

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

JOHN K. DAHL, Executor of the)	NO. 67954-6-I
Estate of Lillian Hagen,)	
)	DIVISION ONE
Respondent,)	
v.)	UNPUBLISHED OPINION
)	
LEO GILLESPIE,)	FILED: December 10, 2012
Appellant.)	
)	

Lau, J. — Leo Gillespie leased a house from his friend, Lillian Hagen, who died in 2011. The court appointed John Dahl as personal representative of Hagen’s estate. In the probate proceeding, Gillespie petitioned for a declaration that Hagen was contractually obligated to devise him the house. While the petition was pending, Gillespie missed a monthly rental payment. Dahl obtained a judgment for unlawful detainer and an order for a writ of restitution. Gillespie appeals the trial court’s order denying his motion for revision. We affirm.

FACTS

The material facts are undisputed. In 2002, Lillian Hagen leased a Shoreline, Washington house to her friends, Leo Gillespie and Petter Pettersen.¹ Under the

¹ Pettersen died in 2005.

February 2002 lease agreement, Gillespie and Pettersen agreed to pay rent of \$500 per month for 20 years and to pay the property taxes. The lease agreement also contained an alleged “bequeath” provision:

10. Additional Lease terms: Landlord agrees to bequeath to the Tenant(s) the above mentioned property free and clear of any encumbrances in her Last Will and Testament together with all monies paid in rent, property taxes and repairs during the lease period. No[t]withstanding this agreement Tenant(s) shall also have the right to purchase the property at any time during this lease period according to the terms of the separate Purchase Option Agreement signed by Landlord and Tenant(s)

(Emphasis added.) On March 8, 2002, Hagen handwrote an alleged addition to her will:

This is an addition to my will. I wish to give the house I own at 20041 – 6th Avenue NE, Lot 1 Block 8 Lago Vista Shoreline King County, Wash. 98155 to Petter M. Pettersen & Leo E. Gillespie. Present time renters to said house. Both good friends of mine and Olaf.^[2]

Hagen executed a will that failed to devise the Shoreline property to Gillespie and Pettersen.

Hagen died on May 22, 2011. The court appointed John Dahl as personal representative with nonintervention powers. During the probate of Hagen’s will, Gillespie filed a verified petition for declaratory judgment under the Trust and Estate Dispute Resolution Act (TEDRA), ch. 11.96A RCW. In his TEDRA petition, Gillespie asked the court to enforce Hagen’s lease provision promise to devise the property to him.

² Olaf was Hagen’s husband who predeceased her.

Gillespie paid June rent of \$500 directly to Dahl. However, Gillespie did not pay July rent. On July 19, 2011, Dahl served Gillespie with a three-day notice to pay rent or vacate. Gillespie admits he was properly served and that he failed to pay July rent within the three-day period. Dahl served Gillespie with an eviction summons, a complaint alleging unlawful detainer based on nonpayment of rent,³ and an order to show cause.⁴ Gillespie cross-moved for an order consolidating his TEDRA petition with the unlawful detainer action.⁵ At the show cause hearing, the commissioner denied the motion to consolidate, entered judgment for unlawful detainer in favor of Dahl, and ordered the clerk to issue a writ of restitution.⁶ The trial court denied Gillespie's motion for revision. Gillespie appeals.

³ RCW 59.12.030(3) states that a tenant is guilty of unlawful detainer "[w]hen he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplained with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due." Here, although Dahl's complaint did not identify the statutory basis for the allegation of unlawful detainer, it did allege that Gillespie was "delinquent in the payment of rent."

⁴ Chapter 59.12 RCW governs unlawful detainer actions generally. Because Gillespie's tenancy was governed by a residential lease, the Residential Landlord-Tenant Act of 1973 (chapter 59.18 RCW) also applies. The Residential Landlord-Tenant Act "requires a landlord who wishes to obtain a writ of restitution to note the matter for a show cause hearing." Indigo Real Estate Servs., Inc. v. Wadsworth, 169 Wn. App. 412, 421, 280 P.3d 506 (2012) (citing RCW 59.18.370).

⁵ Gillespie argued that the court could not "make a reliable ruling on Plaintiff's unlawful detainer action without considering Mr. Gillespie's TEDRA Petition, which asserts that he is the rightful owner of the Gillespie Home, not a mere tenant."

