

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

State of Minnesota, by
Stephen W. Cooper, Commissioner,
Department of Human Rights,

Complainant

FINDINGS OF FACT,
CONCLUSIONS OF LAW,
AND ORDER

vs.

James Senske and Cynthia Senske,
d/b/a Carman Terrace Mobile Home Park,

Respondents.

The above-entitled matter came on for hearing before Administrative Law Judge Peter C. Erickson at 9:00 a.m. on Thursday, March 21, 1991 at the Polk County Courthouse in the City of Crookston, Minnesota, The record remained open through April 26, 1991, when the last written Memorandum was filed.

Stephen L. Smith, Special Assistant Attorney General, 1100 Bremer Tower, Seventh Place and Minnesota Street, St. Paul Minnesota 55101, appeared on behalf of the Complainant. Kenneth F. Johannson, Esq., of the firm of Dickel, Johannson, Taylor and Rust, P.A., 407 North Broadway, P.O. Box 605, Crookston, Minnesota 56716, appeared representing the Respondents.

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case. Under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision may seek judicial review pursuant to Minn. Stat. 14.63 - 14.69.

STATEMENT OF ISSUE

The issue to be determined in this contested case proceeding is whether or not the Respondents unlawfully discriminated against the Charging Party,

Rosalia Villa, by evicting her or threatening to evict her from their mobile home park, and if so, what relief should be granted.

Based upon all the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondents own the Carman Terrace Mobile Home Park located at Crookston, Minnesota. (Tr. 156). During 1987 the park was managed by their daughter, Jayme Senske Baird, who also resided at the mobile home park. (Tr. 75-76).

2. Sometime prior to June of 1987, Reuben Gutierrez bought a mobile home from Adolph Sinkervich. The mobile home was located on Lot 12 of the Carman Terrace Mobile Home Park, where Mr. Sinkervich had resided since 1977. Mr. Sinkervich had signed a written rental agreement with the Respondents which provided, among other things, that the lessee shall take good care of the premises and keep and maintain the lot in a clean condition, free from debris. (Ex. A). The rental agreement also provided that Carman Terrace had the right to approve the purchaser of the mobile home if it was to remain at the park. However, this did not occur in the case of the sale from Mr. Sinkervich to Mr. Gutierrez.

3. In June of 1987 Mr. Gutierrez called Ms. Baird and advised her that he was the purchaser and that his daughter, Rosalia Villa, would be moving into the mobile home on Lot 12. (Tr. 113). Neither Mr. Gutierrez nor Ms. Villa were asked or required to sign a lease. They received no written rules for the mobile home park, however, Ms. Baird did advise Mr. Gutierrez orally of some of the rules. The rental for the lot in 1987 was \$75 per month. (Tr. 81, 83-84).

4. Ms. Villa first came to the Red River Valley in 1986 as a migrant worker in the sugar beet industry. (Tr. 28). She and her four children, ages 9, 4, 3 and a baby, moved into the trailer on Lot 12 in June of 1987. (Tr. 33, 38). She worked in the sugar beet fields during the summer of 1987 until approximately August. (Tr. 35).

5. When Ms. Villa moved into the mobile home, -a number (A' pieces of

furniture appeared in the yard. The furniture belonged to the prior owner, Mr. Sinkervich. (Tr. 90; Tr. 128; Tr. 138). Ms. Baird asked Ms. Villa to remove the furniture. It took Ms. Villa approximately one month before the furniture was removed from the lot. (Tr. 110, 139; Ex. B).

6. Ms. Villa hung clothing on the porch railing of the mobile home, and also on tree branches in the yard and on the furniture in the yard. (Tr. 11, 138, 129). A clothesline was provided for residents at the main building at the center of the park. The main building housed a laudromat. (Tr. 77).

