SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0101-15T2

MANSIONS APARTMENTS,

Plaintiff-Respondent,

v.

TONIANN HUSBAND,

Defendant-Appellant.

Argued March 23, 2017 - Decided April 18, 2017

Before Judges Lihotz and Whipple.

On appeal from Superior Court of New Jersey, Law Division, Camden County, Docket No. LT-4743-15.

Sonia Bell argued the cause for appellant (South Jersey Legal Services, Inc., attorneys; Ms. Bell, on the brief).

Thomas M. Pohle argued the cause for respondent (Greenblatt & Lieberman, LLC, attorneys; Mr. Pohle, on the brief).

PER CURIAM

Defendant Toniann Husband appeals from a July 9, 2015 judgment of possession granted to her landlord, plaintiff Mansions Apartments, and an August 20, 2015 order denying her emergent

application for reconsideration. Judgment was granted premised on the trial judge's finding defendant continuously violated the lease agreement by allowing an unauthorized tenant to occupy the premises, despite a written Notice to Cease, issued pursuant to N.J.S.A. 2A:18-61.1(e)(1). Defendant argues the evidence was insufficient to prove a lease violation and maintains plaintiff accepted rent after the judgment was issued, creating a new tenancy. We reject these arguments and affirm.

Plaintiff owns and operates a 360-unit apartment complex in Pine Hill, which is federally subsidized through the Department of Housing and Urban Development (HUD) Section 8 awards. See 42 U.S.C.A. § 1437f. In 2007, defendant commenced her tenancy in a one-bedroom apartment located in plaintiff's complex. She executed a lease agreement, identifying she was the sole occupant of the premises and qualified for a Section 8 housing subsidy, which satisfied defendant's entire monthly rent.

On March 24, 2015, plaintiff issued a notice demanding defendant cease activity, which violated the lease. Specifically, the notice instructed plaintiff to cease conduct identified as: (1) disturbing the peace, including "disturbances and heavy traffic in and out of [the] apartment," "loitering, numerous guests and other disturbances," and (2) "harboring a female unauthorized

occupant, Michelle Dea,[1] in the leased premises." The notice warned defendant's failure to cease the impermissible activity and remove the unauthorized occupant within ten days would result in the landlord's termination of the lease.

A "Notice Terminating Lease" was issued on April 27, 2015, citing defendant's failure to comply with the prior Notice to Cease, by her continued conduct of "disturb[ing] the peace and quiet of other residents" and "harboring a female unauthorized occupant, Michelle Dea, in the leased premises as well as three (3) other adult unauthorized occupants and multiple children." The notice further instructed defendant "must quit and vacate said premises on or before May 31, 2015."

Plaintiff filed a summary dispossession complaint alleging defendant failed to adhere to the Notice to Cease by disturbing the peace and allowing Dea to occupy her apartment. Trial was conducted on July 9, 2015. Plaintiff proceeded solely on the unauthorized occupation of the unit and withdrew the disturbing the peace allegations.

Plaintiff introduced the lease and issued notices, and presented testimony from Assistant Property Manager, Dawn Brandt

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[1] At trial defendant stated her friend's surname was spelled "Dey," which appears throughout the transcript. However, the certification filed by the party used "Dea," which we have accepted as the correct spelling of her surname.

and a maintenance employee, Jesse White. Defendant testified on her own behalf.

Brandt, who assumed the position of assistant property manager in 2012 and manager in 2015, worked seven days per week from 6:30 a.m. to 5 p.m. She identified provisions in defendant's lease and discussed Section 8 requirements limiting occupation of the unit solely to defendant.

Next, Brandt related her personal knowledge of Dea's use of defendant's apartment. Dea went to Brandt's office seeking to lease a unit and handed Brandt her driver's license, which listed defendant's unit as her address. Brandt inquired how Dea was living in the complex and was told she lived "with a friend." This prompted the issuance of the Notice to Cease.