⁶ The commissioner ordered Gillespie to pay rent for July and August 2011, for a total judgment of \$1,000. The commissioner expressly reserved ruling on all other issues.

ANALYSIS

Gillespie admits he failed to comply with Dahl's three-day notice to pay or vacate. However, he argues the commissioner lacked authority to enter judgment for unlawful detainer and to order a writ of restitution before the trial court resolved his TEDRA petition. Dahl argues that the pendency of Gillespie's TEDRA petition did not affect the propriety of the unlawful detainer judgment. He reasons that even if Gillespie ultimately prevails in the TEDRA action, the commissioner will have properly awarded interim possession to Hagen's estate.

As a preliminary matter, "[w]here the superior court has made a decision on a motion for revision, the appeal is from the superior court's decision, not from the commissioner's decision." Boeing Emps.' Credit Union v. Burns, 167 Wn. App. 265, 270, 272 P.3d 908 (2012) (citing State v. Ramer, 151 Wn.2d 106, 113, 86 P.3d 132 (2004)). However, "when the superior court denies a motion for revision, it adopts the commissioner's findings, conclusions, and rulings as its own." State ex rel. J.V.G. v. Van Guilder, 137 Wn. App. 417, 423, 154 P.3d 243 (2007); see also Williams v. Williams, 156 Wn. App. 22, 27-28, 232 P.3d 573 (2010) (reviewing court not required to enter separate findings and conclusions).

In ruling on a motion for revision, "the superior court reviews both the commissioner's findings of fact and conclusions of law de novo based upon the evidence and issues presented to the commissioner." Ramer, 151 Wn.2d at 113. "When the record consists entirely of written material, an appellate court stands in the same position as the trial court and reviews the record de novo." Hous. Auth. of City of

Pasco & Franklin County v. Pleasant, 126 Wn. App. 382, 387, 109 P.3d 422 (2005).

The law pertaining to unlawful detainer actions is well settled. “An unlawful detainer action under RCW 59.12.030 is a summary proceeding designed to facilitate the recovery of possession of leased property; the primary issue for the trial court to resolve is the ‘right to possession’ as between a landlord and a tenant.” Angelo Prop. Co., LP v. Hafiz, 167 Wn. App. 789, 808, 274 P.3d 1075 (2012). Thus, “when the superior court hears an unlawful detainer action under RCW 59.12.030, it sits in a statutorily limited capacity and lacks authority to resolve issues outside the scope of the unlawful detainer statute.” Angelo, 167 Wn. App. at 809.

An unlawful detainer defendant may “answer, orally or in writing, and assert any legal or equitable defense or set-off arising out of the tenancy.” RCW 59.18.380; Josephinium Assocs. v. Kahli, 111 Wn. App. 617, 624, 45 P.3d 627 (2002). “To protect the summary nature of the unlawful detainer action, defenses ‘arise out of the tenancy’ only when they affect the tenant’s right of possession or are ‘based on facts which excuse a tenant’s breach.’” Josephinium, 111 Wn. App. at 625 (quoting Munden v. Hazelrigg, 105 Wn.2d 39, 45, 711 P.2d 295 (1985)). “When the tenant’s breach is failure to pay rent, the inquiry is ‘whether there is any legal justification for nonpayment.’”⁷ Josephinium, 111 Wn. App. at 625 (quoting Heaverlo v. Keico Indus.,

⁷ Gillespie cites Angelo and Munden for the proposition that “where there is a viable defense, the matter should be set over for trial.” Appellant’s Reply Br. at 5. But no such language appears in those cases. Munden and Angelo reaffirmed the rule that a trial court in an unlawful detainer action may entertain counterclaims, affirmative equitable defenses, and set-offs only when those claims are “‘based on facts which excuse a tenant’s breach.’” Munden, 105 Wn.2d at 45 (quoting First Union Mgmt., Inc. v. Slack, 36 Wn. App. 849, 679 P.2d 936 (1984)); Angelo, 167 Wn. App. at 814-15. Here, Gillespie must demonstrate a “‘legal justification for nonpayment [of rent].”

Inc., 80 Wn. App. 724, 731, 911 P.2d 406 (1996)).

