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**STATE OF MINNESOTA
IN COURT OF APPEALS
A10-656**

South St. Paul HRA,
Respondent,

vs.

Susan Rose,
Appellant.

**Filed March 22, 2011
Affirmed in part, reversed in part, and remanded
Wright, Judge**

Dakota County District Court
File No. 19WS-CV-09-1744

Joy D. Bartscher, Rogosheske, Sieben, Atkins & Pugh, LLC, South St. Paul, Minnesota
(for respondent)

Susan Rose, St. Paul, Minnesota (pro se appellant)

Considered and decided by Stoneburner, Presiding Judge; Wright, Judge; and
Bjorkman, Judge.

UNPUBLISHED OPINION

WRIGHT, Judge

In this eviction action, appellant-tenant challenges the district court's entry of judgment for respondent. Appellant seeks reversal, the return of her personal property, and costs, arguing that (1) the evidence is insufficient to support the district court's

decision, (2) the district court lacked authority to order the destruction of appellant's personal property, (3) the district court committed judicial error and violated the Code of Judicial Conduct, and (4) appellant received ineffective assistance of counsel. We affirm in part, reverse in part, and remand.

FACTS

Appellant Susan Rose signed a lease to rent a public-housing apartment in South St. Paul in 2007. The property is managed by respondent, the South St. Paul Housing and Redevelopment Authority (HRA). In early 2009, Rose complained to the property manager that she was being stalked by a man who was entering the apartment building. After reviewing security videos, the property manager was unable to verify Rose's suspicions. Rose persisted with her complaint, and on May 5, 2009, she entered the HRA office lobby with a list of concerns. She proceeded to the private office area to make a photocopy of the list. After being advised repeatedly by the staff that she was not permitted to enter the private office area or to leave behind her personal property, Rose left behind a purse in one of the private offices, which caused considerable alarm.

Because the property manager was concerned about Rose's well-being after this interaction with Rose, she called the Dakota County Social Services Crisis Response Unit (CRU) the next day. A CRU representative and South St. Paul Police Corporal Mark Sawyer came to the apartment building that afternoon to assess Rose. During a meeting with the CRU representative, Corporal Sawyer, and the property manager, Rose displayed increasingly agitated and verbally abusive behavior. The CRU representative concluded that Rose should be placed on a 72-hour hold for a mental-health assessment,

and Corporal Sawyer called an ambulance. For the safety of the paramedics, Corporal Sawyer frisked Rose for weapons and seized a knife, a stun gun, and a Taser from her pockets. As Corporal Sawyer escorted Rose to the ambulance, Rose asked him whether he was wearing Kevlar because she was considering shooting him with the Taser.

After this incident, the HRA initiated the process to terminate Rose's tenancy on the grounds that Rose was a threat to herself, other residents, and the HRA staff. Section 16(k) of Rose's lease permits the HRA to terminate the lease based on any activity that threatens the health, safety, or right to peaceful enjoyment by other tenants or the HRA employees. In June 2009, Rose agreed to vacate the premises and received extensions of time to vacate. But in July, she ceased communicating with the HRA.

The HRA filed an eviction action, which the district court dismissed because the HRA had not held a grievance hearing. The HRA prevailed in the formal and informal grievance hearings. On October 21, 2009, the HRA filed a second complaint for eviction in district court, alleging that Rose violated section 16(k) of the lease. At the bench trial that followed, the HRA presented six witnesses and Rose presented two, including herself. During the direct examination of Rose, the district court questioned Rose and subsequently ended the trial. In its April 2, 2010 order, the district court found that Rose broke the terms of the lease. The district court entered judgment for the HRA and issued a writ of recovery ordering Rose to vacate the premises and ordered the South St. Paul Police Department to destroy the weapons in the HRA's possession that had been confiscated from Rose. This appeal followed.

DECISION

I.

