). But the term “residential tenant” is not used in section 504B.231. Rather, under section 504B.231, a “tenant” may recover damages in certain circumstances. Minn. Stat. § 504B.231(a) (2018). Both parties appear to assume that the definition of the term “tenant,” as used in section 504B.231, is the same as the definition of the term “residential

¹Reimringer’s appellate brief is somewhat unclear as to whether he is challenging the district court’s decision with respect to *both* his claim for possession under section 504B.375 *and* his claim for damages under section 504B.231. But his brief states that he voluntarily dismissed his claim for possession under section 504B.375 on November 11, 2019, before the evidentiary hearing on his petition. Reimringer’s attorney confirmed during oral argument that, on appeal, Reimringer is seeking appellate relief only with respect to his claim for damages under section 504B.231.

tenant,” as used in section 504B.375. If so, Reimringer would need to convince this court that the district court erred by finding that he was not a “residential tenant.” For purposes of this opinion, we assume without deciding that the two terms are synonymous. But Reimringer cannot prevail on appeal unless he also can convince this court that the district court erred by finding that Anderson did not act in bad faith.

We begin our analysis by considering the issue of bad faith. The ouster statute provides, “If a landlord . . . unlawfully and in bad faith removes, excludes, or forcibly keeps out a tenant from residential premises, the tenant may recover from the landlord treble damages or \$500, whichever is greater, and reasonable attorney’s fees.” Minn. Stat. § 504B.231(a). The term “bad faith” is not defined within chapter 504B. *See* Minn. Stat. § 504B.001 (2018). The supreme court has said that a person acts in bad faith if he or she engages in “wrongful conduct done without legal justification or excuse,” *Nordling v. Northern States Power Co.*, 478 N.W.2d 498, 506 (Minn. 1991), or a “willful violation of a known right,” *Rico v. State*, 472 N.W.2d 100, 107 (Minn. 1991). This court has said that a person acts in bad faith if he or she commits “a malicious, willful wrong,” *Mjolness v. Riley*, 524 N.W.2d 528, 530 (Minn. App. 1994), or if the person has “refus[ed] to fulfill some duty or contractual obligation based on an ulterior motive, not an honest mistake regarding one’s rights or duties,” *Sterling Capital Advisors, Inc. v. Herzog*, 575 N.W.2d 121, 125 (Minn. App. 1998).

The existence of bad faith is a question of fact. *Uselman v. Uselman*, 464 N.W.2d 130, 140 (Minn. 1990); *Lange v. Fidelity & Cas. Co. of New York*, 185 N.W.2d 881, 884 (Minn. 1971); *Sviggum v. Phillips*, 15 N.W.2d 109, 112 (Minn. 1944). This court applies

a clear-error standard of review to a district court's finding as to whether a party acted in bad faith. Minn. R. Civ. P. 52.01; *Lange*, 185 N.W.2d at 884.

In this case, the district court made numerous findings concerning the underlying historical facts. With respect to the issue of bad faith, the district court found as follows:

Defendant provided for three nights in a hotel for Plaintiff and his family and placed all personal property in a locked storage unit that was accessible to Plaintiff. There was credible testimony that Plaintiff refused to pick up his own personal property. The Court cannot find that Defendant acted in bad faith.

Reimringer contends that this finding is clearly erroneous because the record contains ample evidence of bad faith. He refers to evidence that Anderson demanded that he and Schmidt leave the home on short notice, ignored statements that an eviction action was required, acted in a threatening manner toward him, and prevented him from occupying the home. But the existence of evidence contrary to a district court's finding does not mean that the finding is clearly erroneous. A finding of fact is clearly erroneous if it is either "manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole." *DeCook v. Olmsted Med. Ctr., Inc.*, 875 N.W.2d 263, 274 (Minn. 2016) (quotation omitted). Furthermore, the mere fact that "the record might support findings other than those made by the [district] court does not show that the court's findings are defective." *Vangsness v. Vangsness*, 607 N.W.2d 468, 474 (Minn. App. 2000).

