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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA15-955

Filed: 6 September 2016

Mecklenburg County, No. 14 CVD 12037

WILLIAM S. CRAWFORD, Plaintiff,

v.

MATTHEW NAWRATH, Defendant.

MATTHEW NAWRATH, Third-Party Plaintiff,

v.

THE LETTIE M. FRANKS REVOCABLE LIVING TRUST AGREEMENT, Third-Party Defendant.

Appeal by Plaintiff and Third-Party Defendant from final judgment order entered 25 February 2015 by Judge Rebecca T. Tin following a non-jury trial in Mecklenburg County District Court. Heard in the Court of Appeals 28 January 2016.

Marshall A. Swann for Plaintiff-Appellant and Third-Party Defendant-Appellant.

No brief filed for Defendant-Appellee and Third-Party Plaintiff

INMAN, Judge.

In a landlord-tenant dispute, the trial court did not err in awarding compensatory damages to the tenant based upon competent evidence of safety

hazards and other conditions which supported the trial court's finding that the rental value of a residence was diminished by \$200 per month. Nor did the trial court err in finding and concluding that the landlord had engaged in unfair and deceptive trade practices and awarding treble damages to the tenant.

William S. Crawford ("Crawford") and The Lettie M. Franks Revocable Living Trust Agreement ("the Trust") appeal from a final judgment in favor of Matthew Nawrath ("Nawrath"), denying Crawford's claims for summary judgment and granting Nawrath's counterclaims for Breach of Implied Warranty of Habitability and Unfair and Deceptive Trade Practices. Crawford contends there was no evidence that Crawford rented the premises with knowledge of various uninhabitable conditions, and thereby insufficient evidence to support the judgment. After careful review, we affirm.

I. Factual and Procedural History

In April of 2013, Nawrath leased a single-family residence located at 312 Grandin Road in Charlotte, North Carolina ("the Residence"). The Residence was then and is currently owned by the Trust, established for the benefit of Crawford's mother, Lettie M. Franks. Acting as an agent for the Trust, Crawford leased the Residence to Nawrath. When the original lease expired in April 2014, Crawford and Nawrath negotiated a new month-to-month lease agreement whereby the rent would

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increase from \$800 per month to \$850 per month, and Nawrath would provide Crawford with thirty days' notice before terminating the lease.

Evidence presented at trial tended to show the following:

On or about 14 May 2014, one month after Nawrath and Crawford had agreed on a month-to-month lease, Crawford mailed an eviction letter to Nawrath demanding that he vacate the Residence at the end of that month. After receiving the letter, Nawrath requested an inspection of the Residence by the Charlotte-Mecklenburg Building Standards Department. Inspector Kimberly Sauer inspected the Residence on 21 May 2014 in the presence of Nawrath. She found the following violations of the city housing code: loose, leaking toilets; windows painted shut in multiple bedrooms; moisture stains on the ceiling in multiple rooms; a hole in a window pane; missing foundation vents; exterior windows and doors not reasonably weather tight; missing, damaged hardware on a screen door; a missing carbon dioxide detector; a smoke detector covered with Saran Wrap and inoperable; damaged gutters; lack of wood stiff knee piers; holes and openings in foundation walls; damaged flooring coverings; and lack of conduit wiring. Nawrath testified about other problems not mentioned in Ms. Sauer's report, including that throughout his tenancy the kitchen cabinets were rusted and some of the floors were rotting. A friend of Nawrath's also testified about the rusted cabinets and other problems.

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On or about 3 June 2014, Crawford filed an action for summary ejectment against Nawrath and issued summons on the same day. Two weeks later, Nawrath filed his answer and counterclaim for rent abatement, alleging Breach of Implied Warranty of Habitability, Unfair and Deceptive Trade Practices, and Illegal Rent Charges.

On 26 June 2014, following a hearing, a Mecklenburg County magistrate entered judgment granting Crawford possession of the rental property and awarding Nawrath \$500 on his counterclaim for Breach of Implied Warranty of Habitability. Crawford timely appealed the Magistrate's judgment to the district court.