An eviction action is a summary civil proceeding in which the only issue for determination ordinarily is whether the facts alleged in the complaint are true. Minn. Stat. § 504B.355 (2010); *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003); *Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002). Thus, on appeal, we review the district court's findings for clear error, Minn. R. Civ. P. 52.01; *Cimarron Vill.*, 659 N.W.2d at 817, and we will not disturb them unless they are “manifestly contrary to the weight of the evidence or they are not reasonably supported by the evidence as a whole,” *Tonka Tours, Inc. v. Chadima*, 372 N.W.2d 723, 726 (Minn. 1985).

Rose first challenges the sufficiency of the evidence to support the district court's judgment. When a lease permits a landlord to evict for certain actions, the district court must determine whether the allegations in the complaint are true and, if so, whether the facts support termination of the lease. *Minneapolis Pub. Hous. Auth. v. Lor*, 591 N.W.2d 700, 704 (Minn. 1999). Section 16(k) of the rental lease between Rose and the HRA permits the HRA to terminate the lease based on “any activity not just criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants or employees of the HRA.”

The record establishes that Rose carried a stun gun, a knife, and a Taser into an HRA office, demonstrated verbally abusive behavior toward the property manager and other HRA staff, and made a veiled threat to shoot Corporal Sawyer with a Taser as he escorted her from the premises. The property manager testified that she was concerned

for the safety of herself, Rose, other tenants, and the HRA employees, and obtained a permanent restraining order based on those concerns. Corporal Sawyer testified that, based on Rose's conduct that he observed, Rose threatened the health and safety of others. The testimony of an HRA administrative assistant established that the HRA staff members were uncomfortable working near Rose because of the weapons found in her possession. And an HRA resident caretaker testified that she feared working with Rose one-on-one.

Rose argues that the district court's statements at trial indicate that its findings are based on facts outside the record. In support of her argument, she relies on the district court's statements that Rose's fears are based on an imaginary stalker and that Rose likely will suffer a mental-health relapse after convincing herself that she no longer needs medication. "[T]he district court is in the best position to judge the credibility of the witnesses and make determinations in the face of conflicting testimony." *Braith v. Fischer*, 632 N.W.2d 716, 724 (Minn. App. 2001), *review denied* (Minn. Oct. 24, 2001); *see also Hoover v. Norwest Private Mortg. Banking*, 632 N.W.2d 534, 549 (Minn. 2001) (observing that reasonable factfinder can infer causal connection from facts in the record). The statements that Rose challenges reflect the district court's credibility assessments and inferences drawn from the facts in the record. Moreover, because the record contains ample evidentiary support for the district court's decision absent the challenged statements, Rose's arguments at most indicate an instance of harmless error. *See Minn. R. Civ. P. 61* (requiring harmless error to be ignored); *Thompson v. Thompson*, 739 N.W.2d 424, 431 (Minn. App. 2007) (applying rule 61).

Because there is more than sufficient evidentiary support for the district court's determination that Rose violated the terms of the lease, the findings are not clearly erroneous and Rose is not entitled to reversal on this ground.

II.

At the time of trial, the HRA possessed the weapons that had been confiscated from Rose during her arrest. At the conclusion of the hearing, the district court sua sponte ordered the destruction of the weapons for the safety of Rose and others. Rose seeks either the return of her knife, stun gun, and Taser or compensation for the value of these items because, she argues, the district court ordered their destruction without legal authority to do so.

This eviction action was a summary proceeding. When another process to litigate related claims, defenses, or counterclaims is available, it is preferable to litigate those matters in an alternate civil action outside a summary eviction proceeding. *Fraser*, 642 N.W.2d at 40-41 (holding that equitable claims and defenses should be litigated in alternate civil action when possible); *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001). The seizure of property is analogous to an injunction, a form of equitable relief that relates to subject matter beyond the limited scope of an eviction proceeding. *See Bellows v. Ericson*, 233 Minn. 320, 325, 46 N.W.2d 654, 658 (1951) (noting that an injunction is a judicial process that may be used to enforce rights or prevent wrongs by requiring a person to do or refrain from doing a particular thing). The personal property seized from Rose is not related to title or possession of the apartment. Moreover, neither party presented evidence as to ownership

of the weapons nor sought their destruction. Thus, we conclude that the district court exceeded its authority by ordering the destruction of the weapons in a summary eviction proceeding, particularly without affording notice and an opportunity to be heard as to the disposition of this property.

