IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-553

Filed: 18 June 2019

Forsyth County, No. 17 CVD 1108

WINSTON AFFORDABLE HOUSING, L.L.C., d/b/a WINSTON SUMMIT APARTMENTS, Plaintiff,

v.

DEBORAH ROBERTS, Defendant.

Appeal by Defendant from Judgment entered 3 November 2017 by Judge Denise S. Hartsfield and from order entered 18 September 2017 by Judge David E. Sipprell in Forsyth County District Court. Heard in the Court of Appeals 14 November 2018.

Blanco Tackabery & Matamoros, P.A., by Elliot A. Fus and Chad A. Archer, for plaintiff-appellee.

Legal Aid of North Carolina, Inc., by Celia Pistolis, Liza A. Baron, Valene K. Franco, and Andrew Cogdell, for defendant-appellant.

MURPHY, Judge.

In this summary ejectment action, the trial court's findings of fact are supported by competent evidence, and these findings support its conclusion of law that Deborah Roberts ("Roberts") failed to pay rent, which constituted a breach of the

lease entitling Winston Affordable Housing ("WAH") to possession of the premises. Additionally, Roberts failed to present sufficient evidence to support an unfair or deceptive trade practice or act claim under N.C.G.S. § 75-1.1 *et seq*. We affirm.

BACKGROUND

In 1997, Roberts began to lease an apartment at an apartment complex, of which WAH took ownership in 2010. The complex is federally assisted by the U.S. Department of Housing and Urban Development ("HUD"), and Roberts received a rent subsidy that reduced her monthly portion of the rent to $139.00 of the total rent of $532.00.

On 3 October 2016, WAH sent Roberts a "Notice of Termination of Lease" informing her that her lease would be terminated effective 31 December 2016. The Notice cited violations of the lease as the grounds for termination, including smoking in prohibited areas, harassing apartment employees, disturbing other residents, and failing housekeeping inspections by filling vents and electrical outlets with "white powder" and having excessive clutter near "windows and doors, as well as the hot water heater and . . . stove." WAH continued to accept Roberts' payment of rent for the months of November and December 2016. Roberts did not vacate the premises after her lease expired on 31 December 2016, and WAH commenced a summary ejectment action before the Magistrate on 5 January 2017. On 10 January 2017, WAH provided Roberts with a "Ten-Day Notice to Pay Rent or Quit" addressing her

non-payment of rent for the month of January. The Magistrate entered judgment for ejection on 7 February 2017, and Roberts appealed to District Court.

WAH filed an amended complaint, seeking ejectment based on violations of the lease detailed in the "Notice of Termination of Lease," as well as Roberts's failure to pay rent for the month of January 2017 and a portion of February 2017.[1] Roberts filed an answer, asserting numerous counterclaims, all of which were dismissed, except for her claim for unfair or deceptive trade practices ("UDTP"). These claims proceeded to trial, and the trial court made the following conclusions of law:

> 1. By accepting rents for November and December 2016, [WAH] waived any right to evict defendant based on any Lease violations occurring prior to that time, including the alleged violations cited in the October 3, 2016 notice. As a result of this waiver, [WAH]'s claims for breach of lease other than nonpayment of rent should be dismissed.
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> 2. [Roberts]'s failure to pay rents for January 2017 and the first portion of February 2017 constituted a breach of lease that entitles [WAH] to possession of the Premises.
>
> 3. [Roberts] presented insufficient evidence that [WAH]'s actions with respect to the termination of [Roberts]'s Section 8 assistance constituted Unfair and Deceptive Trade Practices in violation of [N.C.G.S.] § 75-1.1.

The trial court accordingly entered judgment ordering Roberts to "be removed from and [WAH] be put in possession of the Premises based on nonpayment of rent for January 2017 and the first part of February 2017." Roberts appeals.

[1] Roberts eventually paid a prorated amount of rent in February 2017 pursuant to a rent bond.

ANALYSIS

"The standard of review on appeal from a judgment entered after a non-jury trial is whether there is competent evidence to support the trial court's findings of fact and whether the findings support the conclusions of law and ensuing judgment." *Cartin v. Harrison*, 151 N.C. App. 697, 699, 567 S.E.2d 174, 176, *disc. review denied*, 356 N.C. 434, 572 S.E.2d 428 (2002) (citation and internal quotation marks omitted). We review the trial court's conclusions of law de novo, considering "the matter anew and freely substitut[ing] [our] own judgment for that of the trial court." *Peninsula Prop. Owners Ass'n Inc. v. Crescent Res., LLC*, 171 N.C. App. 89, 92, 614 S.E.2d 351, 353 (citation, alterations, and internal quotation marks omitted), *appeal dismissed and disc. rev. denied*, 360 N.C. 177, 626 S.E.2d 648 (2005).

