STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0960

Estate of William L. Pickett,
Respondent,

vs.

Rick Howell,
Appellant,

Will Hague,
defendant.

Filed May 23, 2022
Affirmed
Johnson, Judge

Ramsey County District Court
File No. 62-HG-CV-21-128

Jevon C. Bindman, Timothy Lovett, Maslon L.L.P., Minneapolis, Minnesota; and

Robert F. Caldecott, Caldecott & Forro, P.L.C., White Bear Lake, Minnesota (for respondent)

Richard Howell, White Bear Lake, Minnesota (*pro se* appellant)

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

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Rick Howell was evicted from a home on the grounds that he did not have a lease agreement with the owner and that he breached the alleged lease agreement by allowing controlled substances to be present in the home. We affirm.

FACTS

In 2015, Howell entered into an oral agreement to lease a home in the city of White Bear Lake that was owned by William Pickett, who passed away on November 12, 2020. At that time, William's adult son, Brandon Pickett, was overseas in military service. Brandon visited Minnesota for his father's funeral in November 2020 and returned to Minnesota permanently after his discharge from military service in December 2020. After his return, Brandon learned that at least three persons were living in the home, and he observed pervasive drug use in and around the property. Although Brandon had lived in his father's home before his military deployment, he lived elsewhere afterward because of the environment at the home.

Brandon retained an attorney to probate William's estate. On April 1, 2021, the attorney representing the estate sent a two-page letter to Howell and the other residents. The letter stated that the oral lease with William terminated upon his death, that the residents had 30 days to voluntarily vacate the premises, and that the estate would commence an eviction action if they did not voluntarily vacate the premises.

Howell, Will Hague, and a third resident did not vacate the premises. On May 4, 2021, the estate commenced this eviction action against Howell, Hague, and the third

resident. The estate alleged that the defendants had breached the lease agreement by allowing controlled substances, specifically methamphetamine, to be present on the premises. The third defendant was dismissed before trial because she moved out of the home.

The district court conducted a court trial in July 2021. The estate called two witnesses: Brandon and his sister, Chandra Pickett. Brandon testified that, before his father's death, he had personally observed Hague and at least three other persons use methamphetamine at the property. Brandon also testified that he was aware that there was methamphetamine on the premises after his father's death. His testimony was corroborated by a photographic exhibit depicting Hague using methamphetamine in the property's garage and another photographic exhibit depicting a baggie of white powder in Howell's bedroom.

Chandra testified that she previously had resided in the home and, for five years, had been in a romantic relationship with Howell. She testified that the relationship ended in November 2020, when Howell obtained an order for protection (OFP) that prevented her from having contact with Howell and from being present at the property. Chandra testified that, before her exclusion from the property in November 2020, she had observed Howell, Hague, and other persons use methamphetamine at the property on many occasions.

Howell testified that, shortly before William's death, he and William entered into an oral lease agreement by which Howell was allowed to reside in the home until

September 2021. Howell testified that he had used drugs in the past but had not used drugs during the past year.

After trial, the district court filed an order in which it concluded that Howell and Hague had violated the alleged lease agreement by using controlled substances at the property. The district court also concluded that, after William's death, neither Howell nor Hague had a valid lease agreement that gave them a right to possession of the premises. The district court entered judgment in favor of the estate and ordered Howell and Hague to vacate the premises by August 2, 2021. A writ of recovery was issued on August 6, 2021, and was served on Howell and Hague on August 9, 2021.

Howell appeals and raises five issues in his *pro se* brief. Hague is not a party to this appeal.

DECISION

I. Breach of Implied Covenant

Howell first argues that the district court erred by finding that he breached the alleged lease agreement.

By statute, every residential lease includes an implied covenant providing that neither the landlord nor the tenant will "unlawfully allow controlled substances in those premises or in the common area and curtilage of the premises." Minn. Stat. § 504B.171, subd. 1(a)(1)(i) (2020). If a tenant breaches the implied covenant, the breach "voids the tenant's . . . right to possession of the residential premises" and gives the landlord the right to commence an eviction action against the tenant. *Id.*, subd. 2.