For the same reasons that the district court erred by ordering the seizure and destruction of Rose's weapons in the context of this summary proceeding, we decline to order their return. Moreover, because the return of Rose's weapons is an issue neither raised in nor considered by the district court, we decline to address it on the merits. *See Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988) (stating that appellate courts generally will not consider matters not argued to and considered by district court). A claim for the recovery of Rose's personal property or its value should be brought in a separate action in which the record can be developed as to the nature of the relief, if any, to be granted.

Accordingly, we reverse the district court's decision to order the destruction of Rose's weapons and remand for vacation of the destruction order.¹

III.

Rose next argues that the district court erred and violated the Code of Judicial Conduct by (1) manifesting bias against her and behaving in an impatient, discourteous, and undignified manner; (2) denying her the right to be heard; and (3) tampering with the official transcript and granting only \$200 in transcript costs in its in forma pauperis order.

¹ Rose's brief includes a request for costs and disbursements. Any notice of taxation must be served and filed by a prevailing party in accordance with Minn. R. Civ. App. P. 139.03.

A.

A district court judge is presumed to discharge judicial duties in each case with neutrality and objectivity; such presumption is overcome only if the party alleging bias provides evidence of favoritism or antagonism. *State v. Burrell*, 743 N.W.2d 596, 603 (Minn. 2008) (citing *Liteky v. United States*, 510 U.S. 540, 555, 114 S. Ct. 1147, 1157 (1994)); *McKenzie v. State*, 583 N.W.2d 744, 747 (Minn. 1998).

The transcript reflects instances of the district court's exasperation, including instances of the presiding judge shouting² and stating that he did not believe Rose's testimony. While the manner of the district court's interaction is troubling and reflects an intemperate demeanor, the substance of the district court's statements addresses its credibility assessments. In *McClelland v. McClelland*, 359 N.W.2d 7, 11 (Minn. 1984), the appellant argued that the district court judge "inappropriately interjected herself into the questioning of one of the witnesses, interrupted the testimony of appellant's expert, prematurely stopped further inquiry into the wife's marital and nonmarital assets, and refused to make a record of her comments made in chambers." While observing that judges should avoid the appearance of impropriety, the Minnesota Supreme Court held that these were not grounds for a mistrial or reversal. *Id.*

The allegations of judicial bias here are similar to those in *McClelland*. The record does not reflect judicial bias or prejudice warranting reversal; rather, it reflects instances of temperamental expression that may undermine trust in impartial judicial

² The transcript indicates these instances of shouting by placing the term "shouting" in parenthesis.

decision-making. There is neither evidence in the record nor an allegation on appeal that the district court judge had an interest in the case's determination. *See* Minn. R. Civ. P. 63.02 (requiring recusal if judge is interested in case determination or might otherwise be excluded for bias from acting as juror in case). Indeed, when viewed as a whole, the record reflects the presiding judge's patience when questioning Rose and tolerance of Rose's repeated interruptions and insistence that she be allowed to speak in lieu of her counsel. Here, the record reflects neither favoritism nor bias. Thus, the record does not support reversal or a new trial on this ground.

B.

