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Minn. Stat. § 480A.08, subd. 3 (2010).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-1716**

Public Housing Agency of the City of St. Paul,
Respondent,

vs.

La Vang,
Appellant.

**Filed May 3, 2011
Affirmed
Stoneburner, Judge**

Ramsey County District Court
File No. 62HGCV10703

Sara R. Grewing, St. Paul City Attorney, Laura Pietan, Assistant City Attorney, St. Paul,
Minnesota (for respondent)

Lisa Hollingsworth, Southern Minnesota Regional Legal Services, Inc., St. Paul,
Minnesota (for appellant)

Considered and decided by Wright, Presiding Judge; Stoneburner, Judge; and
Collins, Judge.*

* Retired judge of the district court, serving as judge of the Minnesota Court of Appeals
by appointment pursuant to Minn. Const. art. VI, § 10.

UNPUBLISHED OPINION

STONEBURNER, Judge

Appellant challenges the district court's order affirming her eviction from public housing, arguing that the district court erred as a matter of law "when it failed to demonstrate that appellant committed a serious violation of a material lease term *and* that such violation warrants her eviction from public housing," or alternatively when it concluded that it is not authorized to consider mitigating circumstances. We affirm.

FACTS

Appellant La Vang is a Laotian-immigrant mother of nine with borderline intellectual functioning who suffers from depression and does not speak English. She has been a resident of public housing administered by respondent Public Housing Agency of the City of Saint Paul (the PHA) for approximately 12 years.

Appellant admitted that one of her adult daughters, who had moved out of appellant's residence in 2002, moved back into the residence with two children in 2006 to escape domestic violence. Daughter was an unreported, wage-earning resident of appellant's household until 2009.

Appellant admitted that failing to report her daughter's presence and income in the household violated her lease. Specifically, appellant violated lease sections 5A (requiring a tenant to annually provide accurate current information concerning the number of people in the household and the source and amount of the income of everyone in the household); 5B (requiring a tenant to report any change in income or family composition within ten days of the change); 7A (prohibiting guests for periods of time exceeding 15

days per calendar year); and 7B (prohibiting tenant from providing housing for boarders or lodgers).

Section 9A of the lease provides that the agency will not terminate a lease and will not evict a tenant “except for serious or repeated violation of material terms of the Lease or other good cause.” And section 9A(1) specifically identifies the failure of the tenant to timely supply information on family income, assets, or composition as a “serious violation” of the lease.

The PHA evicted appellant. She appealed, and a housing-court referee concluded that appellant had violated her lease but that the PHA had failed to consider important mitigating circumstances, such as appellant’s willingness to accept responsibility and repay wrongfully received assistance; her limited English proficiency; her disability caused by her depression; her large household that includes six non-culpable children; and her unreported daughter’s young age and status as a victim of domestic violence. The order permitted appellant to remain in public housing and instructed the PHA to offer appellant a repayment plan.

The PHA requested review of the referee’s decision. On review, the district court vacated the referee’s order, finding that the PHA had considered the noted mitigating factors but had rejected them, and that there is insufficient evidence to show that appellant’s failure to report her daughter’s presences was “caused by her depression, limited abilities or other handicaps as that term is used in the applicable statutes.” The district court also concluded that the PHA does not have authority in this case to consider mitigating factors under 24 C.F.R. § 966.4(1)(5)(vii)(B) (2010), because the provision

applies only to termination of tenancy for criminal activity or alcohol abuse. And, to the extent that the PHA has authority to consider mitigating factors, the district court “does not have authority to independently examine those factors and mandate a result, no matter how compelling the factors may be.” This appeal followed.

D E C I S I O N

The district court has the power to review unlawful detainer actions de novo to determine whether the lease was materially breached. *Minneapolis Public Housing Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999) (stating that “a lease is a form of contract,” and “unambiguous contract language must be given its plain and ordinary meaning, and shall be enforced by courts even if the result is harsh”). On review of a district court judgment in an eviction action, this court defers to the district court’s credibility determinations and upholds its factual findings unless they are clearly erroneous. *See* Minn. R. Civ. P. 52.01; *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003).