Nawrath vacated the Residence in July 2014.

Before the district court, Nawrath moved to amend his answer and counterclaim to add the Trust as a third-party defendant, and the motion was granted. Although Crawford had requested a jury trial in his Notice of Appeal, the parties stipulated to a non-jury trial before Judge Rebecca T. Tin, who heard evidence and arguments of counsel. On 20 January 2015, Judge Tin entered a judgment denying Crawford's claim for summary ejectment as moot and, finding insufficient evidence before her to determine damages, denying Nawrath any relief on his counterclaims.

In the week following the entry of judgment, in her work related to another case, Judge Tin read this Court's decision in *Cotton v. Stanley*, 86 N.C. App. 534, 358

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S.E.2d 692 (1987), regarding the determination of damages in a landlord-tenant dispute. Based on *Cotton*, on 28 January 2015, Judge Tin *sua sponte* moved pursuant to Rule 59 of the North Carolina Rules of Civil Procedure to set aside the judgment and to reconsider evidence regarding Nawrath's claims for damages and noticed the matter for hearing.

After hearing arguments from counsel, Judge Tin, on 28 February 2015, set aside her earlier judgment and entered an amended judgment again denying Crawford's summary ejectment action as moot but awarding money damages on Nawrath's counterclaims for Breach of Implied Warranty of Habitability and Unfair and Deceptive Trade Practices.

Crawford and the Trust timely appealed.

II. Analysis

A. Standard of Review

Appeal rightfully lies to this Court from a final judgment in a civil action of the district court pursuant to N.C. Gen. Stat. § 7A-27(b)(2) (2015).

“When an action is tried before the trial court without a jury, the trial court is the fact finder; and on appeal, the appellate courts are bound by the trial court's findings if competent evidence in the record supports these findings.” *Fortune Ins. Co. v. Owens*, 351 N.C. 424, 428, 526 S.E.2d 463, 466 (2000). The findings of fact must be supported by competent evidence, “even though the evidence might sustain

findings to the contrary [The trial judge] determines which inferences shall be drawn and which shall be rejected.” *Williams v. Pilot Life Ins. Co.*, 288 N.C. 338, 342, 218 S.E.2d 368, 371 (1975) (citations omitted). “Conclusions of law drawn by the trial court from its findings of fact are reviewable *de novo* on appeal. Under a *de novo* review, the court considers the matter anew and freely substitutes its own judgment for that of the lower tribunal.” *State v. Williams*, 362 N.C. 628, 632-33, 669 S.E.2d 290, 294 (2008) (internal citations and quotations omitted).

Classifying a determination as either a finding of fact or conclusion of law is necessary to establish the applicable standard of review. “As a general rule, however, any determination requiring the exercise of judgment or the application of legal principles is more properly classified as a conclusion of law.” *In re A.B.*, 179 N.C. App. 605, 611-12, 635 S.E.2d 11, 16 (2006) (citing *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997)). In contrast, “[a]ny determination reached through ‘logical reasoning from the evidentiary facts’ is more properly classified a finding of fact.” *Id.* at 612, 635 S.E.2d at 16 (internal citations omitted).

B. Evidence Supporting Unfair and Deceptive Trade Practices

Crawford challenges the trial court’s Conclusion of Law 7, which held that Crawford in his capacity as landlord had committed unfair and deceptive trade practices, and the findings of fact upon which Conclusion of Law 7 is based. Conclusion of Law 7 of the 28 February 2015 revised order states as follows:

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7. A [Landlord] who knowingly rents a home where windows are sealed shut; where the roof is compromised leading to periodic leaks; where kitchen cabinets are rusted; and where the foundation is compromised commits an unfair and deceptive trade practice[.]

