STATE OF MINNESOTA
IN COURT OF APPEALS
A21-1134

Doran-CSM SE I LLC,
Appellant,

vs.

Thomas Stone, et al.,
Respondents.

Filed June 6, 2022
Affirmed
Gaïtas, Judge

Hennepin County District Court
File No. 27-CV-HC-21-360

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

John G. Westrick, Samuel A. Savage, Savage-Westrick, PLLP, Bloomington, Minnesota (for respondents)

Considered and decided by Gaïtas, Presiding Judge; Bjorkman, Judge; and Frisch, Judge.

NONPRECEDENTIAL OPINION

GAÏTAS, Judge

Appellant-landlord Doran-CSM SE I LLC challenges the district court's dismissal of its eviction action against respondents-tenants Thomas Stone and Michael Stengrund. Because the district court did not err in determining that tenants' conduct was not a material breach of their lease, we affirm.

FACTS

Tenants are a married couple who rent an apartment in a Minneapolis residential building called "Expo." They entered a written lease with landlord, effective February 27, 2021 to August 26, 2022.

Landlord commenced an eviction action against tenants on June 24, 2021, alleging that tenants had breached the lease on May 22, 2021, when they "got into a physical altercation with another resident in the pool area" and "committed an assault against another resident." Tenants filed an answer, alleging that they were not the aggressors in the incident and merely acted in self-defense, that they did not seriously endanger others on the property, and that landlord had waived any actionable breach by accepting rent for June and July.[1]

The parties had a court trial in housing court on July 23, 2021. Based on the trial evidence, which included the testimony of six witnesses and two videos of the altercation, the district court made the following findings of fact.

On May 22, 2021, a "concierge" summoned police to Expo upon learning of a fight that had occurred on the pool deck. In addition to police, the senior property manager also reported to the building, arriving at about 7:00 p.m. The senior property manager spoke with the involved parties—tenants and another resident, D.M. She observed that tenant Stone was upset and appeared to be intoxicated, but tenant Stengrund was calm. The senior property manager ordered tenants and D.M. to stay off the building's pool deck for two

[1] Tenants also raised additional defenses in their answer that are not at issue in this appeal.

weeks. After speaking with tenants and D.M., the senior property manager remained on the pool deck until 11:00 p.m., calming people down. Following the incident, she received emails and visits from concerned residents.

The next day, the senior property manager sent Stone an email stating that she had "gathered all the information" required "to make a solid decision," including "watch[ing] all footage." Because she believed that Stengrund had been involved in the altercation, she asked Stengrund to "agree not to use the pool and other amenities for a week." But she stated that no sanction was warranted for Stone because he "tried to break up the fight to help . . . Stengrund."

According to the senior property manager, she did not make the decision to file the eviction action. That decision was made by K.D., who is the property developer and 50% owner of Expo.

Tenants and their witness P.E. were the only eyewitnesses to testify at the trial. They were all on the pool deck with other friends before the fight. D.M., who was also there, began playing inappropriate music. Stone asked D.M. to turn down the music, but D.M. refused. In response, Stone adjusted the position of the speaker. Following this interaction, D.M. pursued Stone and directed a homophobic slur at him. Then, D.M. escalated the situation. He threw several canned drinks at Stone and aggressively approached him. Stengrund blocked the drinks and got between Stone and D.M. D.M. then struck Stengrund several times. In an attempt to calm D.M. down, Stengrund tried to sit D.M. down or push him into the jacuzzi. Stone, attempting to aid Stengrund, ultimately pushed D.M. into the jacuzzi and dunked him in hope of subduing him. When Stone released D.M., however,

D.M. struck him. Eventually, P.E., who is a mutual friend of tenants and D.M., removed D.M. from the jacuzzi and the area. P.E. believed that D.M. was "out of his mind."

During the fight, Stengrund received minor injuries. He has since reconciled with D.M.[2] Ultimately, no charges were filed.

On June 23, 2021—just before filing the eviction action—K.D. sent tenants an email that stated,

> the insults, derogatory and false statements directed against the building, ownership and the staff in phone calls and on the internet by people that don't even live in the building needs to stop. I don't know if you are aware of this inappropriate and defamatory behavior towards us or not or if you know these people but this stuff will not work.

K.D. acknowledged that tenants were up to date on their $4,500-per-month rent at the time of the trial.