7. During June of 1987, Ms. Villa and her boyfriend, Roger Zapata, bought a red pickup truck which needed the brakes fixed. They put the pickup truck up on wooden blocks next to the mobile home on Lot 12. (-Tr. 15; Tr. 41). While the vehicle was on blocks it was not level and appeared to be unstable. (Tr. 91-92).

8. Ms. Baird drove past Lot 12 every day on the way to her mobile home. Upon observing the pickup truck on blocks, his. Baird told Ms. Villa that the vehicle would have to be removed. Ms. Villa said that her boyfriend was getting parts for the truck and that it would be removed in a couple of days. (Tr. 93). Mr. Zapata had some difficulty getting the right parts. (Tr. 16). When the vehicle was not removed, Ms. Baird spoke to Ms. Villa

again several times about removing the vehicle. (Tr. 94)
. During one of their conversations Ms. Villa asked Ms. Baird if she was prejudiced. (Tr. 18; Tr. 95). Ms. Baird told her she wasn't but that Ms. Villa had to follow the same rules as all the other tenants. (Ex. B).

9. On July 7, 1987, after the vehicle had been there for two to three weeks, Ms. Baird again talked to Ms. Villa and told her that she had to comply with the rules and that she would be evicted if the truck was not removed. Ms. Villa told Ms. Baird that she hadn't signed anything so she didn't have to follow any rules. (Tr. 96). Several of Ms. Villa's relatives were in the mobile home listening to this conversation. (Tr. 20).

10. Ms. Baird then proceeded back to her mobile home and drew up an eviction notice for Ms. Villa. She returned to Ms. Villa's mobile home and served the notice upon her approximately ten minutes later. (Tr. 97). The notice, dated July 7, 1987, stated that "You have 30 days to vacate the premises of Carman Terrace." (Ex. 1).

11. Shortly thereafter, Ms. Baird was visited by a paralegal from Migrant Legal Services who told her that the eviction was not proper and that Ms. Villa should be given a set of rules and an opportunity to comply with them. (Tr. 97; Ex. B). Ms. Baird told the paralegal that if Ms. Villa followed the rules in the written lease, she could stay. (Tr. 98), Ms. Baird did not tell Ms. Villa directly that she could stay. (Tr. 44). Ms. Baird moved from the park at the end of July of 1987 and Ms. Villa left some time in August of 1987. Ms. Baird did not talk to Ms. Villa again after July 7, 1987. (Tr. 99-100).

12. Vern Gustafson has lived at Carman Terrace since March of 1987. During March of 1987 he had an automobile on his lot which had a flat tire and a broken windshield. (Tr. 122). The back end of the car was on blocks. (Tr. 124). Ms. Baird told Mr. Gustafson that he would have to have the vehicle

removed or that he might have to vacate the premises. (Tr. 117, 123). Mr. Gustafson agreed to remove the vehicle and did so after approximately 30 days. (Tr. 125).

13. Prior to and during 1987, two Hispanic families lived at the mobile home park and had been residents there for many years. (Tr. 86). It was also common for Hispanic migrant workers to reside at the mobile home park during the summers when they were working in the sugar beet industry. During the summer of 1987, three Hispanic migrant families resided at the mobile home park. (Tr. 44, 87). At the time of the hearing, four Hispanic families were residing at the mobile home park. (Tr. 89; Tr. 127).

14. Two unwritten rules which were enforced at the mobile home park were that residents had to keep their yards clean and that disabled vehicles had to be removed. (Tr. 151, 157). Mr. Senske had authorized managers to have vehicles towed if they were disabled and not removed and he had done so himself. (Tr. 151, 158). The reasons for the rules were that current and prospective residents were upset by messy yards especially because the trailers were quite close together. (Tr. 159). Additionally, disabled vehicles on blocks were a safety hazard to the large number of children in the mobile home park.