The trial court based this conclusion of law on Findings of Fact 64, 65, 66, and 67, which state as follows:

64. The Court finds that [Crawford] had actual or constructive knowledge that two windows in each bedroom could not be opened, which constitutes a safety hazard;

65. The Court finds that [Crawford] had actual or constructive knowledge of problems with the roof, which were the source of various leaks;

66. The Court finds that [Crawford] had actual or constructive knowledge of missing vents in the foundation and two holes in the foundation;

67. The Court finds that [Crawford] breached the Implied Warranty of Habitability by not properly repairing the roof which caused periodic leaking; by renting a home with four bedroom windows that were sealed shut; by having improper wiring for the water heater; by not providing [a] reasonably weather tight exterior door; and by not replacing kitchen cabinets that were rusted, among other things[.]

Crawford does not challenge the application of North Carolina's Unfair and Deceptive Trade Practices Act, N.C. Gen. Stat. § 75-1.1 *et seq.*, to landlord-tenant disputes. However, he contends that the evidence was insufficient to support the trial court's findings of fact cited as a basis for its conclusion of law that Crawford engaged

in unfair and deceptive trade practices. We disagree and address each of the challenged findings of fact.

“To prevail on a claim of unfair and deceptive trade practices, a plaintiff must show: (1) defendants committed an unfair or deceptive act or practice; (2) in or affecting commerce; and (3) that plaintiff was injured thereby.” *First Atlantic Mgmt. Corp. v. Dunlea Realty Co.*, 131 N.C. App. 242, 252, 507 S.E.2d 56, 63 (1998) (citations omitted). “A trade practice is unfair within the meaning of [N.C. Gen. Stat.] § 75-1.1 ‘when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.’” *Pierce v. Reichard*, 163 N.C. App. 294, 301, 593 S.E.2d 787, 791 (2004) (quoting *Creekside Apartments v. Poteat*, 116 N.C. App. 26, 36, 446 S.E.2d 826, 833, *disc. review denied*, 338 N.C. 308, 451 S.E.2d 632 (1994)). A landlord, who collects rent after having knowledge of the uninhabitable nature of a house, or just a part of a house, is engaging in unfair trade practices in violation of Section 75-1.1. *Pierce*, 163 N.C. App. at 301-02, 593 S.E.2d at 792.

In *Allen v. Simmons*, 99 N.C. App. 636, 394 S.E.2d 478 (1990), this Court held that the tenant’s testimony provided sufficient evidence to submit to the jury the issue of whether the landlord committed unfair and deceptive trade practices, pursuant to N.C. Gen. Stat. § 75-1.1, by leasing the tenant a house that had been deemed unfit and uninhabitable. *Id.* at 645, 394 S.E.2d at 484. During trial, the

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tenant testified that on the initial visit to the house she “found and pointed out several defects in the property[,]” for which the landlord “promised to make the needed repairs before [the tenant] moved into the house.” *Id.* at 638, 394 S.E.2d at 480. The tenant further testified that upon moving in the needed repairs had not been performed, and, even with additional notice to the landlord, the repairs performed were insufficient to correct the problems. *Id.* at 638-39, 394 S.E.2d at 480. The defects in the house were verified by a Housing Conservation Administrator for the City of Winston-Salem Housing Services Department, who had declared the house unfit while the tenant was an occupant of the premises. *Id.* at 639, 394 S.E.2d at 480. Ultimately, this Court found that this evidence was sufficient such that a jury could find the landlord “committed an unfair trade practice and [that] the trial court erred in not submitting this issue to the jury.” *Id.* at 645, 394 S.E.2d at 484.

Here, Nawrath testified about defects in the Residence that needed to be addressed prior to moving in and Crawford’s assurances that the work would be completed. Nawrath further testified that at the time he moved in the condition of the house was “awful,” citing rusty cabinets, a leaky roof, and trash in the yard. He stated that he immediately notified Crawford of the leaks, but that despite the repairs the leaks continued. In addition to Nawrath’s testimony, Ms. Sauer’s Violations Summary Report found twenty violations of the Mecklenburg Housing Code, three of which were considered “dangerous and [] required to be repaired within 48 hours.”

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The cited ordinances of the Mecklenburg Housing Code on which these violations are based are as follows:

11-77(p) – All doors opening to the outside shall be reasonably weathertight.

