

A12-2274

STATE OF MINNESOTA
IN COURT OF APPEALS

Paul J. Koski,

Respondent,

vs.

Sharon A. Johnson,

Appellant.

RESPONDENT'S BRIEF

Sharon A. Johnson
16151 Keystone Court
Lakeville, MN 55044
952-898-2683

Pro Se Appellant

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TABLE OF CONTENTS

	<u>Page</u>
LEGAL ISSUES.....	1
STATEMENT OF THE CASE.....	2
STATEMENT OF THE FACTS	3
ARGUMENT	6
I. APPELLANT WAS PROPERLY SERVED WITH THE EVICTION COMPLAINT PURSUANT TO MINN. GEN. R. PRAC. 604(c)	6
II. APPELLANT ILLEGALLY HELD OVER AFTER RECEIVING PROPER NOTICE TO TERMINATE TENANCY.....	8
III. RESPONDENT DID NOT TERMINATE APPELLANT’S TENANCY IN RETALIATION FOR REQUESTING REPAIRS OR ENDING THE ROMANTIC RELATIONSHIP	10
CONCLUSION	13

TABLE OF AUTHORITIES

Minnesota Statutes

Minn. Stat. § 504B.135(a) 1,8
Minn. Stat. § 504B.285, Subd. 2 1,10

Minnesota Rules

Minn. R. Civ. P. 52.01 6
Minn. Gen. R. Prac. 601 6
Minn. Gen. R. Prac. 604(c)..... 1,5,6,8

Minnesota Cases

City of Minnetonka v. Carlson, 298 N.W.2d 763, 766 (Minn.1980) 8,10
Fletcher v. St. Paul Pioneer Press, 589 N.W.2d 96, 101 (Minn.1999) 6,8,10
Larson v. Hendrickson, 394 N.W.2d 524 (Minn.App.1986) 1,7
Minnesota Mining and Manufacturing v. Kirkevold, 87 F.R.D. 317
(D.Minn.1980)..... 1,7
Parkin v. Fitzgerald, 240 N.W.2d 828 (Minn.1976)..... 1,10
Patterson v. Wu Family Corp., 608 N.W.2d 863, 868 (Minn.2000)..... 6
Roehrdanz v. Brill, 682 N.W.2d 626, 629 (Minn.2004) 6
Shamrock Development, Inc. v. Smith, 754 N.W.2d 377, 382 (Minn.2008)..... 6
Wear v. Buffalo-Red River Watershed Dist., 621 N.W.2d 811, 815
(Minn.App.2001)..... 8

LEGAL ISSUES

- I. Did the District Court err in denying Appellant's motion to dismiss by finding that she was properly served where the notice to terminate tenancy was not attached to the complaint but was delivered at the initial appearance pursuant to Minn. Gen. R. Prac. 604(c)?**

Result Below: The District Court correctly held that Appellant was properly served when the notice to terminate tenancy was delivered at the initial appearance pursuant to Minn. Gen. R. Prac. 604(c).

This issue was raised at District Court by pretrial motion.

Most Apposite Authority:

Minn. Gen. R. Prac. § 604 (c)

Larson v. Hendrickson, 394 N.W.2d 524 (Minn.App.1986)

Minnesota Mining and Manufacturing v. Kirkevold, 87 F.R.D. 317
(D.Minn.1980)

- II. Did the District Court err in finding that Appellant illegally held over after receiving proper and timely notice to terminate tenancy?**

Result Below: The District Court correctly held that Appellant illegally held over after receiving proper and timely notice to terminate tenancy.

This issue was raised at District Court at trial.

Most Apposite Authority:

Minn. Stat. § 504B.135 (a)

- III. Did the District Court err in finding that Respondent had legitimate and non-retaliatory reasons for terminating Appellant's tenancy?**

Result Below: The District Court correctly held that Respondent had legitimate and non-retaliatory reasons to terminate Appellant's tenancy.

This issue was raised at District Court at trial.

