Affirmed and Memorandum Opinion filed August 18, 2011.

In The

Fourteenth Court of Appeals

NO. 14-10-00574-CV

HOUSTON HOUSING AUTHORITY, Appellant

V.

YVONNE HOUSE AND ALL OCCUPANTS, Appellees

On Appeal from County Court at Law Number Four (4)
Harris County, Texas
Trial Court Cause No. 958233

M E M O R A N D U M O P I N I O N

In this forcible detainer suit, appellant, Houston Housing Authority ("HHA"), appeals a judgment in favor of appellee, Yvonne House ("House"). In sixteen issues, HHA challenges (1) sufficiency of the evidence supporting the trial court's findings of fact and conclusions of law and (2) the award of attorneys' fees and possession to House. We affirm.

I. BACKGROUND

House entered into a written residential lease agreement with HHA to commence on April 1, 2008. In the early morning hours of November 19, 2009, House began frying

chicken tenders. While the chicken was cooking, House returned to the living room and "dozed off." When House awoke, she discovered a grease fire in the kitchen. No one was injured, but the property sustained some damage. While repairs were performed, House was temporarily relocated to another apartment unit within the same complex. Following this incident, HHA discovered that House had failed to secure the gas utility in her own name.

On January 21, 2010, HHA filed a forcible entry and detainer action against House alleging violations of the lease agreement. The trial court rendered a take-nothing judgment against HHA and awarded $1,000.00 in attorney's fees to House. Pursuant to HHA's request, the court issued findings of fact and conclusions of law. This timely appeal followed.

II. STANDARD OF REVIEW

Findings of fact in a bench trial have the same force and dignity as a verdict on jury questions and are reviewed for legal and factual sufficiency of the evidence by the same standards. *West v. Triple B Servs., LLP*, 264 S.W.3d 440, 445 (Tex. App.—Houston [14th Dist.] 2008, no pet.). We review the trial court's legal conclusions *de novo*. *BMC Software Belgium, N.V. v. Marchand*, 83 S.W.3d 789, 794 (Tex. 2002).

When examining a legal sufficiency challenge, we review the evidence in the light most favorable to the challenged finding and indulge every reasonable inference that would support it. *City of Keller v. Wilson*, 168 S.W.3d 802, 822 (Tex. 2005). We credit favorable evidence if a reasonable fact finder could and disregard contrary evidence unless a reasonable fact finder could not. *Id.* at 827. The evidence is legally sufficient if it would enable a reasonable and fair-minded person to reach the verdict under review. *Id.* There is "no evidence" or legally insufficient evidence when (a) there is a complete absence of evidence of a vital fact, (b) the court is barred by rules of law or evidence from giving weight to the only evidence offered to prove a vital fact, (c) the evidence offered to prove a vital fact is no more than a mere scintilla, or (d) the evidence conclusively establishes the opposite of the vital fact. *See id.* at 810; *Merrell Dow*

Pharms., Inc. v. Havner, 953 S.W.2d 706, 711 (Tex. 1997). A party attacking legal sufficiency relative to an adverse finding on which it had the burden of proof must demonstrate that the evidence conclusively establishes all vital facts in support of the issue. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 241 (Tex. 2001). The fact finder is the sole judge of witness credibility and the weight to give their testimony. *See City of Keller*, 168 S.W.3d at 819.

In a factual sufficiency review, we consider and weigh all the evidence, both supporting and contradicting the finding. *See Mar. Overseas Corp. v. Ellis*, 971 S.W.2d 402, 406–07 (Tex. 1998). A party attacking factual sufficiency with respect to an adverse finding on which it had the burden of proof must demonstrate that the finding is against the great weight and preponderance of the evidence. *Francis*, 46 S.W.3d at 242. We set aside the finding only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. *Pool v. Ford Motor Co.*, 715 S.W.2d 629, 635 (Tex. 1986). We may not substitute our own judgment for that of the trier of fact or pass upon the credibility of the witnesses. *See Ellis*, 971 S.W.2d at 407. The amount of evidence necessary to affirm a judgment is far less than that necessary to reverse a judgment. *GTE Mobilnet of S. Tex. v. Pascouet*, 61 S.W.3d 599, 616 (Tex. App.—Houston [14th Dist.] 2001, pet. denied).