Further, Brandt, who opens and closes the complex playground, located adjacent to defendant's unit, observed Dea "coming and going," at "all different times of the day" "[e]very day[,]" "even on the weekends," after defendant was issued the notice. Brandt, referring to Dea, emphasized: "She's always, always, always there." In addition, Brandt stated she saw "numerous children . . . always in there" and an adult male and females in addition to Dea in the unit. Brandt explained HUD guidelines require strict compliance with the occupation guidelines, which determines the

amount of rent paid by HUD.[2] On cross-examination, Brandt acknowledged Dea's mother and daughter live in plaintiff's complex.

White testified he works as a maintenance technician at the Mansions, from 7 a.m. to 4 p.m. He asserted he knew defendant and personally observed Dea coming and going on a daily basis from defendant's unit.

Next, defendant testified. She identified Dea as "[o]ne of [her] best friends" but insisted she lives alone in her unit and Dea "never" lived with her, but once spent the night two years earlier. Defendant asserted Dea lives in Camden and visits "[m]aybe two or three times [per] month," while seeing relatives, and other friends in the complex. She also explained Dea is friendly with defendant's neighbor, and "is very well known in the Mansions."

Defendant refuted Brandt's testimony stating Dea was not at the complex all spring because she underwent knee replacement surgery. When asked a second time how frequently Dea visits, defendant replied: "Whenever she's in town . . . probably like sometimes twice, three times a week. Or a couple times a month

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[2] In a recent opinion we discussed in more detail federal standards affecting lease provisions of leaseholds subject to the Section 8 public housing subsidy program. See 175 Executive House, LLC v. Miles, __ N.J. Super. __ (2017) (slip op. 6-8).

. . . I haven't even seen her in the past couple months . . . at all." Then added: "But . . . she just came to see me yesterday actually" as she "visits for a couple hours and then she goes and wanders all around the Mansions."

Addressing Brandt's testimony, defendant, on direct examination, said Dea's driver's license lists the address of Dea's sister in Blackwood. On cross-examination, however, defendant responded Dea "don't [sic] even have a driver's license."

The trial judge issued an oral opinion at the close of testimony. He noted the inconsistencies in defendant's testimony regarding the frequency of Dea's visits and the address listed on Dea's driver's license. The trial judge labeled defendant's testimony "a fabrication," stating he found her "completely unbelievable, incredible and not telling the [c]ourt the truth." On the other hand, the judge found Brandt's testimony "completely credible," "uncontroverted," and supported by White's observations. Limiting his findings to Dea's occupation of the unit, the trial judge found Dea presented a driver's license to Brandt listing defendant's unit as her address. This, along with the observations by Brandt and White, established Dea's unauthorized use of defendant's apartment. The judge granted plaintiff's request for a judgment of possession and denied defendant's request for a stay pending appeal.

Defendant was served with a warrant for removal, and on August 5, 2015, filed a pro se order to show cause seeking a hardship stay. The motion judge stayed the execution of the warrant for removal until August 15.

On August 12, 2015, defendant filed a second order to show cause, seeking reconsideration of the judgment of possession. Her supporting certification requested the judgment be vacated, while acknowledging she was a frequent visitor, insisted Dea did not live with her. Dea also filed a certification stating she does not live with defendant, certifying she resides in Camden. She asserted her license was copied when she applied for a unit at the Mansions, which would prove she did not use defendant's address. Therefore, Brandt's failure to produce the copy was suspect. Dea's certification attached copies of documents listing her name and a Camden address; her driver's license was not among them.

Additionally, defense counsel filed a memorandum in support of the order to show cause, arguing plaintiff "accepted full rent paid on the tenant's behalf for the following month[s] of June" and July, 2015, despite the effective date of the "Notice of Termination," listed as May 31. Defendant argued this "acceptance of payment" "effectively created a new tenancy," which was not terminated.

Following the August 20, 2015 motion hearing, the motion judge denied defendant's motion for reconsideration. Plaintiff thereafter locked defendant from the apartment. Defendant filed this appeal.

Before this court, defendant moved for emergent relief to seek restoration of possession. The motion was denied. Plaintiff moved to supplement the record, which we granted on May 24, 2016. See R. 2:5-5. The supplemental record includes the certification of La Niece S. Lewis, the property manager of plaintiff's apartment complex, relating a fire destroyed the unit formerly occupied by defendant. Based on these facts, plaintiff sought to dismiss the appeal, which we denied.