15. Gerald Monsebroten owns several mobile homes located at Carman

Terrace. (t-r . 48) . In 1987 he owned three homes located at the park and rented out two of them. (Tr. 49). After some disturbances with his tenants, Mr. Senske asked Mr. Monsebroten to have the tenants, who were Hispanic migrant workers, evicted. Mr. Senske told Mr. Monsebroten that "I don't care for any of these here fucking Mexicans in our trailer court." (Tr. 50). Mr. Senske believes that migrant workers residing in the mobile home park cause more problems than other residents. (Tr. 161, 168). In October of 1988, Mr. Senske told an investigator for the Complainant that "They are all on welfare and they should go back to Texas or Mexico or wherever." (Tr. 65; Ex. 2).

16. The Respondents have substantial financial resources. (Ex. AA).

17. Subsequently, Rosalia \villa filed at charge of discrimination with the Minnesota Department of Human Rights. The Respondents were advised of the charge in ca letter from the Commissioner dated April 27, 1988. By a letter dated October 14, 1988, the Commissioner advised the Respondents that the Department had found probable cause to credit the charge. (Response to Request for Admissions).

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS_OF LAW

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 363.071.

2. The Complainant gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law or rule.

3. Minn. Stat. 363.03, subd. .2 (1 986) provides that it is unfair discriminatory practice for an owner or a managing agent to refuse to rent or lease real property because of national origin or to discriminate against any person because of national origin in the terms, conditions, or ,privileges of

the rental or lease of any real property or in the furnishing of facilities or services in connection therewith.

4. The Complainant has proved a prima facie case of discrimination by the Respondents.

5. The Respondents have articulated a legitimate nondiscriminatory reason for their attempted eviction of the Charging Party from their mobile home park.

6. That the Complainant failed to prove that the reason advanced by the Respondents was a pretext for discrimination.

7. That the Complainant failed to prove by a preponderance of the evidence that the Respondents discriminated against the Charging Party in violation of Minn. Stat. 363.03, subd. 2(1) (1986).

8. That the reasons for the foregoing Conclusions of Law are set out in the Memorandum which follows and which is incorporated into these Conclusions of Law by reference.

Based upon the foregoing Conclusions of Law, the
Administrative Law Judge
makes the following:

ORDER

IT IS HEREBY ORDERED: That this matter is dismissed with prejudice.

Dated this day of May, 1991.

PETER C. ERICKSON
Administrative Law Judge

Reported: Court Reported. Tracy Jo Faldet
Valley Reporter Services
Fargo, North Dakota (701) 293-6623.
Transcript Prepared.

MEMORANDUM

This contested case proceeding is brought by the
Complainant under the
Minnesota Human Rights Act. The Act provides that it
is an unfair
discriminatory practice to evict or attempt to evict a tenant due
to national
origin or to discriminate in the conditions of rental or the
furnishing of
facilities or services due to a person's national origin.
The Complainant
argues in this case that the Charging Party, Rosalia Villa was
evicted from
the Respondents' mobile home park and was treated differently
from other
tenants because she is Hispanic.

The Minnesota Supreme Court has adopted the three-part
analysis first set
out in McDonnell-Douglas Corp. v. Green, 411 U.S. 792
(1973) for the
adjudication of cases under the Minnesota Human Rights Act.
Danz v. Jones.
263 N.W.2d 395 (Minn. 1978); Sigurdson, v. Isanti County,
386 N.W.2d 715,
719-20 (Minn. 1986). The analysis consists of a prima facie
case, an answer
by the respondent, and a rebuttal. First, the complainant
must present a
prima facie case of discrimination by a preponderance of
the evidence.
Sigurdson, supra, 386 N.W.2d at 720. The specific elements of a
prima facie

case are modified to fit the varying factual patterns and the type of discrimination. Hubbard- v. United Press International 330 N. W. 2d 428, 442 (Minn. 1983).