Most Apposite Authority:

Minn. Stat. § 504B.285, Subd. 2

Parkin v. Fitzgerald, 240 N.W.2d 828 (Minn.1976)

STATEMENT OF THE CASE

This case arises from an eviction action complaint filed in the Fourth Judicial District, Hennepin County Housing Court, by Respondent on October 1, 2012 pursuant to Minn. Stat. 504B.321 (2007). The Respondent timely served and filed summons and complaint upon Appellant. On October 15, 2012 the matter was removed to district court upon Appellant's demand for a district court judge and a jury trial. The matter came before the Honorable William R. Howard on October 25, 2012 at which time Appellant waived trial by jury.

Prior to commencement of trial Appellant moved to dismiss the action for improper service of the complaint. Appellant's motion to dismiss was heard by the court and denied.

Proceedings commenced and then continued on October 30, 2012. They were concluded on November 15, 2012. On December 14, 2012 the Court filed its Findings of Fact, Conclusions of Law, Order & Judgment. The court found that (a) the notice to terminate tenancy provided to Appellant was proper and met the statutory requirements, (b) Respondent had legitimate reasons to terminate the tenancy of Appellant and therefore the eviction was not retaliatory, and (c) Appellant was properly served with the complaint.

Appellant filed a Notice of Appeal on December 18, 2012.

STATEMENT OF FACTS

Respondent Paul Koski owns the premises at _____, Eden Prairie, MN 55347, in the County of Hennepin. (Transcript / October 25, p. 26) He constructed the single family home which is located there himself, in its entirety, between approximately 1981 and 1983. (*Id.*) He leased the home to Appellant on or about January 1, 1996 by a written lease agreement. (*Id.* at 27) The original lease agreement ran from January 1, 1996 for either one or two years. (*Id.*)

Appellant lived in the home continuously for approximately seventeen (17) years during which time the lease term was renewed in writing on more than one occasion. (*Id.* at 27) By the spring of 2012, Appellant's tenancy in the property was based on a private month-to-month lease with rent due payable in the amount of \$900.00 on the first day of the month. (*Id.* at 32-34; Appellant's App. A1 – p. 1)

Throughout the time that Appellant lived in the home she had some difficult relationships with certain neighbors. (*Id.* at 37, 80) This resulted in Appellant hanging various tarps and signs on or near the border of the property facing the neighbors' homes. (*Id.* at 57-59) She also had some verbal confrontations, both in person and via telephone messages, which disturbed the neighbors and their children. (*Id.* at 80-82, 86)

In early 2012 Respondent returned from an assignment in Iraq with the United States military. At that time Respondent and Appellant were involved in a consensual romantic relationship that had begun years earlier. (*Id.* at 33) At no time did the

relationship between Respondent and Appellant involve anything other than consensual and voluntary relations. (*Id.* at 34)

On April 15, 2012, Appellant ended the romantic relationship with Respondent. (*Id.* at 118-119) Shortly thereafter Respondent decided to retake possession of the property and terminate the lease. (*Id.* at 34) He did this because of his desire to make certain previously planned improvements to the property. (*Id.* at 56) Additionally, he was concerned about the difficulties the neighbors were having with Appellant and he needed a place to live other than Fort McCoy. (*Id.* at 57-58)

Respondent properly delivered a notice to terminate tenancy to Appellant on Friday June 8, 2012. (*Id.* at 41; Transcript / October 30, p. 7) The notice instructed Appellant to vacate the premises no later than August 1, 2012. (Transcript / October 25, p. 45; Trial Ex. 2) Respondent purposely delivered the notice to terminate tenancy early in the month due to some family issues Appellant was experiencing and so that it would have the effect of giving her nearly two full rental periods to vacate the premises. (*Id.*)

Appellant failed to vacate the premises by August 1, 2012 and, at the conclusion of the trial in this matter, she remained living at the property against Respondent's will. (Transcript / November 15, p. 26) At one point in a discussion with Respondent, Appellant told him it would require a judge to get her out of the property. (Transcript / October 25, p. 48) At trial, Appellant testified that she doesn't believe there is any reason for her not to be there. (Transcript / October 30, p. 7) Upon Appellant's failure to vacate Respondent sought the help of the court and commenced the unlawful detainer action.