Lewis also explained the circumstances surrounding plaintiff's receipt of HUD funds following defendant's eviction. She certified HUD electronically sends a lump sum transfer of funds on behalf of all residents in the complex whose rent is subsidized each month. While HUD paid the rental amount attributed to defendant's unit after the notice to terminate was issued, the funds were never accepted or applied by plaintiff, but were "reversed and transferred back to HUD."

In our review of an order following a bench trial, we defer to a trial judge's factual findings, if "supported by adequate, substantial and credible evidence." Rova Farms Resort, Inc. v.

Investors Ins. Co. of Am., 65 N.J. 474, 484 (1974). "[W]e do not disturb the factual findings and legal conclusions of the trial judge unless we are convinced that they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice." Seidman v. Clifton Sav. Bank, S.L.A., 205 N.J. 150, 169 (2011) (quoting In re trust Created By Agreement Dated December 20, 1961, ex rel. Johnson, 194 N.J. 276, 284 (2008)). Further, "particular deference," attaches to credibility determinations, RAB Performance Recov., LLC v. George, 419 N.J. Super. 81, 86 (App. Div. 2011), as the trial judge is in the best position to observe the witnesses and hear them testify; Cesare v. Cesare, 154 N.J. 394, 412 (1998).

Initially we address plaintiff's argument the appeal is moot because defendant's unit was destroyed by fire. We reject the argument.

> Ordinarily, where a tenant no longer resides in the property, an appeal challenging the propriety of an eviction is moot. See Ctr. Ave. Realty, Inc. v. Smith, 264 N.J. Super. 344, 347 (App. Div. 1993). Here, however, the eviction carries residual legal consequences potentially adverse to defendant. That is, a tenant's federal subsidy may be revoked if that tenant "has been evicted from federally assisted housing in the last five years." 24 C.F.R. 982.552(c)(ii).

> [Sudersan v. Royal, 386 N.J. Super. 246, 251 (App. Div. 2005).]

Because defendant remains exposed to additional diverse consequences, we decline to dismiss the appeal as moot. Ibid.

We turn to defendant's assertion the judgment must be vacated because plaintiff failed to prove a violation of the lease. Defendant argues plaintiff's evidence showed only that Brandt and White viewed Dea in the vicinity of defendant's apartment "coming and going," which insufficiently proves she resided in the unit. Further, she argues plaintiff's failure to produce a copy of Dea's alleged driver's license using defendant's address should defeat the assertion. We are not persuaded.

The trial judge found Brandt and White's testimony credible regarding seeing Dea consistently entering and exiting defendant's apartment over an extended period. In contrast, the judge found defendant's testimony "completely not credible," as it was replete with inconsistencies and contradictions. We decline to disturb the trial judge's credibility findings, which are well supported by the record. Zaman v. Felton, 219 N.J. 199, 215-16 (2014).

Additionally, the judge found Dea presented a driver's license to Brandt, which listed defendant's address as her own. Although defendant testified this was untrue, her added statements that Dea used her sister's Blackwood address, lived in Camden, and

did not have a driver's license, were contradictions causing the judge to reject defendant's testimony entirely, finding her not truthful. We accept the trial judge's conclusion, giving deference "to the trial court's factual findings . . . 'supported by adequate, substantial and credible evidence.'" Toll Bros., Inc. v. Twp. of W. Windsor, 173 N.J. 502, 549 (2002) (quoting Rova Farms, supra, 65 N.J. at 484).

Defendant also argues the motion judge erred in denying reconsideration. Plaintiff argues reconsideration was warranted because Dea certified, stating she lived in Camden and not with defendant. Further, plaintiff "accepted rent payments made on [defendant]'s behalf" for the months of June, July and August 2015, "after the termination of the tenancy[,]" thereby voiding the judgment of possession and establishing a new tenancy, which was never terminated. These arguments are rejected.