In the context of this discrimination case the Complainant must prove four things in order to establish a prima facie case. He must prove that: (1) the charging party is a member of -a protected class; (2) the charging party was renting at respondent's mobile home park; (3) the charging party was evicted or otherwise discriminated against in the terms, conditions or privileges of the rental; and (4) the mobile home was available for rental thereafter. Department of Human Rights v. Spiten 424 N.W.2d 815, 818 (Minn. Ct. App. 1988). There is no dispute that Rosalia Villa, the Charging Party,

was renting at mobile home at Carman Terrace Mobile Home Park nor that the mobile home was available for rental after she left in August of 1987. The Respondents assert however that the record contains no facts proving the Charging Party's national origin and that this matter must therefore be dismissed.

Ms. Villa was not asked at the hearing to identify her national origin. The Complaint alleged that she is Hispanic. The Complainant contends that the Respondents have in effect admitted that she is Mexican-American within the meaning of *Bush Terrace Home Owners v. Ridgeway*, 437 N.W.2d 765, 771 (Minn. Ct. App. 1989). In response to a question about the number of Hispanic families at the trailer park, his. Baird, the Respondent's daughter, stated that "I believe Rosalia Villa was in No. 12 and Gerald and Mavis Monsebroten mobile homes, there were three of them, and all three of those were occupied with Hispanic families at that same time." (Tr. 87). Additionally, Mr. Senske attempted to explain his comments about Mexicans by drawing a distinction between Hispanic people and migrants, thus implying that Hispanic national origin was crucial to this proceeding. (Tr. 162). It is plain that the Respondents litigated this matter assuming Ms. Villa to be Hispanic. Additionally, the Administrative Law Judge's observation of the Charging Party, listening to her accent, and the fact that her father's surname is Gutierrez, provide a sufficient basis to conclude that Ms. Villa is a Mexican-American or Hispanic person.

The Respondents also argue that the Charging Party was not finally evicted from the trailer park. Ms. Baird told a paralegal from Moorhead Migrant Legal Services that she would withdraw the notice of eviction given to Ms. Villa if she would follow a list of rules which she gave to him. However, Ms. Baird never communicated this directly to Ms. Villa nor did she provide her with anything in writing that withdrew the eviction notice. In fact,

there is nothing in the record which indicates that the paralegal advised Ms. Villa that she did not have to move. Even if it could be concluded that the eviction notice was withdrawn, a conclusion which cannot be made upon this record, a prima facie case would still be proved because the service of the eviction notice would still constitute discrimination in the terms, conditions and privileges of rental, if it was done because of his. Villa's national origin. The service of an eviction notice in the manner in which it was accomplished in this case might well have convinced Ms. Villa that she had to move even if the paralegal had told her it was not necessary to do so. It would constitute discrimination in the conditions of rental even absent an eviction. Accordingly, it is concluded that the Complainant has proved a prima facie case of discrimination based upon national origin.

The Respondents advance as a legitimate non-discriminatory reason for serving the notice of eviction upon the Charging Party the hazardous and unkempt conditions existing on her trailer lot. The evidence in the record preponderates in favor of finding that Ms. Villa kept a number of pieces of indoor furniture in the yard for about one month. She also hung clothing on the furniture as well as tree branches and a porch railing. Additionally, there was a pickup truck on blocks in the lot for two to three weeks despite repeated requests by his. Baird to have it removed. The testimony of Ms. Baird, as well as two other residents of the mobile home park, was more credible than that of Ms. Villa as to the conditions in her yard. One resident characterized her lot as looking like a "yard sale". (Tr. 129). Another resident, a former manager, also testified that the furniture was in her yard quite a while and that clothes were hanging from trees and railings.