III. ANALYSIS

A. The Fire

In issues one through three, HHA argues the evidence is legally and factually insufficient to support the trial court's findings of fact 8, 17, and 18. Specifically, the court found as follows:

> 8. On or about November 19, 2009, while cooking, a fire accidentally broke out in the Defendant's apartment.
>
> . . .
>
> 17. There is no evidence that the Defendant negligently started the fire.
>
> 18. There is sufficient evidence to demonstrate that the fire was accidental.

HHA argues there is no evidence or, alternatively, insufficient evidence, that the fire in House's unit was accidental. Instead, HHA contends the evidence conclusively shows House's negligence caused the fire.

The undisputed evidence shows that, on November 19, 2009, House and her two-year-old son were sleeping on the couch in the living room. At approximately 3:30 a.m., House awoke, was hungry, and went into the kitchen to cook some chicken tenders. She returned to the living room, sat down, and "dozed off." House testified that "[t]he last thing I remember hearing before I dozed off was hearing it cook, you know, like the grease pop. . . . [s]o I knew it wasn't going to take long." When House awoke, she went into the kitchen and saw the fire. She called out for her uncle, who had been sleeping upstairs, to extinguish the fire.

Viewing the evidence in the light most favorable to the challenged findings, we conclude the evidence is legally sufficient to support the court's determination that the fire was accidental. As the fact finder, the trial court was the sole judge of witness credibility and could conclude the fire was accidental based on House's testimony. Further, after weighing all of the evidence, we conclude the findings are not so contrary to the overwhelming weight of the evidence as to be clearly wrong and unjust. Because there is sufficient evidence to support the trial court's finding that the fire was accidental, we need not address HHA's argument that the evidence conclusively shows the fire was due to House's negligence.[1]

In its fourth issue, HHA contends the evidence is legally and factually insufficient to support the trial court's finding of fact 10: "Said fire caused a small amount of damage to the leased premises, requiring the replacement or repair of the following: stove vent, two overhead cabinets, and surrounding sheetrock." HHA further argues the court's finding that the damage was minimal is contradicted by the subsequent description of the

[1] We further note that HHA did not plead a negligence cause of action in its complaint, and no evidence of the elements of a negligence cause of action was introduced at trial.

damage as well as finding of fact 12 that House had to be relocated to another apartment after the fire.

At trial, Paula Roberson, an assistant manager for HHA, testified that only the vent hood, three cabinets, and the surrounding sheetrock were replaced as a result of the fire, and neither the stove nor any other appliance was damaged. Although House was relocated to another apartment while repairs were made to her unit, this fact alone does not contradict the court's finding of minimal damage. Nothing in the record indicates how long House remained at the new location or whether the relocation was unusual or simply standard procedure when repairs are made to a unit. The evidence is sufficient to support the trial court's finding that the fire caused a small amount of damage to the apartment.

In its fifth issue, HHA contends the evidence is legally and factually insufficient to support the trial court's finding of fact 11 that no one was injured. HHA does not dispute the fact no one was injured by the fire; rather, HHA contends the finding is "vague and confusing" and argues "[t]o the extent that it means that the trial court found there was no property damage or injury to HHA's premises from the fire, then HHA does challenge this finding …." HHA's argument is without merit. The court's finding that "[n]o one was injured" is not vague and clearly refers to people, not property. Moreover, HHA concedes no one was injured by the fire.

In sum, the evidence is legally and factually sufficient to support the trial court's findings of fact 8, 10, 11, 17, and 18. We overrule issues one through five.

In issues six and seven, HHA contends the evidence conclusively shows the fire was a serious violation of a material term of the lease because the fire was caused by House's negligence. As such, HHA argues that the trial court erred in its conclusion of law 19: "[t]here is no evidence that the accidental fire was a material breach of the lease agreement."

In support of its argument, HHA relies on Part II, Section 16, subsection (a) of the

lease, which states, in relevant part, as follows: "This Lease may be terminated for serious or repeated violations of material terms of the Lease, including without limitation: . . . failure to fulfill any other Tenant obligation set forth in Section 7 or 9 or elsewhere in the Lease . . . ." HHA argues House violated the following tenant obligation set forth under Section 9: "Take reasonable precautions to prevent fires, especially any fires caused by the Tenant's, household member's or guest's carelessness, negligent actions or neglect, and refrain from storing or keeping flammable materials on or near the premises." HHA argues House failed to fulfill this tenant obligation when she negligently caused the fire and, in doing so, violated material terms of the lease. However, as noted above, there is sufficient evidence the fire was accidental and not the result of negligence. Further, there is nothing in the record suggesting House failed to take reasonable precautions or kept flammable materials in her apartment. Consequently, we overrule HHA's sixth and seventh issues.