Based on the trial evidence—including the "generally credible and consistent" testimony of tenants and P.E., who were "the only eyewitnesses . . . able to give the court a first-hand account"—the district court dismissed the action with prejudice. It determined that tenants had engaged in minor breaches of their lease agreement by being "unruly, boisterous, and interfering with the peaceful enjoyment of others." But the district court concluded that tenants' conduct was not an act of violence, which would have been a material breach of the lease, and that it did not seriously endanger the safety of other

[2] Tenants also called D.M. as a trial witness. But D.M., who was represented by counsel, invoked his Fifth Amendment privilege against self-incrimination and did not testify.

residents or others. Moreover, the district court concluded that landlord waived any right to evict tenants by accepting rent after the incident.

Landlord appeals.

DECISION

Landlord challenges the district court's judgment in favor of tenants on two primary grounds. First, landlord argues that the district court erred in concluding that tenants' conduct was not an "act of violence" in violation of a material lease term or conduct that seriously endangered the safety of others. Second, landlord contends that the district court erroneously determined that landlord waived any breach of the lease by accepting tenants' rent.

In an eviction action we generally review a district court's findings of fact for clear error. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). "We do not reweigh the evidence that was before the district court, and we defer to a district court's credibility determinations." *See Landmark Cmty. Bank v. Klingelhutz*, 927 N.W.2d 748, 755 (Minn. App. 2019); *see also* Minn. R. Civ. P. 52.01 ("[D]ue regard shall be given to the opportunity of the [district] court to judge the credibility of the witnesses."). A factual finding is clearly erroneous if "there is no reasonable evidence in the record to support those findings . . . and [an appellate court is] left with a definite and firm conviction that a mistake has been made." *In re Tr. of Schwagerl*, 965 N.W.2d 772, 781 (Minn. 2021) (quotations and citations omitted).[3] "[Appellate courts] review a district court's application

[3] In the Fourth Judicial District—the venue in this case—a party may seek district court judge review of a housing court referee's confirmed order. *See* Minn. Stat. § 484.013,

of the law de novo." *Harlow v. State, Dep't of Human Servs.*, 883 N.W.2d 561, 568 (Minn. 2016).

We first address landlord's arguments regarding serious endangerment, which relate to a series of restrictions on eviction actions prompted by the COVID-19 pandemic. To promote housing stability during the pandemic, the governor issued multiple executive orders that significantly restricted the ability of landlords to file eviction actions. The final executive order, EEO 20-79, which was in effect at the time of the pool-deck incident, continued the suspension of most eviction actions with some narrow exceptions. *See* Emerg. Exec. Order No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* (July 14, 2020) (EEO 20-79) (rescinding previous eviction-suspension orders and outlining updated rights and protections for tenants and landlords). Among other things, the exceptions allowed eviction actions to proceed where a tenant "[s]eriously endanger[ed] the safety of other residents" or "[m]aterially violate[d] a residential lease by . . . [s]eriously endanger[ing] the safety of others." After the pool-deck incident but before the trial, the legislature passed a session law that "phased out" the protections of EEO 20-79, including the suspension of certain eviction actions. 2021 Minn. Laws 1st Spec. Sess. ch. 8, art. 5, § 2 at 1849. When

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subd. 6 (2020); Minn. R. Gen. Prac. 611. Landlord chose not to do that. Tenants argue that attorneys are "ill-advised" to bypass judge review and that this decision affects the "scope of review on appeal." We disagree. A confirmed housing court order is treated no differently on appeal, as long as the appeal is taken from a final judgment. *See Dominium Mgmt. Servs. LLC v. Lee*, 924 N.W.2d 925, 926-27 (Minn. App. 2019) (explaining this court's jurisdiction when judge review is sought); *Tonkaway Ltd. P'ship v. McLain*, 433 N.W.2d 443, 443 (Minn. App. 1988) (holding that in eviction actions—formerly unlawful-detainer proceedings—the exclusive mode of appeal is from the judgment).

the eviction trial occurred, the phase-out statute authorized eviction actions for "material violations of the lease other than nonpayment of rent."[4]

Tenants have never argued that any of the restrictions on eviction actions precluded landlord from bringing an eviction action. And no party argues that the eviction action should not have proceeded due to lack of "serious endangerment." Thus, like the parties and the district court, we focus our analysis on the merits of the breach-of-lease ground for eviction.[5]

Turning to the merits, landlord argues that the district court erred in ruling that landlord failed to satisfy its burden of proving a material breach of the lease. In an eviction action, a landlord must establish grounds for eviction by a preponderance of the evidence. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 908 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018). "Preponderance of the evidence requires that to establish a fact, it must be more probable that the fact exists than that the contrary exists." *Christie v. Est. of Christie*, 911 N.W.2d 833, 839 (Minn. 2018) (quotation omitted). Landlord contends that

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[4] Under the phaseout statute, landlords could resume filing breach-of-lease actions for material violations of the lease other than nonpayment of rent on July 14, 2021. *See id.*, § 2(b)(2)(iii) at 1849.