The district court found that Howell breached the implied covenant in section 504B.171, subdivision 1, "based on Mr. Howell's admission that he previously used drugs in the subject property, Ms. Pickett's testimony that Mr. Howell was still using drugs in the subject property in November 2020, and Brandon Pickett's testimony that the Defendants are still using drugs in the subject property."

Howell contends that the evidence is insufficient because he admitted to using methamphetamine during an earlier time period, before the term of the alleged lease; because Chandra was excluded from the premises during the entire term of the alleged lease and, thus, did not have any first-hand knowledge of the premises during the term of the alleged lease; and because Brandon did not testify that he saw Howell use methamphetamine during the term of the alleged lease.

Howell's argument assumes that evidence of *use* of controlled substances, *by him*, is necessary. The statute provides that the implied covenant is breached if a tenant "allow[s] controlled substances in those premises." Minn. Stat. § 504B.171, subd. 1(a)(1)(i). The record contains abundant evidence of the presence of methamphetamine at the home before William's death, which allows a fact-finder to infer that methamphetamine also was present after William's death. More importantly, the record contains direct evidence that controlled substances were on the premises during the term of the alleged lease. Brandon's testimony and the estate's photographic exhibits tend to prove that methamphetamine was present at the property in June 2021, which is after William's death and during the term of the alleged lease. Howell contends that Brandon is not a credible

witness, but a district court's credibility determinations are entitled to deference. *See* Minn. R. Civ. P. 52.01; *Thornton v. Bosquez*, 933 N.W.2d 781, 790 (Minn. 2019).

Thus, the district court did not err by finding that Howell violated the implied covenant in section 504B.171, subdivision 1.

II. Right to Possession

Howell also argues that the district court erred by finding that he does not have a right to possession of the premises. Specifically, he argues that the OFP that prevents Chandra from being present at the property granted him a possessory interest in the property.

The district court did not make any specific finding of fact or conclusion of law as to whether the OFP gave Howell a right of possession. Howell did not provide any such testimony or argument at trial. The argument likely has not been preserved. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988).

In any event, the argument is without merit. Howell did not introduce the OFP into evidence as an exhibit, so he did not prove that its terms conferred on him a right to possession of the property that then was owned either by Chandra's father or by his estate. It is unlikely that the OFP did so. The statute authorizing the issuance of an OFP allows a district court to, among other things, "exclude the abusing party from the dwelling which the parties share" and "award temporary use and possession of property." Minn. Stat. § 518B.01, subd. 6(a)(2), (8) (2020); *see also Swenson v. Swenson*, 490 N.W.2d 668, 670 (Minn. App. 1992) (holding that district court erred by excluding abused party, not abusing party, from shared residence). But the statute merely allows a modification of the relative

rights of joint tenants. Nothing in the statute authorizes a district court to enlarge the rights of a tenant of leased residential property in a way that diminishes the rights of a landlord who is not a party to the OFP proceedings.

Thus, the district court did not err by concluding that Howell does not have a right to possession of the premises, despite the existence of the OFP preventing Chandra from being present at the property.

III. Disclosure of Landlord's Authority

Howell next argues that the district court erred by not finding that Brandon did not satisfy a statutory requirement to disclose his authority to manage the premises.

The relevant statute provides that a tenant is entitled to disclosure of "the person authorized to manage the premises" and the landlord or the landlord's agent. Minn. Stat. § 504B.181, subd. 1 (2020); Minn. Stat. § 504B.001, subd. 7 (2020). A landlord cannot commence an eviction action if the required disclosure was not made at least 30 days earlier. Minn. Stat. § 504B.181, subd. 4.

The district court did not make a finding as to whether the required disclosure was made. But the record makes clear that Howell's argument is without merit. On April 1, 2021, Brandon's attorney sent Howell a letter, which stated that Brandon was the personal representative of William's estate, informed Howell of Brandon's intent to commence an eviction action, and requested that Howell vacate the premises voluntarily within 30 days. The estate commenced the eviction action 33 days later on May 4, 2021. Furthermore, the record reveals that Howell recognized Brandon's authority to manage the property before the April 1, 2021 letter was sent to him.