B. The Utilities

In issues eight through ten, HHA argues the evidence is legally and factually insufficient to support findings of fact 3, 4, and 5. Specifically, the court found as follows:

> 3. No provision in the lease or the Utility Service Letter states that failure to secure utilities in the lessee's name is grounds for eviction.
>
> 4. No provision in the lease or the Utility Service Letter states that failure to secure utilities in the lessee's name constitutes a material breach of the lease.
>
> 5. The Utility Services Letter provides one remedy only: the ability of HHA to terminate ("cut off") services.

HHA contends House's failure to secure the gas utility in her name before the move-in date was a serious violation of the lease and constituted grounds for termination and eviction. In support, HHA cites Part II, Section 9, subsection (cc) of the lease, which requires the tenant "[a]bide by necessary and reasonable rules and regulations applicable to the AGENCY's Admissions and Continuing Occupancy Policy (ACOP) . . . ." HHA

then cites Section IX, subsection A.2 of the ACOP, which states "[i]f a resident or applicant is unable to get utilities connected because of bad credit or a previous balance owed to the utility company at a prior address, the resident or applicant will not be permitted to move into a unit with resident-paid utilities." However, there is no evidence in the record that House failed to have utilities connected because of bad credit or a prior balance; rather, House testified she did not secure the utilities in her name because the deposit was high, and her sister put the utilities in her name. Further, the ACOP provides that a tenant's failure to have utilities connected due to bad credit or a previous balance owed will only result in the tenant being denied permission to move into a unit with resident-paid utilities—it contains no provision about termination of an existing lease or eviction.

HHA also relies on Part II, Section 7, subsection (c)(2) of the lease, which provides as follows:

> Tenant agrees to supply the AGENCY, when requested and within 10 days of when change occurs, with accurate information about: . . . income and source of income of all family members; assets and related information necessary to determine eligibility; annual income; adjusted income; and rent. Failure to supply such information or providing false information, is a serious violation of the Lease and grounds for termination.

According to HHA, House committed a serious violation of the lease when she misrepresented information in the Utility Service Letter. The letter signed by House provides as follows: "I acknowledge all applicable utilities must be connected in my name by the move in date shown above. The community is not responsible for my utility costs at any point past my move in date and if utilities are not placed in my name by the move in date they may be disconnected at any time by management without notice." HHA's argument is without merit. Subsection (c)(2) quoted above concerns income-related information necessary to determine a tenant's eligibility and makes no mention of information related to a resident's utilities. Further, there is no evidence, nor does HHA contend, that House misrepresented any of the information enumerated in subsection (c)(2). There is no provision in either the lease or the ACOP suggesting failure to secure

utilities in one's own name constitutes a material breach or grounds for eviction. Further, the Utility Service Letter states that, if utilities are not placed in a resident's name by the move-in date, they may be disconnected; there is no reference to lease termination or eviction.

We conclude the evidence is legally and factually sufficient to support the trial court's findings of fact 3, 4, and 5. Accordingly, we overrule appellant's eighth, ninth, and tenth issues.

C. Breach of the Lease

In issues eleven through fourteen, HHA contends the evidence is legally and factually insufficient to support the trial court's findings of fact 14 and 15 and conclusions of law 20 and 21. These findings and conclusions state as follows:

> 14. Under the Admissions and Continuing Occupancy Policy (hereinafter "ACOP"), Plaintiff shall terminate the lease only for serious and repeated violations of the material provisions of the lease or other good cause.
>
> 15. Said lease contains terms that are ambiguous as to whether "intent" is required for "breach" of the lease.
>
> 20. There is no evidence that failure to secure utilities in the lessee's name is a material breach of the lease.
>
> 21. There is no evidence that Congress intended that the failure to obtain utilities in the lessee's name would suffice as a material breach of the lease agreement.