A. Breach of Lease

The trial court made the following relevant findings of fact with respect to the breach of lease entitling WAH to possession of the premises:

> 4. [Roberts] did not vacate the Premises and has continued to reside there.
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> 5. On or about January 4, 2017, [Roberts] signed documents presented to her by the [WAH]'s management, indicating that $532 per month in rent would be owed by [Roberts] after December 31, 2016 (although [Roberts] previously paid $139 per month in rent and received "Section 8" subsidized rental assistance from HUD).
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> 6. This summary ejectment action was commenced on January 5, 2017.

> 7. On or about January 10, 2017, [WAH]'s management gave [Roberts] a "Ten-Day Notice to Pay Rent or Quit" regarding [Roberts]'s non-payment of January 2017 rent.
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> 8. A judgment for ejectment was granted to [WAH] in Small Claims Court on February 7, 2017. [Roberts] appealed to District Court.
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> 9. Rents since mid-February have been paid into Court by [Roberts]. However, [Roberts] never paid rents for January 2017 or for the portion of February 2017 accruing prior to her first payment of rent bond into Court.
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> 10. [WAH] filed an Amended Complaint on April 6, 2017. [WAH] sought ejectment, based on the violations of the Lease listed in the October 3, 2017 notice as well as failure to pay January 2017 and early February 2017 rents. [WAH] also sought a money judgment for the unpaid rents.

Based on these findings of fact, the trial court made the following relevant conclusion of law:

> 2. [Roberts]'s failure to pay rents for January 2017 and the first portion of February 2017 constituted a breach of lease that entitles [WAH] to possession of the Premises.

Roberts does not challenge any of these findings of fact as unsupported by competent evidence; therefore, they are presumed to be supported by competent evidence and are binding. *See Koufman v. Koufman*, 330 N.C. 93, 97, 408 S.E.2d 729, 731 (1991). Rather, Roberts argues, "[a]dditional findings, such as whether Plaintiff properly increased [her] $139.00 monthly rent payment to $532.00 and the amounts [she] had already paid to [WAH], are needed to support the [trial] court's conclusion

that [she] breached her lease by failing to pay rent and should be evicted." We disagree and conclude the trial court's findings of fact support its conclusion that Roberts's failure to pay rents during January and the first portion of February constituted a breach of lease that entitled WAH to possession of the premises.

In an "attempt to cure the evils of discriminatory and arbitrary eviction procedures prevalent in federally-subsidized housing, the courts have established a standard of 'good cause' as a condition upon which tenancies" in federally subsidized low-income housing may be evicted. *Maxton Housing Authority v. McLean*, 313 N.C. 277, 280-81, 328 S.E.2d 290, 293 (1985) (quoting *Apartments, Inc. v. Williams*, 43 N.C. App. 648, 651, 260 S.E.2d 146, 149 (1979)). In Finding of Fact 9, the trial court found that Roberts "never paid rents for January 2017 or for the portion of February 2017 accruing prior to her first payment of rent bond into Court." Roberts does not contest that her failure to pay rent for this time period is a material noncompliance that constitutes good cause for eviction.

Roberts argues that "[b]ecause [WAH] had no grounds to terminate [her] housing assistance, she did not owe the market rental rate of $532.00, and she should not have been evicted for nonpayment of rent." Stated differently, Roberts contends that it was WAH's improper termination of her HUD subsidy that brought about her inability to pay the rent, and thus the breach of the lease. In support of this argument, Roberts cites the Illinois Court of Appeals decision in *Am. Prop. Mgmt. Co.*

v. Green-Talaefard, 195 Ill. App. 3d 171, 552 N.E.2d 14 (1990).[2] Assuming arguendo that we found this decision persuasive, based on the facts before us, we need not reach this argument. Roberts contends that her HUD subsidy was improperly terminated and that her portion of rent should have remained at $139.00 per month. However, during January 2017 and the first portion of February 2017, Roberts paid *no* rent. This is not the scenario in *Green-Talaefard*, where the tenant continued to pay what she believed to be her correct portion of the rent. Here, Roberts did not attempt to pay the $139.00 – she paid $0.00.[3] By doing so and failing to pay even what Roberts argues to be her correct portion of rent, we cannot address the propriety of WAH's termination of her HUD subsidy. Accordingly, we affirm the trial court's conclusion of law that Roberts's failure to pay rent for January 2017 and the first portion of

