

IN THE SUPREME COURT

FOR THE STATE OF NORTH DAKOTA

IRET Properties,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	Supreme Court No.: 20170451
)	District Court No.: 53-2017-CV-01168
Cassidy Lee and All Other Occupants,)	
)	
Defendants and Appellees)	
)	
And)	
)	
Stephanie Lee,)	
)	
Defendant and Appellant.)	

APPEAL FROM THE DISTRICT COURT OF WILLIAMS COUNTY

NORTHWEST JUDICIAL DISTRICT

THE HONORABLE JOSHUA B. RUSTAD

BRIEF OF THE PLAINTIFF-APPELLEE

Jeff L. Nehring, ND ID #05410
Hernando Perez, ND ID # 08260
NEHRING LAW OFFICE, PLLC
716 2ND St W
WILLISTON, ND 58801
info@nehrlaw.com
701-577-5555
Attorneys for Plaintiff-Appellee

¶i TABLE OF CONTENTS

Table of Contents ¶ i

Table of Authorities ¶ ii

Statement of the Issues..... ¶ 1-3

Statement of the Case.....¶ 4

Statement of the Facts ¶ 5-7

Argument ¶ 8-15

Conclusion¶ 16

¶ii **TABLE OF AUTHORITIES**

CASES

Gasic v. Bosworth, 2014 ND 85, ¶ 7, 845 N.W.2d 306..... ¶9
Marsden v. Koop, 2010 ND 196, ¶8, 789 N.W. 2d 531 ¶8
Nelson v. Johnson, 2010 ND 23, 778 N.W.2d 773..... ¶8
Rosendahl v. Rosendahl, 470 N.W. 2d 230, 231 (N.D. 1991) ¶8
Schmitt v. Schmitt, 2014 ND 225, ¶ 5, 857 N.W.2d 362 ¶9, 10, 11
Wagner v. Miskin, 2003 ND 69, ¶ 9, 660 N.W.2d 593 ¶10

STATUTES

§ 47-32 passim

NORTH DAKOTA RULES OF APPELLATTE PROCEDURE

Rule 10(b) ¶10

NORTH DAKOTA RULES OF CIVIL PROCEDURE

Rule 52(a)(6)..... ¶8

STATEMENT OF THE ISSUES

- [¶1] A. Whether the IRET Properties properly performed all prerequisites under North Dakota Century Code, Chapter 47-32 in order to bring eviction action against Mrs. and Mr. Lee.
- [¶2] B. Whether the district court correctly found that Mrs. and Mr. Lee were in default of the lease agreement.
- [¶3] C. Whether the district court correctly ordered Mrs. and Mr. Lee to be evicted from the premises and award IRET Properties a monetary judgment in the amount of \$880 for reasonable attorney's fees and costs.

STATEMENT OF THE CASE

[¶4] IRET Properties is the owner of the real estate located at 4915 11th Avenue West, Apartment 511, Williston, North Dakota, and leased the property to Stephanie Lee and Cassidy Lee on or about July 19, 2017. On October 9, 2017 IRET Properties brought eviction action against Mrs. and Mr. Lee for lease violations and lack of timely rent payment. A hearing was held on October 19, 2017. On October 19, 2017 Mrs. Lee appeared in Court but Mr. Lee did not appear. The District Court, Williams County, Northwest Judicial District, Joshua B. Rustad, J., issued judgment of eviction and awarded IRET Properties a monetary judgment of \$880.00 against Mrs. and Mr. Lee for reasonable attorney's fees and costs for bringing the eviction action. Mrs. Lee appealed.