Service was properly effectuated on Appellant by the Hennepin County Sheriff's Office pursuant to the Rules. (Transcript / October 25, p. 10-12)

Respondent did not attach a copy of the notice to terminate tenancy to his complaint, but instead provided Appellant with a copy at the October 15, 2012 initial appearance in this matter, pursuant to Minn. R. Gen. Prac. 604(c). (Appellant's App. A2 – p. 3) Appellant acknowledged receipt of the same on the record at that time. (*Id.*)

After receiving the notice to terminate, Appellant continued to pay rent to Respondent by direct deposit into his bank account in the amount of \$900 per month. (Transcript / October 25, p. 46-47) Respondent did not accept the rent payments from Appellant, but instead has either deposited them with his counsel (August, September and October 2012 payments) or retained them in his bank account (November 2012 payment) until this matter could be concluded. (*Id.*)

ARGUMENT

I. APPELLANT WAS PROPERLY SERVED WITH THE EVICTION COMPLAINT PURSUANT TO MINN. GEN. R. PRAC. 604(c).

Whether service of process was effective and personal jurisdiction therefore exists, “is a question of law that we review de novo.” *Shamrock Development, Inc. v. Smith*, 754 N.W.2d 377, 382 (Minn.2008); *Roehrdanz v. Brill*, 682 N.W.2d 626, 629 (Minn.2004); *Patterson v. Wu Family Corp.*, 608 N.W.2d 863, 868 (Minn.2000). In conducting the review, the appellate court must apply the facts as found by the district court unless those factual findings are clearly erroneous. Minn. R. Civ. P. 52.01; *see also Fletcher v. St. Paul Pioneer Press*, 589 N.W.2d 96, 101 (Minn.1999)(“On appeal, a trial court’s findings of fact are given great deference, and shall not be set aside unless clearly erroneous.”). Clearly erroneous means “manifestly contrary to the weight of the evidence or not reasonably supported by the evidence as a whole.” *Northern States Power Co. v. Lyon Food Prod., Inc.*, 304 Minn. 196, 201, 229 N.W.2d 521, 524 (1975).

In Hennepin County housing matters, such as the instant case, Rules 601 through 612 of the Minnesota Rules of General Practice apply to all proceedings. Minn. Gen. R. Prac. 601.

Minn. Gen. R. Prac. 604(c) states as follows:

Termination. If the complaint contains allegations of holding over after termination of the lease, a copy of the termination notice, if any, must be attached to the complaint *or provided to defendant or defendant’s counsel at the initial appearance*, unless the plaintiff does not possess a copy of the notice or if the defendant at the hearing acknowledges receipt of the notice. (Emphasis added).

The complaint filed in district court alleges that Appellant improperly and illegally held over after being given notice of the termination of her lease. Minn. Gen. R. Prac. 604(c), therefore, clearly applies. Appellant claims she was not properly served with the eviction action complaint because the notice to terminate tenancy was not attached to it when filed. The rule, however, specifically provides an alternative means by which to ensure the tenant is provided a copy of the termination notice. It is undisputed that Respondent used this alternative in the present case. On the record at the October 15, 2012 initial appearance, before Hennepin County Housing Court Referee Hutchison, Appellant was provided a copy of the termination notice and acknowledged receipt thereof. Consequently, service was properly made.

