IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION ONE

CAPITOL HILL HOUSING IMPROVEMENT PROGRAM,	)	No. 64608-7-I
Respondent,	)	
v.	)	
CHRISTIAN BRYANT,	)	UNPUBLISHED OPINION
Appellant.	)	FILED: September 20, 2010

Ellington, J. — Christian Bryant appeals the trial court's order granting a writ of restitution to his former employer and landlord. Because the trial court properly determined that Bryant's right to occupancy terminated when his employment terminated, we affirm. We also deny the employer's request for attorney fees on appeal.

BACKGROUND

In October 2005, Christian Bryant signed a lease for an apartment at the Melrose Apartments owned by Capitol Hill Housing Improvement Program (CHHIP), a low income housing provider. CHHIP also hired Bryant as a resident manager. Bryant signed a "Resident Staff Housing Addendum." The addendum provides: "Upon termination of employment, the Employee's right to occupancy is terminated and they

[sic] must vacate the unit within 7 calendar days, unless given a written extension."[1]

CHHIP terminated Bryant's employment on June 3, 2009. CHHIP agreed in writing to extend Bryant's stay at the Melrose until July 31, 2009. Bryant did not vacate the apartment. After several unsuccessful attempts to serve Bryant with a summons and complaint, CHHIP obtained an order for alternative service under RCW 59.18.055 and filed an amended eviction summons on August 27, 2009. Bryant answered and appeared for a show cause hearing where he argued that his tenancy should be considered a month-to-month tenancy and that he was entitled to the protections of the Residential Landlord-Tenant Act (the Act), chapter 59.18 RCW.

On October 13, 2009, a court commissioner entered judgment for a writ of restitution. On October 15, 2009, a court commissioner denied Bryant's motion to stay enforcement of the writ. A judge denied Bryant's motion for revision on November 18, 2009. Bryant voluntarily vacated the apartment after the sheriff served him with the writ.

Bryant appeals, seeking a new lease for his former apartment, reimbursement for rent, moving expenses, storage fees, and court costs, as well as punitive damages of $1,000. CHHIP also requests attorney fees and costs on appeal.

DISCUSSION

Bryant contends that the trial court misapprehended the law in granting the writ of restitution. We review questions of law de novo.[2]

Bryant first contends that by requiring him to sign a lease, CHHIP expressed its

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[1] Clerk's Papers at 93.

[2] Carlstrom v. Hanline, 98 Wn. App. 780, 784, 990 P.2d 986 (2000).

intention that his tenancy would be covered by the Act, rendering the addendum unenforceable under RCW 59.18.230. RCW 59.18.230 provides:

> (1) Any provision of a lease or other agreement, whether oral or written, whereby any section or subsection of this chapter is waived . . . shall be deemed against public policy and shall be unenforceable. Such unenforceability shall not affect other provisions of the agreement which can be given effect without them.
>
> (2) No rental agreement may provide that the tenant:
>
> (a) Agrees to waive or to forego rights or remedies under this chapter.

Without citation to authority, Bryant argues that the addendum here constitutes such an unenforceable waiver of his rights under the Act.

But Bryant fails to address the exemption in RCW 59.18.040 upon which CHHIP relied below and now relies on appeal. RCW 59.18.040 provides that certain living arrangements "are not intended to be governed by the provisions of this chapter, unless established primarily to avoid its application." Subsection (8) specifically exempts occupancy "by an employee of a landlord whose right to occupy is conditioned upon employment in or about the premises."

It is undisputed that Bryant signed the lease, which refers to his rent credit and paid electric service based on employment, on the same day he signed the addendum. It is also undisputed that Bryant occupied the resident manager apartment, performed duties as an employee, and paid a reduced rent based on his employment at Melrose from the time CHHIP hired him to the date of his termination. Under the circumstances, Bryant's self-serving claim that his occupancy was not based on his employment does not render the addendum unenforceable or demonstrate an error of law in the trial

court's decision to issue the writ of restitution.