Ms. Villa's testimony that she hung clothes on the porch and that the incident concerning the pickup truck, as well as her eviction, all occurred in one day, is not believable. Ms. Baird testified that she asked Ms. Villa several times to remove the truck after having been told by her that her boyfriend would get parts for the truck in a couple of days. Ms. Baird estimated that the truck was on blocks for two to three weeks. The former manager was sure that it was in the yard for more than one day and perhaps over two weeks. (Tr. 139, 145). The presence of a disabled or hazardous vehicle in the mobile home park was prohibited. Another resident, Vern Gustafson, testified that Ms. Baird had told him earlier in 1987 that he would have to remove a disabled vehicle from his lot if he wished to remain as a resident in the mobile home park. It is concluded that the Respondents have advanced a legitimate non-discriminatory reason for their treatment of Ms. Villa, namely that she violated the mobile home park's policies in regard to disabled vehicles and keeping the premises neat.

The Complainant advances several arguments to show that the reason given by the Respondents for eviction is in fact a pretext. He argues that Mr. Gustafson was not treated in the same manner as the Charging Party. He was not evicted even though it took him 30 days to remove the disabled vehicle. However, Mr. Gustafson did agree with Ms. Baird that the vehicle was a hazard to children in the park and did agree to remove it. The record indicates that Ms. Villa was not as cooperative in working out a solution to the problem. This likely accounts for the difference in treatment.

Additionally, the Complainant argues that Mr. Senske's statements about Mexican-Americans displays an animus towards Hispanic tenants which supports a conclusion that the reasons advanced by the Respondents are mere pretext. The Respondent has attempted to explain away his statements by indicating that while he may be prejudiced against migrant workers, he is not prejudiced

against Hispanics generally such -as those who have resided full-time in his mobile home park. Although Mr. Senske's statements are reprehensible, they do not support a conclusion of pretext because his sentiments have not been linked to the events surrounding the Charging Party. Mr. Senske never met Ms. Villa. The eviction notice was served by Ms. Baird, the manager of the mobile home park, who is Mr. Senske's daughter. There is no evidence in the record that Mr. Senske gave any directions to Ms. Baird in this regard. Nor is there any evidence that he communicated his sentiments concerning migrant workers to her, even though the Complainant believes it is reasonable to infer that this was the case. What evidence is in the record would indicate that Ms. Baird had both a childhood Hispanic girlfriend and a Hispanic boyfriend, which would evidence an absence of discrimination on her part.

The Complainant also asserts that even if the record supports a finding of a legitimate reason for eviction because of the conditions on the lot, that discrimination can still be found if national origin was a factor. In *Anderson v. Hunter Keith Marshall and Company*, 417 N.W.2d 619, 627 (Minn. 1988), the Minnesota Supreme Court held that in mixed motive discrimination cases, liability will attach where it is proven that the illegitimate reason was a "discernible, discriminatory, and causative factor in the defendant's conduct." The Complainant argues that Mr. Senske's statements alone provide a reasonable inference that his bigotry was effectuated through his agent, Jayme Baird. For the reasons indicated above, this inference is inappropriate and is not supported by sufficient evidence. The record supports a conclusion

that Ms. Villa was evicted because of the condition of her lot, her unwillingness to properly deal with a safety hazard, and her belligerent attitude towards Ms. Baird in indicating that she did not need to follow any rules since she hadn't been provided with any. The Complainant has failed to demonstrate that the reasons advanced by the Respondents are really a pretext.

Finally, the Respondents assert, as they did at hearing, that Minn. Stat. 363.071 is unconstitutional insofar as it permits an award of money damages. they argue that the State Constitution assures the right of a jury trial where a claim is for the recovery of money. The Court of Appeals has dealt with this question previously in an unpublished opinion, State v. Lavle French, filed October 31, 1989, where the Court concluded that when the Legislature creates new rights and remedies unknown at common law, it may withhold the right to a jury trial. However, it is generally held that neither an Administrative Law Judge nor an agency has the power to declare a statute unconstitutional. Starkweather v. Blair 71 N.W.2d 869, 884 (Minn. 1955); Quam v. State, 391 N. W. 2d 803 (Minn. 1986); Johnson v. Aikin, 263 N.W.2d 123, 126-127 (N.D. 1978). Constitutional questions are properly left for the courts to decide.

P.C.E.