However, even if all of the requirements of Minn. R. Gen. Prac. 604(c) had not been met, Appellant received actual notice of the matter thereby giving the district court proper jurisdiction over her. In the past this court has held that when actual notice of an action is received by the intended tenant recipient, “the rules governing such service should be liberally construed.” *Larson v. Hendrickson*, 394 N.W.2d 524, 525 (Minn.App.1986); *Minnesota Mining and Manufacturing v. Kirkevold*, 87 F.R.D. 317, 323 (D.Minn.1980). In *Larson* this court found that, where a tenant who claimed improper substitute service of process had actual notice of the matter, personal jurisdiction existed. *Larson* at 525. In outlining its reasoning, the *Larson* court noted that there was no apparent significant problem resulting from service of process since the tenant promptly forwarded it to his lawyer. *Id.* Similarly, in the instant case Appellant

received process and appeared precisely as directed by the summons at both the initial appearance and the trial.

Accordingly, the district court established personal jurisdiction over Appellant when she was properly served with the eviction action complaint pursuant to Minn. Gen. R. Prac. 604(c) and when she received actual notice of the proceedings. The record in the lower court wholly supports such a finding.

II. APPELLANT ILLEGALLY HELD OVER AFTER RECEIVING PROPER NOTICE TO TERMINATE THE TENANCY.

On appeal, a trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. *Fletcher*, 589 N.W.2d at 101. Under the clearly erroneous standard of review, the district court's findings will not be set aside unless, after reviewing the entire record, the appellate court is left with the "firm and definite conviction that a mistake has been made." *City of Minnetonka v. Carlson*, 298 N.W.2d 763, 766 (Minn.1980). "A clearly erroneous finding is one that is palpably and manifestly against the weight of the evidence." *Wear v. Buffalo-Red River Watershed Dist.*, 621 N.W.2d 811, 815 (Minn.App.2001), *review denied* (Minn. May 15, 2001).

In the present case it is undisputed that Appellant had a month-to-month lease, or tenancy at will, in June of 2012 when Respondent delivered notice to terminate.¹ Rent was due on the first day of each month in the amount of \$900.

Minn. Stat. § 504B.135 (a) states, in pertinent part:

¹ Appellant admits the lease was month-to-month but claims she was entitled to sixty (60) days notice. (Appellant's App. A1 – p. 1; Transcript / October 30, p. 32)

A tenancy at will may be terminated by either party by giving notice in writing. The time of the notice must be at least as long as the interval between the time rent is due or three months, whichever is less.

Respondent provided written notice by leaving three copies in conspicuous places at the property. Respondent and Appellant, at trial, each offered photographs of those notices. Moreover, the testimony from both Respondent and Appellant at trial was that the notices were delivered and received on June 8, 2012. The notice was received into evidence without objection at trial informed Appellant that she was to vacate the premises by stating, in pertinent part: "Notice is hereby given that you are required to move from and deliver up possession of the above-referenced premises no later than August 1, 2012."

The notice delivered to and received by Appellant provided nearly two full terms. The lower court correctly found that because both parties acknowledged that the lease was month-to-month and the notice was delivered and received on June 8, 2012, proper notice was provided.

Appellant also argues that the notice to terminate tenancy is void because Respondent accepted rent in August, September, October and November of 2012. The record clearly demonstrates, however, that Respondent did not accept rent for those months. Specifically, the record demonstrates that Respondent received a direct deposit from Appellant in the amount of \$900 for the August 2012 rent and immediately returned the same to her. When Appellant re-deposited the August rent into Respondent's account, he deposited those funds with his counsel until the matter could be resolved by the Hennepin County Housing Court. He followed the same procedure for rents paid in

September and October of 2012. Similarly, rent paid by Appellant in November of 2012 was retained until the matter could be concluded. At both the October 15, 2012 initial appearance and the subsequent trial, the Hennepin County judicial officers affirmed this procedure and directed Respondent to continue doing so until the conclusion of the matter.

The record wholly supports the trial court's findings. Accordingly, its ruling cannot be deemed clearly erroneous and Appellant's claims of improper service and waiver by acceptance of rent must fail.

III. RESPONDENT DID NOT TERMINATE APPELLANT'S TENANCY IN RETALIATION FOR REQUESTING REPAIRS OR ENDING THE ROMANTIC RELATIONSHIP.