[2] In *Green-Talaefard*, the tenant received a HUD subsidy of $197.00 per month, lowering her portion of the rent payment to $90.00 per month. *Id.* at 174, 552 N.E.2d at 15. The tenant stated "that she did not understand she was to pay the full amount of rent" and "tendered $90.00 to [the landlord], who refused to accept it and demanded payment of the full amount of the rent . . . ." *Id.* at 175-76, 552 N.E.2d at 16. "[T]he trial court found that rent of $287.00 was due, that the [tenant] had failed to pay the rent, and that the [landlord] was entitled to possession." *Id.* at 176, 552 N.E.2d at 17. The Illinois Court of Appeals concluded the landlord "terminated [the tenant]'s housing-assistance benefits without affording her any due process protection and failed to reconsider the termination when the [tenant] provided the information he had requested." *Id.* at 179, 552 N.E.2d at 19. Accordingly, the Court reversed, holding that the landlord was not entitled to possession of the unit based upon an alleged breach caused by the landlord's improper termination of housing-assistance benefits. *Id.* at 180, 552 N.E.2d at 19.

[3] Roberts also points us to several unpublished cases outside of our jurisdiction for her proposition that "other jurisdictions have uniformly held that a Section 8 project-based landlord cannot terminate a tenant's rental assistance for an alleged breach of the lease and then evict the tenant for nonpayment of the full fair market rental." *See DiVetro v. Hous. Auth. of Myrtle Beach*, No. 4:13-cv-01878-RBH, 2014 WL 3385163 (D.S.C. July 10, 2014); *Jessie v. Jerusalem Apartments*, No. 12-06-00113-CV, 2006 WL 3020368 (Tex. Ct. App. Oct. 25, 2006). While the lack of precedential value in an unpublished case outside of our jurisdiction is obvious, the posture of these cases are fundamentally distinguishable from that in the case before us. In those cases, the tenants' obligations under the housing-assistance benefit programs were $0.00.

February 2017 constituted a breach of lease entitling WAH to possession of the premises.

B. Unfair or Deceptive Trade Practices

Roberts also challenges the trial court's conclusion of law that she "presented insufficient evidence that [WAH]'s actions with respect to the termination of [her] Section 8 assistance constituted Unfair and Deceptive Trade Practices in violation of [N.C.G.S. §] 75-1.1." We affirm the trial court's conclusion.

Under N.C.G.S. § 75-1.1, "[u]nfair methods of competition in or affecting commerce, and unfair or deceptive acts or practices in or affecting commerce, are declared unlawful." N.C.G.S. § 75-1.1(a) (2017). "In order to establish a violation of N.C.G.S. § 75-1.1, a plaintiff must show: (1) an unfair or deceptive act or practice, (2) in or affecting commerce, and (3) which proximately caused injury to plaintiffs." *Gray v. N.C. Ins. Underwriting Ass'n*, 352 N.C. 61, 68, 529 S.E.2d 676, 681 (2000). "A practice is unfair when it offends established public policy as well as when the practice is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers. A practice is deceptive if it has the capacity or tendency to deceive." *Walker v. Fleetwood Homes of N.C., Inc.*, 362 N.C. 63, 72, 653 S.E.2d 393, 399 (2007) (citations, alterations, and internal quotation marks omitted).

"Residential rental agreements fall within Chapter 75 because the rental of residential housing is considered commerce pursuant to [N.C.G.S.] § 75-1.1." *Dean v. Hill*, 171 N.C. App. 479, 485, 615 S.E.2d 699, 702 (2005). For example:

> [We have] held that where a tenant's evidence establishes the residential rental premises were unfit for human habitation and the landlord was aware of needed repairs but failed to honor his promises to correct the deficiencies and continued to demand rent, then such evidence would support a factual finding by the jury that the landlord committed an unfair or deceptive trade practice.