The evidentiary record is mixed with respect to the issue of bad faith. The district court found that Anderson did *not* act in bad faith, and the record contains evidence that supports that finding. Anderson testified that he paid for Reimringer's family to stay in a

hotel for three nights while Anderson waited for Reimringer to make the \$7,500 that was required by the lease. Anderson's testimony is corroborated by an exhibit. In addition, Anderson testified that he gave Reimringer access to the family's personal property while it was stored in a locked storage container. Based on this evidence, the district court reasonably could have believed that Anderson acted in good faith because he was justified in not allowing Reimringer to reside on his property without paying rent or a security deposit and because he gave Reimringer three additional days in which to pay the money that ordinarily would have been due at the time of signing the lease or the beginning of the tenancy. The evidence described above, when considered in connection with the evidence as a whole, is sufficient to support a finding that Anderson did not engage in "wrongful conduct done without legal justification or excuse," *Nordling*, 478 N.W.2d at 506; did not commit a "willful violation of a known right," *Rico*, 472 N.W.2d at 107; did not commit "a malicious, willful wrong," *Mjolness*, 524 N.W.2d at 530; and did not "refus[e] to fulfill some duty or contractual obligation based on an ulterior motive, not an honest mistake regarding one's rights or duties," *Sterling Capital Advisors*, 575 N.W.2d at 125.

Reimringer contends that Anderson's conduct is worse than the landlord's conduct in *Bass v. Equity Residential Holdings, LLC*, 849 N.W.2d 87 (Minn. App. 2014), in which this court affirmed a finding of bad faith and an award of damages under section 504B.231. The *Bass* opinion is distinguishable in at least two respects. First, the district court in that case found that the landlord had acted in bad faith, so this court applied the clear-error standard of review to a different type of finding. *Id.* at 90-91. That we affirmed a finding of bad faith in *Bass* does not mean that we would have reversed a finding of good faith.

Second, the evidence of bad faith in *Bass* was stronger than the evidence in this case. The landlord in *Bass* disposed of the tenant's personal property in a rain-filled dumpster, which prevented her from salvaging the items. *Id.* at 89-90. In contrast, Anderson kept Reimringer's personal property secure in a locked storage container while waiting for Reimringer to withdraw money from a retirement account and pay the money required by the lease agreement. Also, the landlord in *Bass* justified his actions on the ground that the tenant had abandoned the apartment, even though she simply had gone to work during ordinary business hours. *Id.* at 89, 93. In this case, however, Anderson acted only after Reimringer had lived in the rental home for one month without paying any money. In short, this court's affirmance in *Bass* is based on a different factual record and a different finding and, thus, does not compel reversal in this case.

Before concluding, we note that, in Anderson's responsive brief, he contends that Reimringer's initial appellate brief was untimely filed, and he asks this court to award him costs and attorney fees. Such a request should be raised by motion, not in a brief on the merits. Minn. R. Civ. App. P. 127; *Sanifill, Inc. v. Kandiyohi Cnty.*, 559 N.W.2d 111, 114 n.1 (Minn. App. 1997). In any event, Reimringer's brief was timely. An appellant must serve and file the opening brief "within 30 days after delivery of the transcript by the reporter." Minn. R. Civ. App. P. 131.01, subd. 1. A comment to the rule indicates that the 30-day period is triggered by the delivery of a transcript ordered by either party. Minn. R. Civ. App. P. 131.03, 1998 advisory comm. cmt. In this case, both parties ordered a transcript. The court reporter delivered the transcript ordered by Reimringer on January 14, 2020, and delivered the transcript ordered by Anderson on January 28, 2020.

Reimringer filed his appellate brief 30 days after the latter delivery, on February 27, 2020. Accordingly, Anderson's request is denied.

Thus, the district court did not clearly err by finding that Anderson did not act in bad faith. In light of that conclusion, we need not consider Reimringer's argument that the district court erred by finding that he was not a "residential tenant." In sum, the district court did not err by denying Reimringer's claim for damages under section 504B.231.

Affirmed.