In its eleventh issue, HHA correctly points out that finding of fact 14 misstates the relevant ACOP provision. Section VIII, subsection (c)(1) of the ACOP states "HHA or its manager shall terminate the lease only for serious **or** repeated violations of the material provisions of the lease or other good cause" (emphasis added) (citation omitted). Notwithstanding the misstatement, HHA's argument is unavailing. As discussed above, there is no evidence House negligently caused the fire or committed any other serious or repeated violations.

In issue twelve, HHA contends the trial court's finding of fact 15—that the lease is ambiguous as to whether intent is required to find a breach—is unsupported by the

evidence. HHA argues intent is not required to find a breach and House's negligent conduct in causing the fire violated the terms of the lease.[2] However, assuming intent is not required to find a breach of the lease, the evidence is legally and factually sufficient to support the trial court's finding that the fire was accidental and did not constitute a breach of the lease for the reasons previously discussed.

In its thirteenth issue, HHA challenges the trial court's conclusion of law 21 that Congress did not intend for failure to obtain utilities in one's own name to constitute a material breach of the lease agreement. In support, HHA cites 24 CFR § 966.4(l)(2)(iii)(B), (C), which provides as follows:

> (2) Grounds for termination of tenancy. The [Public Housing Agency] may terminate the tenancy only for:
>
> . . .
>
> (iii) Other good cause. Other good cause includes, but is not limited to, the following:
>
> . . .
>
> (B) Discovery after admission of facts that made the tenant ineligible;
>
> (C) Discovery of material false facts or fraud by the tenant in connection with an application for assistance or with reexamination of income . . . .

As previously noted, there is nothing in the lease agreement, the ACOP, or Utility Service Letter indicating failure to secure utilities in one's own name renders a tenant ineligible or otherwise provides grounds for termination of the lease or eviction. House's failure to secure the gas utility in her name does not constitute good cause under 24 CFR § 966.4(l)(2)(iii).

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[2] House relies on two provisions previously discussed above. Part II, Section 9 requires a tenant to "[t]ake reasonable precautions to prevent fires, especially any fires caused by the Tenant's . . . carelessness, negligent actions or neglect . . . ." Part II, Section 16 states, in relevant part, as follows: (a) "This Lease may be terminated for serious or repeated violations of material terms of the Lease, including without limitation: . . . failure to fulfill any other Tenant obligation set forth in Section 7 or 9 or elsewhere in the Lease . . . ."

In its fourteenth issue, HHA challenges the trial court's conclusion of law 20 stating there is no evidence that failure to secure utilities in the lessee's name is a material breach of the lease. Because we have previously addressed this argument, we need not do so again here. We overrule HHA's eleventh, twelfth, thirteenth, and fourteenth issues.

D. Attorneys' Fees and Possession of the Premises

In issues fifteen and sixteen, HHA argues the trial court abused its discretion by awarding attorneys' fees to House and failing to render judgment of possession to HHA in its forcible detainer action. The lease provides HHA is entitled to attorneys' fees only if it prevails in an eviction proceeding.[3] Here, the record is clear that House prevailed in the proceeding below. As the prevailing tenant, House was entitled to recover attorneys' fees.[4] Further, it was within the trial court's discretion to conclude the fire was an accident and neither the accident nor the failure to place utilities in House's own name resulted in a material breach of the lease agreement. We conclude the court did not abuse its discretion by awarding attorneys' fees or rendering judgment of possession to House. We overrule HHA's fifteenth and sixteenth issues.

IV. CONCLUSION

We affirm the trial court's judgment.

/s/ Charles W. Seymore
Justice

Panel consists of Chief Justice Hedges and Justices Seymore and Boyce.

[3] Part II, Section 17 provides as follows: "In the event the AGENCY evicts a Tenant by judicial proceedings, and the AGENCY prevails in the eviction proceedings, the AGENCY shall be entitled to recover from the TENANT reasonable attorneys' fees and court costs."

[4] Section 24.006 of the Texas Property Code provides, in relevant part, as follows: "If the landlord provides the tenant notice under Subsection (a) or if a written lease entitles the landlord or the tenant to recover attorney's fees, the prevailing tenant is entitled to recover reasonable attorney's fees from the landlord . . . . " Tex. Prop. Code Ann. § 24.006(c) (West 2000). The record reflects that HHA provided House a written demand to vacate the premises.