Rose also argues that the district halted the trial prematurely, thereby denying her the right to be heard. When a protected property interest is at stake, the United States and Minnesota constitutions require that court procedures provide reasonable notice and an opportunity to be heard. U.S. Const. amend. XIV, § 1; Minn. Const. art. I, § 7; *Comm'r of Natural Res. v. Nicollet Cnty. Pub. Water/Wetlands Hearings Unit*, 633 N.W.2d 25, 29 (Minn. App. 2001), *review denied* (Minn. Nov. 13, 2001). These due-process guarantees afford a defendant in a civil matter an opportunity to be heard at a meaningful time and in a meaningful manner appropriate to the interest involved and the nature of the proceeding. *Boddie v. Connecticut*, 401 U.S. 371, 378, 91 S. Ct. 780, 786 (1971).

The district court proceedings at issue here satisfied the procedural due-process requirements by affording Rose ample opportunity to be heard. Rose cross-examined each of the HRA's six witnesses. Rose's Adult Rehabilitative Mental Health Services provider testified as a defense witness, and more than 40 pages of the trial transcript are

devoted to this testimony. Rose was questioned by her counsel and questioned extensively by the district court. Neither party objected when the district court ended the proceedings following its examination of Rose. Rose does not argue, nor does the record reflect, that she would have presented any additional evidence or witnesses at trial.

We also observe that a district court has broad discretion to control courtroom proceedings. *See Rice Park Props. v. Robins, Kaplan, Miller & Ciresi*, 532 N.W.2d 556, 556 (Minn. 1995) (observing that district court “has considerable discretion in . . . furthering what it has identified as the interests of judicial administration and economy”). And a district court has discretion to exclude relevant evidence “if its probative value is substantially outweighed by . . . considerations of undue delay, waste of time, or needless presentation of cumulative evidence.” Minn. R. Evid. 403. Here, the district court acted within its discretion, and our review of the record establishes that Rose was not denied her constitutional right to be heard. Rose, therefore, is not entitled to reversal or a new trial on this ground.

C.

In a related challenge to the district court’s impartiality, Rose asserts that the district court exhibited bias by tampering with the record and granting insufficient transcript funds in the supplemental order for proceeding in forma pauperis. The record does not reflect any instance in which the district court chastised the court reporter or altered the record, as alleged in Rose’s brief. Contrary to Rose’s contention that the district court altered the record to hide the district court’s demeanor, the transcript reflects

the instances of the district court's shouting. Accordingly, this basis for alleged error is without merit.

The district court has broad discretion to determine whether expenses should be paid when a party is proceeding in forma pauperis. *Thompson v. St. Mary's Hosp. of Duluth*, 306 N.W.2d 560, 563 (Minn. 1981). Rose submitted an affidavit in support of her motion to proceed in forma pauperis and requested transcript expenses. Rose left blank the portion of her affidavit addressing estimated costs, and the district court granted up to \$200 for transcripts. This was an appropriate exercise of the district court's discretion based on the affidavit evidence provided. Moreover, when Rose filed a second affidavit and motion to proceed in forma pauperis, the district court granted the motion. Rose subsequently submitted, and we reviewed, the full transcript of the proceedings.

For the foregoing reasons, the record does not reflect that the district court erred by displaying bias or prejudice, by denying Rose's due-process right to be heard, or by tampering with the record or Rose's appeal. Accordingly, Rose is not entitled to reversal or a new trial on these grounds.

IV.

Rose also seeks reversal on the ground that she was denied the right to effective assistance of counsel because her attorney failed to request a jury trial, offered evidence that should have been suppressed, failed to raise certain defenses or to notify Rose of those defenses, and failed to object to the district court's abrupt cessation of the trial.

The Sixth Amendment to the United States Constitution provides that, "[i]n *all criminal prosecutions*, the accused shall . . . have the Assistance of Counsel for his [or

her] defence.” U.S. Const., amend. VI (emphasis added); *accord* Minn. Const. art. I, § 6. Because an eviction action is a civil matter without the constitutional right to effective assistance of counsel that is afforded the accused in a criminal proceeding, Rose is not entitled to relief on this ground.

Affirmed in part, reversed in part, and remanded.