As noted above, Gillespie admits he failed to comply with Dahl's three-day notice to pay or vacate. Nonetheless, Gillespie argues that "when there is an issue relating to title, that issue must be resolved before an unlawful detainer action can proceed." Appellant's Br. at 11. For support, he relies on Puget Sound Inv. Grp. v. Bridges, 92 Wn. App. 523, 963 P.2d 944 (1998). Appellant's Br. at 11-12. As Dahl correctly argues, Puget Sound does not control based on the facts here.

In Puget Sound, the plaintiff purchased property at a tax foreclosure sale and obtained a quitclaim deed. Puget Sound, 92 Wn. App. at 525. The defendant refused to surrender possession. The plaintiff sought a judgment for unlawful detainer under RCW 59.12.030(6), which required proof that the defendant entered and remained on the plaintiff's land without permission or color of title.⁸ The defendant had color of title based on his statutory warranty deed. Consequently, the plaintiff lacked a statutory basis for its unlawful detainer action. Puget Sound, 92 Wn. App. at 527. We concluded that the plaintiff's remedy was an action for ejectment and quiet title because, under the circumstances, "dispossession may not be achieved through an action for unlawful detainer when title has not been cleared." Puget Sound, 92 Wn. App. at 525.

Josephinium, 111 Wn. App. at 625 (quoting Heaverlo, 80 Wn. App. at 731). His claim that any "viable defense" will suffice is too broad.

⁸ RCW 59.12.030(6) states that a tenant is guilty of unlawful detainer "[when] [a] person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice"

Unlike the defendant in Puget Sound, Gillespie is a mere tenant with only an unresolved claim to title. He contends he will eventually prevail on his TEDRA petition, at which time he will become record owner of the property. But that outcome necessarily depends on the resolution of the TEDRA petition. Puget Sound does not alter the well-settled principle that unlawful detainer actions “do not provide a forum for litigating claims to title.” Puget Sound, 92 Wn. App. at 526. Gillespie’s claim to title provides no defense in this unlawful detainer action.

We reject Gillespie’s contention that the commissioner must stay an unlawful detainer action pending resolution of collateral litigation that may affect an ownership interest. Gillespie cites no controlling authority to support this relief.⁹ This relief would also undermine the purpose of an unlawful detainer action by causing unwarranted, protracted delay. See Christensen v. Ellsworth, 162 Wn.2d 365, 370-71, 173 P.3d 228 (2007) (“An unlawful detainer action is a statutorily created proceeding that provides an expedited method of resolving the right to possession of property.”); Puget Sound, 92 Wn. App. at 526 (unlawful detainer actions offer the “advantage of speedy relief”). Under the circumstances here, we conclude that the trial court properly denied Gillespie’s motion for revision.¹⁰

⁹ See State v. Logan, 102 Wn. App. 907, 911, 10 P.3d 504 (2000) (“Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.”) (quoting DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962)).

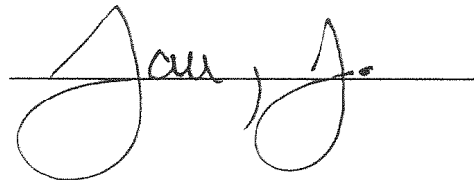
¹⁰ We express no opinion on the merits of Gillespie’s unadjudicated claim to title. We also agree with Dahl—“The resolution of this case has no res judicata application to Mr. Gillespie’s claim of ownership.” Resp’t’s Br. at 10 (boldface and formatting omitted).

ATTORNEY FEES AND COSTS

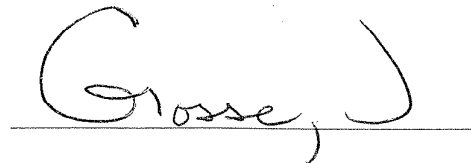
The trial court awarded no attorney fees. Dahl requests attorney fees on appeal under RCW 59.18.410, which authorizes the trial court to award attorney fees on final judgment if unlawful detainer occurs “after default in the payment of rent”¹¹ Here, the trial court found that Gillespie unlawfully detained the premises following a default in the payment of rent. We award attorney fees to Dahl conditioned on compliance with RAP 18.1(d).

CONCLUSION

Gillespie presented no legal justification for nonpayment of rent. Because Dahl was entitled to a judgment for unlawful detainer and an order for a writ of restitution, the trial court properly denied Gillespie’s motion for revision.



WE CONCUR:



¹¹ As the result of an obvious clerical error, Dahl cites “RCW 59.12.410” in his response brief. Gillespie does not object to this error in his reply brief.

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