11-77(q) – There shall be installed in every dwelling unit, rooming unit and lodging unit an operable smoke detector or alarm.

11-77(r) – Every dwelling and roominghouse shall comply with the current county health regulations governing carbon monoxide alarms.

11-78(b) – The openable window area in each habitable room in a dwelling shall be equal to at least one-half of the minimum allowance window area and facing directly to the outside for ventilation unless the room is served by an approved ventilating system.

11-78(c) – All windows and doors opening to the outside shall be adequately screened unless the room is served by an approved ventilating system. Screens shall fit openings snugly, and the screen mesh shall not be torn or otherwise defective.

11-78(d) – Screens shall not be permanently fixed to the window frame or sash.

11-78(g) – All windows in dwellings and roominghouses opening to the outside shall be reasonably weathertight and shall have operable locks. If the windows in a lodging establishment are designed to open to the outside, such windows shall be reasonably weathertight and shall have operable locks.

11-80(e) – Water closets shall not be loose or leaking.

11-82(e) – There shall be no unsafe wiring.

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11-83(a)(7) – Foundation. Foundations shall conform to the following: There shall be masonry underpinning on all dwelling units with ventilation as required by the state building code.

11-83(b)(6) – Floors. Floors shall conform to the following: Flooring shall be reasonably smooth and not decayed, fire damaged or worn through.

11-83(f)(6) – Roofs. Roofs shall conform to the following: There shall be no loose roof covering, no holes, and no leaks causing damage to the structure or rooms.

11-84(a)(1) – Building structure. The building structure of a place of habitation shall be maintained as follows: Exterior wood surfaces not inherently resistant to deterioration shall be treated with a protective coating of paint or other suitable preservative with sufficient frequency to prevent deterioration.

11-84(b)(1) – Open areas. Open areas shall be maintained as follows: Surface and subsurface water shall be appropriately drained to protect buildings and structures and to prevent development of stagnant ponds.

a. Painted Windows

The windows that were painted shut were identified in Ms. Sauer's Violations Summary Report as being dangerous and in violation of the housing code. Although he concedes that there was sufficient evidence to prove that the windows were painted and sealed shut, Crawford argues that no evidence was presented that he knowingly rented the Residence to Nawrath with the windows painted shut. We disagree.

Competent evidence of record supports this finding of fact. The inability to open windows is a patent defect that any landlord would have discovered in any reasonable inspection of the Residence prior to leasing it to a tenant. Nawrath testified that during his first visit to the house Crawford was painting and making repairs. Therefore, the trial court's inference that Crawford knew the windows were painted shut when the lease period began was reasonable.

b. Rusted Cabinets

Crawford contends that the only evidence presented to the trial court regarding the rusted state of the cabinets was the testimony of Nawrath and his friend. The inspector did not mention the cabinets in her Violations Summary Report, which was admitted into evidence, and she did not testify about the cabinets at trial. Along with the trial court's finding that Nawrath's testimony was at times "exaggerated and not credible in many regards," Crawford argues that there was insufficient evidence to find that the cabinets were in fact rusted, or that Crawford was aware of the defect. We disagree.

"The standard of review for the trial court's findings of fact is well-established: The trial court's findings of fact are conclusive on appeal if supported by competent evidence, even if the evidence is conflicting." *State v. Kilby*, 198 N.C. App. 363, 366, 679 S.E.2d 430, 432 (2009) (citation and quotation marks omitted). Nawrath's trial testimony concerning the cabinets was sufficient to support the trial court's finding

that they were rusted. Determinations of credibility are for the trier of fact. *See Parsons v. Parsons*, 231 N.C. App. 397, 400, 752 S.E.2d 530, 533 (2013) (finding where a plaintiff's argument goes to the credibility and weight given to an affidavit, determination of credibility is "for the trial court, not this Court").

c. Compromised Roof and Foundation

Crawford concedes that evidence showed that there were two leaks in the ceiling of the bedroom closet, two leaks in the ceiling of the den, and a leak in the ceiling of the utility room. These leaks were noted in Ms. Sauer's Violations Summary Report. However, because the only evidence that said leaks were ongoing came from Nawrath's testimony at trial, Crawford contends that the evidence presented was insufficient to prove that the ceiling and foundation of the Residence were compromised. We disagree and hold that the evidence was sufficient to support this finding.

