

**COURT OF APPEALS
DECISION
DATED AND FILED**

July 9, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2014AP2816

Cir. Ct. No. 2014SC812

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

ROY E. DOBBS,

PLAINTIFF-RESPONDENT,

V.

KEITH DOUGLAS TROST,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Monroe County:
TODD L. ZIEGLER, Judge. *Affirmed.*

¶1 BLANCHARD, P.J.¹ This is a landlord-tenant dispute involving a long term farm property lease. Keith Trost appeals a circuit court order and

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

judgment evicting Trost from property belonging to persons who include Roy Dobbs and granting damages based on past due rent. For the following reasons, I affirm the circuit court.

¶2 In October 2014, Roy Dobbs (hereafter “Dobbs,” unless I use a different first name) filed the small claims complaint at issue here against Keith Trost for eviction and for a money judgment of \$6,751.68. Dobbs made allegations that included the following: Dobbs was a fee simple owner of the premises at 22358 Nightingale Avenue, Ontario, Wisconsin; Trost was in possession of the premises, which Trost had begun possessing under a lease executed on July 28, 2004, but which had terminated on July 31, 2014;² Trost owed back rent under the lease for each month, March-July 2014; Trost owed rent for each month after July 2014 that Trost remained in possession of the property; Trost had received a notice terminating tenancy for failure to pay rent in September 2014.

¶3 In an answer and counterclaim and a motion to dismiss, Trost, representing himself, took positions that included the following: there was “no jurisdiction” for the action, because Trost “is not under tenant law”; and Dobbs “is violating his [f]iduciary duties as the Personal Representative of the Lavern Dobbs estate, by not making a conveyance of the farm purchase contract.”³

² The lease actually bears a termination date of July 30, 2014, but the difference is of no consequence to any issue raised on appeal.

³ The first name of Dobbs’s late father is spelled various ways in the record. We follow the spelling used by Dobbs in his briefing, namely, Lavern. As referenced below, Lavern owned the property at issue before it passed to persons who include Dobbs.

¶4 Dobbs filed an answer and affirmative defenses to the counterclaim, and a motion to dismiss the counterclaim.

¶5 At a court trial, Dobbs was represented by counsel and Trost appeared pro se. Trost voluntarily withdrew his counterclaim, leaving only the eviction action and claim for a money judgment for past due rent.

¶6 Dobbs gave trial testimony that included the following, supported by numerous exhibits. In November 2012, Dobbs and two of his siblings took ownership of a 20-acre parcel of property through an inherited deed from Dobbs's late father, Lavern. Trost occupied the parcel when Dobbs took his ownership interest. Eight years earlier, Trost and Lavern Dobbs had entered into a 10-year lease, which ran from August 1, 2004, to July 30, 2014, to allow Trost to use the parcel. The last monthly rent payment that Trost had made before trial covered February 2014, and Trost still owed rent for the months March-July 2014. Trost received a 10-day notice terminating tenancy in September 2014.

¶7 Dobbs further testified that Trost attempted to pay the outstanding rent due by tendering a cashier's check made out to the three Dobbs siblings and the "Lavern Dobbs Wildlife Refuge Inc." ("the refuge entity"). Dobbs testified that the refuge entity is not an owner of the parcel that Trost occupied under the lease, and for this reason Dobbs's attorney returned the cashier's check to Trost and asked Trost to make rent payments to the attorney's trust account. Trost did not make any payments to the attorney's trust account. In September 2014, Trost filed a separate small claims action against Dobbs, claiming \$8,500 in "lost income and opportunities by blocking my contractual farm lumber rights." Dobbs interpreted Trost's conduct, including his filing of the lawsuit, to indicate that Trost was not going to pay the back due rent. At the time of trial, Trost was still in

possession of the property, even though Trost had not paid rent for any month after February 2014. In addition, Dobbs testified that Trost failed to pay real estate taxes on improvements that Trost made to the property, as Dobbs believed the lease required.

¶8 Trost testified at trial that he did not follow Dobbs's attorney's direction regarding how to make the rent payments, and had not otherwise paid the back rent claimed by Dobbs, because Trost considered himself obligated under the lease to pay all of "the owners of my land," and the owners of the land included the refuge entity. Trost testified that he believed that the lease applied to "18 of Mr. Dobbs' acres and two acres of the wildlife refuge" and that "[Dobbs is] trying to claim a different 20 acres than I am claiming." Trost acknowledged that he remained on the parcel without permission from Dobbs after the lease expired.

¶9 During the trial, the circuit court engaged in a dialog with Trost, during which the court observed that it appeared that the only potentially viable defense to either eviction or the money judgment that Trost was attempting to offer was that the refuge entity was an owner of the property subject to the lease, and therefore Trost's cashier's check should have been accepted. Trost's responses to the court's observations and questions were not clear, but Trost did not expressly disagree with the proposition that this was his only potential defense. The court, working from that premise, repeatedly asked Trost what evidence there might be that the refuge entity was an owner of the property subject to the lease. Trost gave a series of non-responsive and generally confusing answers. Trost told the court that he would produce evidence that would answer the court's question, but did not clearly explain what that further evidence might be, and in any case he failed to produce such evidence.