Bryant next contends that he was entitled to be evicted only for just cause after proper notice under Seattle's Just Cause Eviction Ordinance.[3] But by operation of the addendum, Bryant's right to occupancy was terminated on June 3, 2009, the date of his termination of employment. Because the ordinance applies only to "evictions of 'tenants,'" which are defined as "persons occupying a residence 'pursuant to a rental agreement,'"[4] and Bryant's tenancy had terminated as of June 3, Seattle's Just Cause Eviction Ordinance does not apply.[5]

Finally, Bryant argues, again without citation to authority or the record, that by accepting his rent payment for July 2009, CHHIP agreed to the creation of a new month-to-month tenancy for an indefinite period of time. The record does not support his claim. As the court commissioner found, CHHIP terminated Bryant's employment on June 3, 2009 and instructed him to vacate the apartment within seven days according the addendum. CHHIP then extended the deadline to vacate, rather than the term of the tenancy, to July 31, 2009 and accepted rent solely for the month of July as detailed in a series of electronic mail messages. Because unchallenged findings of fact are verities on appeal,[6] and because the acceptance of the July rent was based solely on the extension of the date to vacate, Bryant's claim has no support in the record or law

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[3] Seattle Municipal Code (SMC) 22.206.160C.

[4] Carlstrom, 98 Wn. App. at 787 (quoting SMC 22.204.210.)

[5] See id. ("The [Just Cause Eviction Ordinance] does not apply where a lease has terminated as a matter of law.").

[6] Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 808, 828 P.2d 549 (1992).

and he fails to demonstrate grounds for relief.

CHHIP requests attorney fees under RCW 59.18.290(2)[7] because Bryant held over in the premises after termination of his tenancy. CHHIP acknowledges that the trial court's authority was restricted to determining proper possession of the premises because of its alternative service method under RCW 59.18.055, but argues that an award of attorney fees on appeal is proper because Bryant has voluntarily submitted himself to this court's jurisdiction by requesting affirmative relief. RCW 59.18.055 provides that when service on the defendant is accomplished by the alternative procedure, "the court's jurisdiction is limited to restoring possession of the premises to the plaintiff and no money judgment may be entered against the defendant or defendants until such time as jurisdiction over the defendant or defendants is obtained."

But the scope of this appeal is limited to whether the trial court properly determined possession of the premises. CHHIP fails to cite any authority to support its theory that Bryant's request for relief beyond the scope of his own appeal overcomes the requirement for personal service before a money judgment including attorney fees under RCW 59.18.290(2) may be entered in an unlawful detainer action. Moreover, the rights of the parties have not yet been finally determined.[8] The trial court properly

[7] RCW 59.18.290(2) provides: "It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him or her, and the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees."

[8] Carlstrom, 98 Wn. App. at 788 ("A show cause hearing is not the final determination of the rights of the parties in an unlawful detainer action.").

reserved judgment on CHHIP's monetary claims. CHHIP may continue to litigate its claims against Bryant for damages and attorney fees under RCW 59.18.290(2) after personal service is accomplished.[9]

CHHIP also requests attorney fees under RAP 18.9(a), claiming Bryant filed a frivolous appeal. An appeal is frivolous "if the appellate court is convinced that the appeal presents no debatable issues upon which reasonable minds could differ and is so lacking in merit that there is no possibility of reversal."[10] In determining whether an appeal is frivolous, we consider the record as a whole and resolve all doubt in favor of the appellant.[11] In addition, we must keep in mind that a civil appellant has a right to appeal.[12] Under the circumstances here, we decline to award CHHIP attorney fees on appeal under RAP 18.9.

Affirmed.

Ellington, J.

WE CONCUR:

Leach, A.C.J.

[9] Negash v. Sawyer, 131 Wn. App. 822, 827, 129 P.3d 824 (2006) (where defendant's limited response to summons did not constitute personal submission to court's jurisdiction, trial court properly determined possession of property and reserved money judgment, such that plaintiff can continue litigation after accomplishing personal service).

[10] In re Marriage of Foley, 84 Wn. App. 839, 847, 930 P.2d 929 (1997).

[11] Streater v. White, 26 Wn. App. 430, 435, 613 P.2d 187 (1980).

[12] Id.

Grosse, J