STATEMENT OF THE FACTS

[¶5] IRET Properties is the owner of the real estate located at 4915 11th Avenue West, Apartment 511, Williston, North Dakota, and leased the property to Stephanie Lee and Cassidy Lee on or about July 19, 2017. (App. 16) The terms of the lease agreement required Mr. and Mrs. Lee to pay IRET Properties rent in the amount of \$1,050.00 plus an additional \$5.00 for monthly trash fee with payment due on the first day of each month. (App. 10 at ¶ 1) Also pursuant to the terms of the lease agreement, if payment was not made by the 5th of each month, a \$50.00 late fee would be assessed. (App. 11 at ¶ 6)

[¶6] The terms of the lease agreement indicate that no animals are allowed, even temporarily, anywhere in the apartment or otherwise at the property without Landlord's prior written consent. (App. 12 at ¶ 17) If tenant allows an animal into the apartment without Landlord's prior written consent, then tenant will be in default of the lease and will be subject to possible eviction. *Id.* The lease agreement indicates that the tenant shall be in default under the lease if tenant does not pay rent or other amounts owed under the lease on time. (App. 13 at ¶ 25) The terms the lease agreement allows IRET properties to recover reasonable attorney's fees an eviction action. (App. 14 at ¶ 26(f))

[¶7] Mrs. And Mr. Lee did not pay rent on time for the months of August and October 2017. Mrs. and Mr. Lee failed to receive prior consent from IRET Properties, in order to move dogs in the apartment. Mrs. and Mr. Lee failed to pay pet deposit and pay rent for the unauthorized dogs living in the apartment. IRET Properties posted a 3-day notice of intention to evict to the front door of the apartment unit being rented by Mrs. And Mr., Lee on September 18, 2017. (App. 20) Mrs. And Mr. Lee did not move out of the apartment and IRET Properties brought an

eviction action against Mrs. and Mr. Lee in the Williams County Courthouse by filing a complaint on October 9, 2017 with the Williams County clerk of court. (App. 7) At the time the Complaint was filed and served, Mrs. and Mr. Lee were past due in the amount of \$1,242.63 in rent and late fees for the month October and past due monies from previous months. IRET Property cause a copy of the Summons and Complaint to be serve by mail to Mrs. and Mr. Lee and also cause service by posting a copy of the Summons, Complaint and Exhibits 1-3, to the front door of Mr. and Mrs. Lee apartment unit between the hour of 5:00 and 10:00 p.m. as required by N.D.C.C. § 47-32-02. (App. 23, 24, 25 and 26) A hearing was held on October 19, 2017, the District Court received evidence and testimony. The District Court Judge, Joshua B. Rustad found Mrs. and Mr. Lee in default of the lease and ordered Mr. and Mrs. Lee to evict the premises and awarded a monetary judgment in favor of IRET Properties against Mrs. and MR. Lee for reasonable attorney's fees and costs. (App. 28 and 31).

ARGUMENT

1. IRET Properties properly performed all prerequisites under North Dakota Century Code, Chapter 47-32 in order to bring eviction action against Mrs. and Mr. Lee.

[¶8] This Court has held that on appeal the party challenging the findings of fact of a trial court has the burden of demonstrating that those findings are clearly erroneous. Rosendahl v. Rosendahl, 470 N.W.2d 230, 231 (N.D. 1991) see N.D.R.Civ.P. 52(a)(6). A finding of fact is clearly erroneous only if it is induced by an erroneous view of the law or, although there is some evidence to support it, on the entire record we are left with a definite and firm conviction a mistake has been made. Marsden v. Koop, 2010 ND 196, ¶8, 789 N.W. 2d 531. This court has stated that “A district court's choice between two permissible views of the weight of the evidence is not clearly erroneous, and simply because we may have viewed the evidence differently does not entitle us to reverse the district court. On appeal, we do not reweigh conflicts in the evidence, and we give due regard to the district court's opportunity to judge the credibility of the witnesses.” Nelson v. Johnson, 2010 ND 23, ¶ 31, 778 N.W.2d 773.

[¶9] An eviction to recover possession of land may be maintained when a lessee holds over after a lease termination or expiration of the lessee's term or fails to pay rent for three days after the rent is due. Gasic v. Bosworth, 2014 ND 85, ¶ 7, 845 N.W.2d 306. Actions for eviction are governed under N.D.C.C. ch. 47–32. As this court has explained:

Section 47–32–02, N.D.C.C., provides for an expedited procedure, with the defendant allowed between three and fifteen days to appear and defend in the action. If the court finds for the plaintiff, the court must enter judgment granting immediate restitution of the premises to the plaintiff, but the court may delay execution in case of hardship for a reasonable period not exceeding five days. N.D.C.C. § 47–32–04. The statute strictly limits the parties' ability to combine the eviction with other claims and precludes the defendant from interposing *365 a counterclaim, except as a setoff to the plaintiff's claim for damages, rent, or profits. N.D.C.C. § 47–32–04. The proceeding is limited to a speedy

determination of the right to possession of the property, without bringing in extraneous matters. The purpose of the statute is to provide an inexpensive, expeditious, and simple means to determine possession. Schmitt v. Schmitt, 2014 ND 225, ¶ 5, 857 N.W.2d 362.