[5] A recent precedential opinion from this court, *Fairmont Hous. & Redevelopment Auth. v. Winter*, discusses the effect of termination of EEO 20-79 on pending appeals. 969 N.W.2d 839, 843-48 (Minn. App. 2021). There, the underlying incident, entire eviction action, and eviction judgment "all occurred before the enactment of the moratorium phaseout." *Id.* at 847. The tenants therefore argued, and this court agreed, that the protections in EEO 20-79 extended to the eviction action. *Id.* But because the tenants in that case seriously endangered the safety of other residents, the district court properly allowed the eviction action to proceed on the merits. *Id.* at 849. Here, by contrast, tenants do not argue that the protections in EEO 20-79 precluded the eviction action.

the trial evidence established that tenants breached the "crime free/drug free housing addendum" to the lease. That section of the lease provides that an act of violence constitutes a material breach. The relevant lease provisions state:

> 5. **Resident . . . shall not engage in acts of violence or threats of violence** . . . or any other breach of the Apartment Lease Contract that otherwise jeopardizes the health, safety, or welfare of . . . other residents.
>
> . . . .
>
> 7. ***Violation of the above provision shall be a material violation of the Apartment Lease Contract and good cause for the immediate termination of the Apartment Lease Contract.*** A single violation of any of the provisions of this Addendum shall be deemed a serious violation and material non-compliance with the terms and conditions of the Apartment Lease Contract. It is understood and agreed that a single violation shall be good cause for termination of the Apartment Lease Contract. Unless otherwise provided for by law, proof of violation shall not require a criminal conviction, but shall be the preponderance of the evidence as provided by Management.

(Emphasis added.)

Landlord argues that the videos of the altercation that were admitted in evidence clearly show that tenants committed an act of violence. Thus, landlord contends, the district court clearly erred in concluding otherwise.

But the district court's determination that tenants did not commit an act of violence is supported by detailed factual findings, which include credibility determinations. We must defer to those credibility determinations. *See Klingelhutz*, 927 N.W.2d at 755. And our task on review is not to reweigh the trial evidence. Rather, we are limited to

determining whether the record supports the district court's factual findings. *See Schwagerl*, 965 N.W.2d at 781.

Based on our review of the trial record, we cannot conclude that the district court's findings are clearly erroneous. Landlord's witnesses testified that they did not observe the altercation firsthand. Although landlord argues that the videos prove that tenants behaved violently, the district court found that the credible testimony of tenants' witnesses showed that D.M. instigated a fight and tenants merely defended themselves. The record supports this finding. Tenants and their friend testified that D.M. initiated the fight and that they merely tried to stop D.M. from causing harm. In the process, Stengrund sustained multiple documented injuries. The district court also found that the videos were helpful in understanding the sequence of events. Again, the record supports this finding. One video shows D.M. throwing something at Stone, punching Stengrund, and pursuing tenants until he was physically removed from the hot tub by P.E.

Landlord also challenges the district court's determination that tenants did not commit an act of violence because they were merely defending themselves. According to landlord, the district court should have applied criminal-law self-defense principles, and the district court erred in determining that tenants established the elements of a criminal-law self-defense claim.[6] Most notably, landlord argues, tenants could not rely on a self-defense claim because they had an opportunity to retreat from D.M. during the incident.

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[6] The four elements of a criminal-law self-defense claim are:

> (1) the absence of aggression or provocation on the part of the defendant; (2) the defendant's actual and honest belief that he

We reject this argument. Landlord cites no authority for its assertion that the district court was required to apply criminal-law self-defense principles in determining whether tenants committed a material breach of their lease. Moreover, we do not read the district court's reference to self-defense as invoking the technical criminal-law concept. Rather, the order seems to use the term in its colloquial sense to convey that tenants were not the aggressors but simply acted to defend themselves during the incident.

The record supports the district court's finding that tenants did not commit a material breach of their lease. Thus, the district court did not err in dismissing the eviction action with prejudice.

Landlord also argues that the district court erred in concluding that landlord's acceptance of rent waived any right to evict tenants. Given our determination that the district court did not err in finding no material breach of the lease, we need not address the waiver argument.

Affirmed.

> or she was in imminent danger of bodily harm; (3) the existence of reasonable grounds for that belief; and (4) the absence of a reasonable possibility of retreat to avoid the danger.

State v. Devens, 852 N.W.2d 255, 258 (Minn. 2014) (quoting *State v. Basting*, 572 N.W.2d 281, 285-86 (Minn. 1997)).