As discussed above, a trial court's findings of fact are given great deference, and shall not be set aside unless clearly erroneous. *Fletcher*, 589 N.W.2d at 101. Under the clearly erroneous standard of review, the district court's findings will not be set aside unless, after reviewing the entire record, the appellate court is left with the "firm and definite conviction that a mistake has been made." *City of Minnetonka v. Carlson*, 298 N.W.2d at 766.

Minnesota law provides that it is a defense to the action of recovering the premises if "the alleged termination was intended in whole or part as a penalty for the defendant's good faith attempt to secure or enforce rights under a lease or contract." Minn. Stat. § 504B.285, Subd. 2.

Appellant argues that *Parkin v. Fitzgerald*, 240 N.W.2d 828 (Minn.1976) supports

her contention that Respondent retaliated against her when he terminated her tenancy. In that case, the Minnesota Supreme Court found a landlord retaliated against a tenant when he terminated the tenant's lease. The notice to quit was delivered after the tenant made multiple requests for repairs and secured a housing inspection that resulted in citations for eight housing code violations. In that case the landlord did not state reasons for terminating the tenancy, but it was inferred from the evidence that he did so for a rent check that was returned for insufficient funds but later paid, a late rent payment, and the tenant's ownership of a dog.

The *Parkin* court held that the landlord failed to carry his burden of showing substantial non-retaliatory purpose. *Id.* at 833. The court reasoned that the landlord was ultimately paid the rent from the check that was returned by the bank. Moreover, it found that the late payment had been submitted to the housing court after the notice to quit and that the landlord had previously acquiesced to the tenant's ownership of a dog.

In the instant case, the record contains extensive and credible testimony from Respondent as to his legitimate, non-retaliatory reasons for regaining possession of his property. Specifically, it shows that Respondent had concluded his overseas military assignments and planned substantial improvements to the property requiring intrusive and prolonged access to the property. In addition, Respondent wanted to end the increasing difficulties Appellant was having with the neighbors, including verbal altercations, property line disputes, and maintaining unsightly tarps hanging in trees.

In addition, the record is replete with evidence that Respondent had additional legitimate reasons to end the tenancy and in no way retaliated against Appellant. At trial

Appellant claimed Respondent retaliated, in part, due to her requests for repairs at the property. However, the record shows that Respondent regularly made repairs and improvements to the rental property during Appellant's tenancy. The evidence further proved that Respondent had no history of refusing to make repairs or increasing rent due to improvements. Extensive testimony was heard regarding Appellant's complaints about the well water at the property. However, as the district court noted, this request came well after the June 8, 2012 notice to terminate tenancy was delivered. The district court properly found that Respondent addressed the water complaint both by offering a neighbor's assistance in changing the filters and hiring Stodola Well to inspect the well itself. An invoice from Stodola Well was received in evidence which indicated no issues with the well.

Lastly, the district court properly found that Respondent, in addition to his other legitimate reasons to terminate the tenancy, simply wished to avoid the inherent awkwardness of renting his property to a former girlfriend.

The lower court found that Respondent's reasons were legitimate and, as such, did not support a finding of retaliation.

CONCLUSION

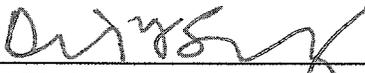
The district court correctly found that the eviction complaint was properly served on Appellant thereby establishing personal jurisdiction. The district court also correctly found that Appellant received proper and timely notice to terminate her tenancy. Lastly, the district court correctly found that Respondent's termination of Appellant's tenancy was not motivated, in whole or in part, by retaliation but was based on legitimate and substantial reasons established by the evidence.

Accordingly, Respondent respectfully requests that the district court's decision be affirmed.

Dated: 4/25/13

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with the word/line limitations of Minn. R. Civ. App. P. 132.01, subd. 3(a). The brief was prepared using Microsoft Word ® version 2010, which reports that the brief contains 3,373 words.

Dated: 4/25/13

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