Reconsideration is a matter within the sound discretion of the trial court. Capital Fin. Co. of Del. Valley, Inc. v. Asterbadi, 398 N.J. Super. 299, 310 (App. Div.), certif. denied, 195 N.J. 521 (2008).

As provided by Rule 4:49-2, a motion for reconsideration is only granted under certain narrow circumstances, "in which either (1) the [c]ourt has expressed its decision based upon a palpably incorrect or irrational basis, or (2) it is obvious that the

[c]ourt either did not consider, or failed to appreciate the significance of probative, competent evidence." Fusco v. Bd. of Educ. of City of Newark, 349 N.J. Super. 455, 462 (App. Div.) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)), certif. denied, 174 N.J. 544 (2002). Neither circumstance is present here.

Defendant's claim regarding Dea's residence was considered at trial. Dea did not testify and defendant relied on her own testimony regarding this issue. The certifications attached to her motion do not provide newly discovered information, which was unavailable at the time of trial. Consequently, we determine no abuse of discretion is shown by the motion judge's denial of reconsideration on this issue.

Defendant also asserts plaintiff accepted rent payments after notice to vacate was issued. She incorrectly contends the law mandates acceptance of rents after issuance of a notice to quit voids the judgment of possession.

This argument misses the mark. N.J.S.A. 2A:18-61.1 lists several "grounds for removal of tenants," including, subsection (a), for failure to pay rent. However, plaintiff's June 11, 2015 complaint did not allege defendant failed to pay rent. Rather, plaintiff alleged defendant violated her lease by hosting an unauthorized occupant, Dea. Defendant's violation of the lease

was itself a separate ground for removal under N.J.S.A. 2A:18-61.1(d). HUD's continued payment of rent on defendant's behalf, the precise timing of which we express no opinion on, has no effect on plaintiff's valid judgment of possession, obtained under N.J.S.A. 2A:18-61.1(d). See Hous. and Redev. Auth. of Franklin v. Mayo, 390 N.J. Super. 425, 432-34 ("Unlike [non-payment of] rent, however, which can be cured retroactively, not all cases for eviction can be completely cured"). A tenant's continued compliance with another condition of the tenancy is immaterial, once a landlord has obtained a valid judgment for possession based on one of the enumerated statutory grounds of N.J.S.A. 2A:18-61.1. Cf. Mayo, supra, 390 N.J. Super. at 434 ("[T]herefore, the question [is] whether the late vacation of the premises by the unauthorized persons constituted an adequate cure of this particular breach.").

Defendant characterizes the issue as one of waiver, asserting plaintiff accepted payment of rent from HUD on behalf of defendant, which voided plaintiff's judgment for possession by establishing a new tenancy. As we have noted, we disagree the issue of payment of rent is material to plaintiff's right to seek eviction. Nevertheless, waiver requires "the intentional relinquishment of a known right." Jasontown Apartments v. Lynch, 155 N.J. Super. 254, 262 (App Div. 1978) (citation omitted). In Jasontown, "[a] landlord's acceptance of a tenant's admitted liability for use and

occupancy" is rent and "should not result, as a matter of law, in loss of the right to seek dispossession." Id. at 261-62. In this matter, plaintiff proffered a certification from its property manager stating plaintiff received a bulk transfer of funds from HUD for rent for residents in the complex, but that defendant's share of the bulk payment, for the time after the judgment of possession was entered. However, before defendant vacated the premises, the funds were returned to HUD. Plaintiff's receipt of the bulk transfer would not constitute a waiver and establish a new tenancy requiring a new judgment of possession. Id. at 262.

Here, even assuming plaintiff accepted HUD payments on defendant's behalf, there was no evidence of intent by plaintiff to waive its right to seek dispossession as alleged in its complaint. Further, the record establishes monies issued by HUD were combined with rent from all units. Therefore, acceptance of the bulk electronic transfer in and of itself was not an agreement to waive its right regarding defendant's unit. Jasontown, supra, 155 N.J. Super. at 262. Finally, other than the HUD bulk transfer issued to plaintiff, defendant offered no evidence from which waiver could be established.

We find no error. We conclude reconsideration of the judgment of possession was properly denied.

Affirmed.