Appellant argues that she did not commit a serious and material breach of the lease justifying eviction. But the lease specifically provides that failure to timely supply documentation of family income or composition constitutes a serious violation of the lease. Appellant’s breach of the lease was not only serious, it was repeated. Appellant attended annual reviews and reported other changes to her household and household income, but failed to report her income-earning daughter and her daughter’s two children.

We conclude that appellant’s serious breach was also material. A material breach is one that violates “one of the primary purposes” of the lease. *See Steller v. Thomas*, 232

Minn. 275, 282, 286–87, 45 N.W.2d 537, 542 (1950). Reporting household composition and income is a primary purpose of the lease because the amount of a tenant’s monthly rent is calculated based on reported household income. The district court did not err by concluding that appellant’s lease violation was serious and material.

Appellant points to Section 5 of the lease, which provides that “[f]ailure by a Tenant to report any increases in household income . . . will be considered a serious and material violation of the Lease and will result in any rent increase being effective retroactive to the time the increase would have been made.” Appellant argues that, because this section does not mandate eviction for a reporting failure, “to sustain the eviction, the [district] court must . . . make a determination that eviction rather than retroactive imposition of the increased rent amount is required under the lease in this case.” Appellant does not cite any authority for the assertion that eviction is only appropriate under the lease if it is required. An assignment of error based on a mere assertion and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *State v. Modern Recycling, Inc.*, 558 N.W.2d 770, 772 (Minn. App. 1997). Even if the argument is not waived, we find it to be without merit. The supreme court has noted that PHA’s have *discretion* under federal statutes and regulations to evict tenants. *Lor*, 591 N.W.2d at 703. In this case, the PHA is empowered by the lease to evict a tenant for a serious and material breach of the lease. That the lease provides other remedies for specific violations does not negate the power to evict for that violation or mandate that the district court must make a finding that eviction is “required” under the circumstances of each case.

Appellant, relying on federal regulations that the PHA must follow in administration of public housing, argues that the district court erred in failing to consider relevant mitigating circumstances.¹ The district court held that the federal regulation cited by appellant (1) is permissive and not mandatory; (2) only applies to lease violations for criminal activity or alcohol abuse; and (3) that even if the regulation permits consideration of mitigating circumstances in this case, only the PHA has authority to consider mitigating factors. Because the district court correctly held that consideration of mitigating factors is permissive, we need not determine in this case whether the cited regulation is limited to offending criminal or alcohol-related conduct. And because the record in this case supports the district court's finding that the PHA considered mitigating circumstances, we find no merit in appellant's assertions that the PHA abused its discretion in failing to consider her mitigating circumstances.² Case law supports the district court's conclusion that the district court does not have authority to independently consider mitigating factors. *See Lor*, 591 N.W.2d at 704 (stating that in public-housing cases, federal regulations "do not empower [district] courts to consider

¹ Specifically, appellant relies on 24 C.F.R. § 966.4(1)(5)(vii)(B), which provides that the PHA may consider all circumstances relevant to a particular case such as the seriousness of the offending action, the extent of participation by the leaseholder . . . the effects that the eviction would have on family members not involved in the offending activity and the extent to which the leaseholder has shown personal responsibility and has taken all reasonable steps to prevent or mitigate the offending action.

² The cases appellant cites for the proposition that the PHA abused its discretion by failing to consider mitigating circumstances all involve certiorari review of quasi-agency decisions rather than appeal from the district court in an eviction action, and can be distinguished, on that ground, from the instant facts.

external circumstances in eviction proceedings”). We find no supporting authority for, or merit in, appellant’s argument that *Lor* only limits consideration of mitigating circumstances by the district court when eviction is for a criminal act. The district court did not err in concluding that it was without authority to independently consider mitigating circumstances in this case.

Affirmed.