[¶10] Under N.D.R.App.P. 10(b), the appellant must file with this Court the transcript of any evidentiary hearing held in the matter. “An appellant assumes the consequences and the risk for failing to file a proper transcript.” Schmitt, 2014 ND 225, ¶ 7, 857 N.W.2d 362. This principle applies equally to self-represented litigants. Wagner v. Miskin, 2003 ND 69, ¶ 9, 660 N.W.2d 593. If the record on appeal does not allow for a meaningful and intelligent review of alleged error, we will decline review of the issue. Id. The “[f]ailure to provide a transcript may prevent a party from being successful on appeal.” Id.

[¶11] In our instant case Mrs. Lee did not file a transcript of the district court’s evidentiary hearing. Accordingly, the Court should only look to the record in reviewing the district court’s findings. Schmitt, 2014 ND 225, ¶ 7, 857 N.W.2d 362. In regard to Mrs. Lee’s argument that IRET Properties did not submit proper evidence to support N.D.C.C. § 47-32-04 and that action was unlawfully brought upon the courts, the District Court found that it had jurisdiction over the parties and subject matter of the action. (App. 29 at ¶ 7) The District also found that the action has been properly brought under the provisions of the eviction section of the N.D.C.C. Chapter 47-32, and that IRET Properties had performed all prerequisites for relief pursuant to North Dakota Law. Id. at ¶8 and 9. A district court’s findings of fact are presumed to be correct, and the Court reviews the evidence in the light most favorable to the findings. Schmitt, 2014 ND 225, ¶ 7, 857 N.W.2d 362. Without a transcript or other evidence to refute the findings, the Court cannot conclude the district court’s findings, regarding IRET Properties properly performing all prerequisites under North Dakota Century Code, Chapter 47-32 in order to bring eviction action against Mrs. and Mr. Lee, is clearly erroneous.

[¶12] IRET Properties under N.D.C.C. § 47-32-04 is required to give notice to Mrs. Lee and Mr. Lee of an intent to evict them from the property. IRET Properties provided notice to Mrs. Lee and Mr. Lee. (App. 20) IRET Properties also served Mrs. Lee and Mr. Lee with a copy of the Summons and Complaint as well as exhibits. (App. 21, 23, and 24) The District Court had jurisdiction over the matter and parties because the property is in Williston, ND and both Mrs. and Mr. Lee reside in Williston, ND. (App. 10)

2. The district court correctly found that Mrs. and Mr. Lee were in default of the lease agreement.

[¶13] The terms of the lease agreement signed by both Mrs. Lee and Mr. Lee indicated that a tenant shall be in default under the lease if tenant does not pay rent or other amounts owed under the lease on time. (App. 13 at ¶ 25) Mrs. Lee and Mr. Lee were required to pay rent on the first day of each month. Mrs. and Mr. Lee owed IRET Properties rent for the month of October. IRET Properties filed a complaint with the District Court on October 9, 2017, after giving notice to Mrs. and Mr. Lee of their intention to evict. (App. 7) Mrs. and Mr. Lee did not pay rent to IRET Properties until October 12, 2017. (App. 27) Under the terms of the lease agreement IRET Properties had the option to terminate the right of possession, terminate the lease, accelerate the remaining rent, or charge Mrs. and Mr. Lee a re-rental fee. (App. 14 at ¶ 26) The lease also states that “Landlord’s acceptance of full or partial Rent from Tenant (or from any third party) during the continuance of any breach or default by Tenant under this Lease (a) shall not constitute Landlord’s waiver of any such breach or default, and (b) shall not constitute Landlord’s waiver of Landlord’s right to recover possession of the Apartment for non-payment by Tenant of the balance of Rent owed by Tenant to Landlord.” (App. 14 at ¶ 27)