As discussed above, it falls on the trial court – not the appellate court – to determine the weight and credibility of the testimony. *See Parsons*, 231 N.C. App. at 400, 752 S.E.2d at 533. Where inferences drawn from conflicting testimony flow logically from the facts presented, the determination should be classified as a finding of fact and should not be disturbed absent a showing of abuse of discretion. *See In re A.B.*, 179 N.C. App. at 611-12, 635 S.E.2d at 16. Here, Nawrath's testimony and the findings presented by Ms. Sauer's Violations Summary Report provided competent

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evidence for the trial court to infer the Residence was compromised during Nawrath's tenancy. This inference flows logically from the facts presented and does not require any exercise of judgment. Crawford has failed to meet the heavy burden of showing the trial court abused its discretion when it made the findings of fact upon which it based its conclusion of law.

Finally, the trial court made several findings of fact that, although not cited in Conclusion of Law 7, provide further support for the determination that Crawford engaged in an unfair and deceptive trade practice by knowingly renting an uninhabitable home to Nawrath. Findings of Fact 76, 77, 78, and 79 are as follows:

76. However, there is evidence that [Crawford] knew that [Nawrath] inhabited a dwelling with a compromised roof, which led to an early report of leaking in the bedroom closet that was repaired; leaking in the den that was periodic and never fully repaired; and frequent leaking in the utility room that led to a rotting of the floor;

77. There is also evidence that [Crawford] knew that [Nawrath] inhabited a dwelling with a kitchen that had rusting and deteriorating cabinets;

78. There is also evidence that [Crawford] knew that [Nawrath] inhabited a dwelling where bedroom windows were sealed shut;

79. There is also evidence that [Crawford] knew that [Nawrath] inhabited a dwelling without a weather tight exterior door and with holes in the foundation[.]

Even if a trial court fails to cite all pertinent findings supporting a particular conclusion of law, the appellate court can affirm the trial court based on any pertinent

findings of fact included in the trial court's order. *See, e.g., State v. Rainey*, 198 N.C. App. 427, 436-37, 680 S.E.2d 760, 768-69 (2009) (citing findings of fact from the order that were not directly cited by the trial court in its conclusion of law).

Crawford has failed to demonstrate that the trial court abused its discretion in making its Findings of Fact 64, 65, 66, and 67. These findings, as well as the trial court's Findings of Fact 76, 77, 78, and 79, support its Conclusion of Law 7. Accordingly, the trial court did not err.

C. Evidence Supporting the “As Is” Rental Value

The Residential Rental Agreement Act provides that a landlord, by entering into a leasing agreement, impliedly warrants to the tenant that the premises being leased are fit for human habitation. N.C. Gen. Stat. § 42-38 *et seq.* A landlord must “[c]omply with the current applicable building and housing codes” N.C. Gen. Stat. § 42-42(a). In light of these standards, Crawford concedes that the housing code violations observed by Ms. Sauer within the Residence constitute breaches of the implied warranty of habitability, and he does not challenge this conclusion on appeal.

However, Crawford contends that the trial court erred in determining the appropriate “as is” rental value of the Residence because the evidence presented regarding the Residence's value was insufficient to support such a finding. We disagree.

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Following the initial trial proceeding, the trial court entered judgment denying Nawrath's claims for breach of the implied warranty of habitability and unfair and deceptive trade practices because he had failed to prove any damages. Specifically, the trial court found:

[Nawrath] presented no evidence regarding the fair market value of the home in its warranted condition; there is no evidence of the size of the home; no evidence of how many bedrooms; no evidence of how many bathrooms; no evidence of the home's square footage; no evidence about the rental value of properly-maintained homes in the neighborhood; there is no evidence to determine whether [Nawrath]'s monthly rent of \$800 and later \$850 represented the fair market value of the home in its warranted condition, in its unwarranted condition, or are simply arbitrary numbers[.]