¶10 The circuit court granted the eviction and the money judgment sought by Dobbs. The court found, in pertinent part, that Trost had drafted the terms of the lease and had failed to comply with Dobbs’s rent payment instructions on two occasions. The court determined that Dobbs, as owner of the property, was entitled to eviction based on Trost’s failure to pay rent as required, and that Trost was a hold-over tenant who owed double damages on that basis. *See* WIS. STAT. § 704.27 (double-rent formula for hold-over tenants). Regarding the property at issue, the court concluded:

The legal description on the lease is invalid. Ambiguities in contracts are held against the drafter of the contract. Keith Trost took possession of the property based on his drafting of the lease and legal description, thereby creating the ambiguity he is now attempting to use as a defense to eviction.

The mutual mistake of the legal description of the rented property does not overcome nor prevent Mr. Trost’s failure to abide by the landlord’s payment instructions on two separate occasions.

¶11 Following trial, Trost submitted two letters to the court, as well as a “motion to reconsider judgment and attached affidavit,” and an “objection to proposed findings of fact and orders[,] motion to reconsider judgment[,] motion to delay imposition of eviction.” As pertinent to any issue raised in this appeal, the court denied the requests made in these submissions.

¶12 On appeal, Trost remains pro se. He purports to make three arguments, each difficult to track and not well developed.

¶13 Trost’s first argument appears to depend on at least two contentions. First, Trost contends that the court erred in “plac[ing] the burden of proof of ownership” of the property covered by the lease on Trost. Second, Trost apparently means to contend that the court erroneously failed to use property

records and a plain language interpretation of the property description in the lease to determine that the two southernmost acres of the 20 acres that Trost leased belong to the refuge entity.

¶14 I first address and reject the “burden of proof” aspect of this argument. The trial transcript shows that the court did not resolve this issue based on a burden of proof, but instead the court properly examined the language of the lease in order to determine its meaning. What Trost calls a misplaced burden of proof was in fact a series of patient attempts by the court at trial to assist Trost in articulating any potential defense that he might intend to make, by repeatedly reminding Trost of the necessity of basing arguments on relevant evidence.

¶15 Turning to the lease-based argument, the following are additional pertinent details. Consistent with the court’s finding, not challenged by Trost on appeal, the lease explicitly states that it was “Prepared by Keith Trost.” The lease describes the parcel at issue using the following language:

[T]he premises situated at Nightingale Road, Sheldon [T]ownship, County of Monroe, State of Wisconsin and more particularly described as follows: The 20 (twenty) acres on the North side of the far end of Nightingale road, along the Von Ruden and Noffke properties starting at the township road and north to the property line, then West, then south parallel to the property line back down to Nightingale [R]oad to complete 20 (twenty) acres.

There are at least two problems with this purported legal description. It does not make clear how far west one would travel in proceeding “then West.” It also does not make clear at what point one would meet Nightingale Road in proceeding “back down to Nightingale [R]oad,” since, depending on how the phrase “then West” is interpreted, Nightingale Road could be met (circumscribing 20 acres) by going straight south or instead by going south and then east. Therefore, the circuit

court was correct, and Trost is incorrect, on the question of whether this language is ambiguous.

¶16 For these reasons, whatever else Trost might mean to suggest or imply, his first argument rests on at least two false premises: the court improperly shifted a burden and erroneously failed to apply a plain language interpretation to the property description in the lease. This is sufficient to establish that Trost's first attempted argument lacks merit.

¶17 Trost's second argument relies at least in part on the statute of frauds. However, the circuit court explained that Trost presented it with no statute of frauds argument, and Trost does not now dispute that finding of the court. Particularly given the extensive efforts that the record reflects the circuit court made to allow Trost to present any relevant evidence or valid arguments he might have, I see no reason not to consider any argument that rests in part on the statute of frauds forfeited for purposes of appeal. *See State v. Ndina*, 2009 WI 21, ¶¶30-31, 315 Wis. 2d 653, 761 N.W.2d 612.

¶18 Trost's third argument apparently involves the concept that he lacked sufficient advance notice of the issues that the court would consider at trial. In particular, Trost suggests that he had no reason to anticipate that the description of the property contained in the lease would be a focus of the court's attention. However, even putting aside the obvious relevance of the property description in the lease to adjudication of the eviction claim, it appears that Trost himself attempted to put the property description at issue at trial. More generally, Trost fails to present and support a clear argument that the circuit court did not, at trial, appropriately receive and consider relevant evidence offered by either party; give Trost full opportunities to present evidence, to attempt to rebut evidence, and to be

heard; and base its decisions on correct legal standards. Therefore, his third argument also fails.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.