[¶14] After Mrs. and Mr. Lee defaulted the lease by not paying timely rent IRET Properties decided to proceed with eviction process. After filing the complaint and before the hearing Mrs.

and Mr. Lee paid the rent owed to IRET Properties online. Even after receiving payment, IRET Properties, had the option to continue through with the eviction process under the terms of the lease agreement. Because Mrs. Lee is not refuting that rent was paid late and Mr. Lee not appealing, the District court correctly found that Mrs. and Mr. Lee were in default under the lease. (App. 28)

3. The district court correctly ordered Mrs. and Mr. Lee to be evicted from the premises and award IRET Properties a monetary judgment in the amount of \$880 for reasonable attorney's fees and costs.

[¶15] Once the District Court found Mrs. Lee and Mr. Lee were in default of the lease agreement for failing to pay timely rent. Under N.D.C.C. 47-32-04 if the District Court finds for the plaintiff in the action, the court shall enter judgment that the plaintiff have immediate restitution of the premises. Upon a showing by the defendant that immediate restitution of the premises would work a substantial hardship on the defendant or the defendant's family, except in cases in which the eviction judgment is based in whole or in part on a disturbance of the peace, the court may stay the special execution for a reasonable period, not to exceed five days. The lease agreement that Mrs. Lee and Mr. Lee signed allows IRET Properties to recover all reasonable attorney's fees litigation cost and other costs and expenses incurred by IRET Properties in enforcing any of IRET Properties' rights or remedies under the lease. (App. 14 at ¶ 26(f)). The district court correctly ordered Mrs. and Mr. Lee to be evicted from the premises and award IRET Properties a monetary judgment in the amount of \$880 for reasonable attorney's fees and costs.

CONCLUSION

[¶16] Based on the foregoing, IRET Properties respectfully requests this Court affirm the decision of the District Court, as IRET Properties properly performed all prerequisites under

North Dakota Century Code, Chapter 47-32, the district court properly found Mrs. and Mr. Lee in default of the lease agreement, and the district court properly ordered Mrs. and Mr. Lee to evict the premises and awarded IRET Properties a monetary judgment in the amount of \$880.00 for reasonable attorney's fees and costs.

DATED this 12th day of March, 2018.

NEHRING LAW OFFICE, PLLC
ATTORNEYS FOR DEFENDANT-APPELLEE
716 2ND ST W
WILLISTON, ND 58801

/s/ Hernando Perez
Jeff L. Nehring, ND ID #05410
Hernando Perez, ND ID # 08260
info@nehrlaw.com
<mailto:info@nehrlaw.com>
701-577-5555

IN THE SUPREME COURT
FOR THE STATE OF NORTH DAKOTA

IRET Properties,)	
)	
Plaintiff and Appellee,)	
)	
vs.)	Supreme Court No.: 20170451
)	District Court No.: 53-2017-CV-01168
Cassidy Lee and All Other Occupants,)	
)	
Defendants and Appellees)	
)	
And)	
)	
Stephanie Lee,)	
)	
Defendant and Appellant.)	

APPEAL FROM THE DISTRICT COURT OF WILLIAMS COUNTY
NORTHWEST JUDICIAL DISTRICT
THE HONORABLE JOSHUA B. RUSTAD

CERTIFICATE OF SERVICE

[1] I hereby certify that a true and correct copy of the **Appellee's Brief and Appellee's Appendix** was served electronically on March 12, 2018, to the following:

Stephanie Lee at guccimagoo.sl@gmail.com
Williston, ND 58801

[2] I hereby certify that a true and correct copy the **Appellee's Brief and Appellee's Appendix** was served on March 12, 2018 by placing true and correct copies of the same in envelopes addressed as follows:

Cassidy Lee
4915 11th Avenue West
Apt. 511
Williston, ND 58801
Last Known Address

Dated this 12th day of March, 2018.

/s/Hernando Perez
Jeff L. Nehring, ND ID #05410
Hernando Perez, ND ID # 08260
NEHRING LAW OFFICE, PLLC
716 2ND ST W
WILLISTON, ND 58801
info@nehrlaw.com
701-577-5555
Attorneys for Plaintiff-Appellee