Without more evidence, "the Court could only speculate in awarding damages, with no evidentiary basis to support such speculation[.]" The trial court further found that "there is insufficient evidence to prove what the home was worth in either its warranted or unwarranted condition for each month of [Nawrath]'s occupancy[.]"

However, as explained to the parties in the trial court's *sua sponte* motion to set aside the initial judgment, the trial court discovered that the *Cotton* decision "brings into question whether the Court applied the proper legal standard in evaluating [Nawrath]'s evidence of damages[.]"

Following the motion and further argument by counsel, the trial court found that it was able to determine damages and that Nawrath was entitled to judgment

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on his claims at issue in this appeal. The trial court determined that the fair market rental value of the Residence as warranted was \$800 per month during the first year of the tenancy and \$850 per month during the month-to-month tenancy. The trial court determined that the fair market rental value of the Residence in its unwarranted condition was \$650 per month during the entirety of Nawrath's tenancy. From this the trial court concluded that Nawrath is entitled to recover rent abatement damages of \$2400.

We agree with the trial court that the trier of fact can reasonably infer the fair market value of a rental property in its warranted condition from the agreed rental price between the landlord and the tenant. We also agree with the trial court that the trier of fact can reasonably infer the fair market value of a rental property in its unwarranted condition by considering the defects found, and the trier of fact's own common sense and experience regarding how those defects diminish the value. Both of these conclusions are supported by this Court's decision in *Cotton v. Stanley*. *Cotton*, 86 N.C. App. at 534, 358 S.E.2d at 692, *superseded by statute on other grounds*, N.C. Gen. Stat. §§ 42-42(a)(5), (7).

In *Cotton*, tenants in a class action filed suit against the landlord, claiming that the landlord violated the Residential Rental Agreements Act and participated in unfair business practices. *Id.* at 535, 358 S.E.2d at 693. The tenants argued that they were entitled to a refund of rent paid between the date the landlord had notice

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of violations of the housing code and the date the repairs were actually made, saying that the fair market rental value for a portion of the time was zero. *Id.* at 537, 358 S.E.2d at 694–95. This Court found that “the Housing Code does not make it unlawful to continue to collect rent from present occupants of an offending structure[,]” and reasoned that “[t]he measure of the unit’s fair rental value is not the price at which the owner could *lawfully* rent the unit to a new tenant in the open market, but the price at which he could rent it if it were lawful for him to do so.” *Id.* at 537–38, 358 S.E.2d at 695. This Court ultimately held that the trial court had erred in entering a directed verdict for the landlord. *Id.* at 539, 358 S.E.2d at 695. This Court further held that the landlord was liable for the difference between the fair rental value of the units “as is” and the fair rental value “as warranted” from the time the defendant had notice and reasonable opportunity to repair, and the date the repairs were made. *Id.* at 539, 358 S.E.2d at 695–96. This Court emphasized that although “[t]he rent agreed upon by the parties when entering into the lease is some evidence of the property’s ‘as warranted’ fair rental value, . . . it is not binding.” *Id.* at 539, 358 S.E.2d at 695 (citation omitted). The tenants’ “evidence was sufficient to show both fair rental value ‘as warranted’ and fair rental value ‘as is.’” *Id.*

Cotton has not been overturned, and we are bound by its precedent. The trial court is to be commended for making an effort to correct its own misapprehension of law in its initial judgment. Given the small amount of damages at issue in this

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matter, as in many landlord-tenant disputes, compared to the cost of pursuing an appeal, it is possible this matter would not have reached this Court otherwise.

III. Conclusion

For the reasons described above, we affirm the decisions of the district court below granting Nawrath damages for Breach of Implied Warranty of Habitability and treble damages for Unfair and Deceptive Trade Practices.

AFFIRMED.

Judges STEPHENS and HUNTER, JR. concur.

Report per Rule 30(e).