Thus, the district court did not err by not finding that Brandon did not disclose his authority to manage the premises.

IV. Discovery Motion

Howell next argues the district court erred by denying his motion to compel discovery.

In the Ramsey County housing court, the rules of civil procedure apply, except to the extent that they are "in conflict with applicable statutes." Minn. R. Gen. Prac. 601. Under the rules of civil procedure, a party generally must respond to discovery requests within 30 days. Minn. R. Civ. P. 33.01(b), 34.02(c)(1), 36.01. Because an eviction action is a summary proceeding, the rules governing housing court require parties to "cooperate with reasonable informal discovery requests." Minn. R. Gen. Prac. 612. Upon request, the district court "may issue an order for an expedited discovery schedule." *Id.* No housing-court rule modifies the 30-day response time in the rules of civil procedure. This court applies an abuse-of-discretion standard of review to a district court's ruling on a discovery motion. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 238 (Minn. 2019).

Howell served interrogatories on the estate on July 4, 2021, only ten days before trial began on July 14, 2021. Three days before trial, Howell moved to compel answers to the interrogatories or to dismiss the eviction action due to the lack of answers. At the outset of trial, Howell asked the district court to rule on the motion. The estate's attorney argued that answers to the interrogatories were not yet due. The district court denied the motion.

It is significant that the district court did not order an expedited discovery schedule for this case. *See* Minn. R. Gen. Prac. 612. Consequently, the estate's discovery responses

were not due until after the day of trial, which is when the district court denied Howell's motion. *See* Minn. R. Civ. P. 33.01(b).

Thus, the district court did not abuse its discretion by denying Howell's motion to compel discovery or to impose discovery sanctions.

V. Evidentiary Ruling

Howell last argues that the district court erred by admitting into evidence the photographic exhibits that tend to show the presence of controlled substances on the premises in June 2021. Howell contends that the exhibits are inadmissible on the ground that they lack authenticity because they were excerpted from a video-recording.

Before trial, Howell filed a motion to exclude the estate's photographic exhibits on various grounds. The district court denied that motion at the outset of trial without a detailed explanation. During trial, Howell asserted objections to three of the estate's photographic exhibits. The objections caused the estate's attorney to elicit additional testimony from Brandon to lay a foundation for the photographic exhibits based on his first-hand knowledge of the persons and places depicted in the photographs and the person who created the photographs. The district court construed the objections to be challenges to foundation and overruled the objections. The district court did not abuse its discretion by overruling Howell's foundation objections. *See Lundman v. McKown*, 530 N.W.2d 807, 829 (Minn. App. 1995), *rev. denied* (Minn. May 31, 1995).

For the first time on appeal, Howell invokes the best-evidence rule and argues that the district court should not have admitted the photographs without admitting the entire video-recording from which the photographs were excerpted. Again, this argument likely

has not been preserved. *See Thiele*, 425 N.W.2d at 582. Nonetheless, it is without merit. The best-evidence rule applies only if a party seeks "[t]o prove the content of a writing, recording, or photograph." Minn. R. Evid. 1002. Brandon did not seek to prove the contents of a photograph; rather, he sought to use photographs to prove another fact—that controlled substances were present on the premises. *See* Minn. R. Evid. 1002, 1977 comm. cmt.; *see also* 11 Peter N. Thompson, *Minnesota Practice Series—Evidence* § 1002.01, at 792 (4th ed. 2012). In addition, a duplicate generally is "admissible to the same extent as an original unless . . . a genuine question is raised as to the authenticity of the original." Minn. R. Evid. 1003. In this particular situation, a photograph may be considered a duplicate of an original video-recording. *See United States v. Perry*, 925 F.2d 1077, 1082 (8th Cir. 1991) (holding that still photographic image excerpted from video-recording was duplicate and that its admission did not violate best-evidence rule). In addition, Howell did not challenge the authenticity of the video-recording. Accordingly, the admission of the photographic exhibits did not violate the best-evidence rule.

Thus, the district court did not err by overruling Howell's objections to Brandon's introduction of photographic exhibits.

Affirmed.