Foy v. Spinks, 105 N.C. App. 534, 540, 414 S.E.2d 87, 89-90 (1992) (citing *Allen v. Simmons*, 99 N.C. App. 636, 394 S.E.2d 478 (1990)); *see also Pierce v. Reichard*, 163 N.C. App. 294, 301, 593 S.E.2d 787, 792 (2004) (finding unfair trade practice where landlord "was aware that the roof was leaking and that repairs were necessary, yet did not perform necessary repairs until approximately two years after the defective condition was brought to his attention"). However, N.C.G.S. § 75-1.1 "is not intended to apply to all wrongs in a business setting. For instance, it does not cover employer-employee relations or securities transactions." *HAJMM Co. v. House of Raeford Farms, Inc.*, 328 N.C. 578, 593, 403 S.E.2d 483, 492 (1991) (internal citations omitted).

Roberts argues that WAH "violated federal regulations when it terminated [her] rent subsidy on impermissible grounds and without following the proper procedure for doing so." She contends that "[o]ur courts have found that such

statutory or regulatory violations as committed by [WAH] are unfair trade practices and *per se* violations of [N.C.G.S.] § 75-1.1." Yet, Roberts fails to cite authority that supports her proposition that a failure to follow HUD procedures or regulations constitutes a *per se* unfair or deceptive trade act or practice.

To the contrary, our Supreme Court has rejected such a proposition. In *Walker*, our Supreme Court agreed that "regulations which pertain to the licensing of mobile home manufacturers and dealers[] do not necessarily establish a Chapter 75 claim." *Walker*, 362 N.C. at 70, 653 S.E.2d at 398. The Court held, "[w]hile such a regulatory violation *may* offend N.C.G.S. § 75-1.1 [*et seq.*], the violation does not automatically result in an unfair or deceptive trade practice under that statute." *Id.* (emphasis in original). We have reached a similar conclusion in the context of another regulatory statute:

> Contrary to plaintiff's argument, there is no support for the position that violation of statutes generally constitutes a per se deceptive or unfair trade practice. As one of the opinions plaintiff cites as authority for this proposition clearly states: the North Carolina Supreme Court has held violation of a statutory provision designed to protect the consuming public may constitute an unfair and deceptive practice as a matter of law. [That case] further qualifies this statement by stating that whether violation of a statute constitutes unfair and deceptive trade practices generally depends on the facts of the case, and when it offends established public policy or is immoral, unethical, oppressive, unscrupulous, or substantially injurious to consumers.

Bartlett Milling Co., L.P. v. Walnut Grove Auction & Realty Co., Inc., 192 N.C. App. 74, 665 S.E.2d 478, 486 (2008) (citations, alterations, and internal quotation marks omitted). Indeed, our courts have only concluded that a violation of a regulatory statute is a *per se* violation of N.C.G.S. § 75-1.1 "where the regulatory statute *specifically* defines and proscribes conduct which is unfair or deceptive within the meaning of" N.C.G.S. § 75-1.1 *et seq*. *Noble v. Hooters of Greenville (NC), LLC*, 199 N.C. App. 163, 170, 681 S.E.2d 448, 454 (2009). As such, we reject Roberts's argument and hold that an alleged violation of HUD procedures or regulations does not constitute a *per se* violation of N.C.G.S. § 75-1.1.

In fact, our case law has not addressed the question of whether an alleged violation of HUD procedures or regulations is an act "in or affecting commerce" such that it would be within the purview of N.C.G.S. § 75-1.1 *et seq*. However, we need not reach this issue here, as there is insufficient evidence in this case of an injury proximately caused by the alleged act or practice. WAH terminated Roberts's HUD subsidy after her lease terminated in December 2016. Subsequently, Roberts did not pay any rent to WAH for the month of January 2017 and for the first portion of February 2017. The only amount paid over her prior subsidized portion of the rent was to the Clerk of Superior Court pursuant to a separate court order. Accordingly, we affirm the trial court's conclusion that Roberts presented insufficient evidence to support a claim under N.C.G.S. § 75-1.1 *et seq*.

CONCLUSION

The trial court's findings of fact are supported by competent evidence and, in turn, support its conclusion of law that Roberts's failure to pay any rent during January 2017 and the first portion of February 2017 constitute a breach of the lease entitling WAH to possession of the premises. Additionally, Roberts has failed to show WAH's alleged acts constitute a *per se* unfair or deceptive trade practice under N.C.G.S. § 75-1.1 *et seq*. and that the trial court erred in concluding that Roberts presented insufficient evidence to support this claim. We affirm.

AFFIRMED.

Judges STROUD and DILLON concur.

Report per Rule 30(e).