STATE OF MINNESOTA
IN COURT OF APPEALS
A12-1097

Greg Rono, LLC, et al.,
Respondents,

vs.

Todd Peterson, et al.,
Appellants.

Filed March 18, 2013
Affirmed
Schellhas, Judge

Aitkin County District Court
File No. 01-CV-12-419

Jeffrey J. Haberkorn, Haberkorn Law Offices, Ltd., Aitkin, Minnesota (for respondent)

Christopher J. Perske, The Law Office of Christopher J. Perske, Jordan, Minnesota (for appellant)

Considered and decided by Johnson, Chief Judge; Worke, Judge; and Schellhas, Judge.

U N P U B L I S H E D O P I N I O N

SCHELLHAS, Judge

In this eviction dispute, appellant-tenants argue that the district court erred by concluding that (1) the statutory notice requirement for terminating tenancies at will was not applicable to respondents' termination of two agricultural leases and (2) under the

terms of the leases and *Anderson v. Ries*, 222 Minn. 408, 24 N.W.2d 717 (1946), no notice of termination was required. We affirm.

FACTS

In November 2009, respondents Greg Rono LLC and Willow Springs Inc. entered into a written lease agreement with appellants Todd Peterson and Nicholas Peterson (Petersons) in which they leased land for agricultural purposes. The leases contain a three-year term commencing on April 1, 2010, and provide that payment of the annual rent be paid on April 1 of each year. The leases also contain the following provision: "The Three year term will not apply if the land is turned into wetland bank or required for black dirt or sod."

In 2010, Petersons paid the annual rent and farmed the land. For 2011 and 2012, they executed a sublease in favor of appellant Pete Marxen. In 2011, respondents received the annual rent and Marxen farmed the land. In the fall of 2011, Vern Reynolds, an owner and officer in both respondent businesses, communicated to appellants that the businesses had other plans for the property for the 2012 farming year. Nevertheless, Marxen worked the property in preparation for the 2012 farming year and spent approximately $250,000 on seed; supplies; and equipment in excess of $250,000. Due to unusually warm weather, in March 2012 Marxen planted portions of the land. Petersons tendered the rent for 2012 to respondents on or about March 14, 2012.

On March 29 and 30, counsel for respondents mailed letters to Petersons in which they stated that the leases were terminated because the "land is going to be used for black dirt or sod as is referred to in the Lease," and respondents also returned the rent for 2012.

Petersons did not notify Marxen of the letters but through counsel informed respondents that they did not accept the terminations. In April, Marxen continued to work the land and when respondents discovered this fact, an Aitkin County Deputy Sheriff went to the property and told Marxen to leave. Marxen later returned and finished planting the majority of the property.

On May 7, respondents filed an eviction summons and complaint. At the evidentiary hearing, appellants argued that Minn. Stat. § 504B.135 (2012), which governs notice to quit tenancies at will, is applicable and therefore respondents could only terminate the leases by providing three months' notice. Respondents argued that Minn. Stat. § 504B.135 is not applicable; their exercise of the black-dirt-or-sod provisions terminated the leases; and, under the terms of the leases and *Anderson v. Ries*, 222 Minn. 408, 415–16, 24 N.W.2d 717, 721–22 (1946), no notice was required. The court filed findings of fact, a conclusion of law, order and judgment in favor of respondents, concluding that Minn. Stat. § 504B.135's notice requirement is not applicable; the leases' terms contain no notice provision in the event that the black-dirt-or-sod clauses are exercised; respondents' exercise of the clauses terminated the leases; and, under the terms of the leases and *Anderson*, no notice was required.

This appeal follows.

D E C I S I O N

Appellants argue that the district court erred by concluding that Minn. Stat. § 504B.135's notice requirement is not applicable to respondent's termination of the

leases and by applying *Anderson* to conclude that no notice of termination of the leases was required.

An eviction proceeding is "a summary court proceeding to remove a[n] . . . occupant from or otherwise recover possession of real property." Minn. Stat. § 504B.001, subd. 4 (2012); *see also Univ. Cmty. Props., Inc. v. Norton*, 311 Minn. 18, 21–22, 246 N.W.2d 858, 860 (1976) (referring to unlawful detainer statutes replaced by current eviction statutes); *Fraser v. Fraser*, 642 N.W.2d 34, 40 (Minn. App. 2002) (explaining analogy between former unlawful detainer statutes and present eviction statutes). "[G]enerally, the only issue for determination [in an eviction proceeding] is whether the facts alleged in the complaint are true." *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817–18 (Minn. App. 2003). On review of a district court judgment in an eviction action, we defer to the district court's credibility determinations and rely on its factual findings unless they are clearly erroneous. *Id.*

Leases are contracts to which we apply general principles of contract construction. *RAM Mut. Ins. Co. v. Rohde*, 820 N.W.2d 1, 14 (Minn. 2012) (noting that it is a "well-established principle that leases are contracts to which we apply general principles of contract construction"). The interpretation of a contract is a question of law. *Bus. Bank v. Hanson*, 769 N.W.2d 285, 288 (Minn. 2009). "The cardinal purpose of construing a contract is to give effect to the intention of the parties as expressed in the language they used in drafting the whole contract." *Art Goebel, Inc. v. N. Suburban Agencies, Inc.*, 567 N.W.2d 511, 515 (Minn. 1997). "Intent" is that which the parties have manifested objectively through their words, oral or written, and through their conduct. *Capital*

Warehouse Co. v. McGill-Warner-Farnham Co., 276 Minn. 108, 114, 149 N.W.2d 31, 35–36 (1967). "When the language of a lease is unambiguous, it should be given its plain and ordinary meaning." *RAM Mut. Ins. Co.*, 820 N.W.2d at 14–15 (quotation omitted).

The leases at issue contain the following terms: "This lease is for 3 years (2010,11,12), 1st year rent to be paid on April[] 1 of each year. . . . The Three year term will not apply if the land is turned into wetland bank or required for black dirt or sod."

The district court concluded that

> [t]he leases themselves do not provide any specific notice provisions in the exercise of black dirt/sod provisions.
>
> The operative language of the *Anderson* case is "when a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally apprised of the determination of the terms." Here the lease was determinable on the exercise of the black dirt/sod provisions. All parties to the November 16, 2009 lease[s] were aware that the exercise of this provision could shorten the term of the lease.

(Citation omitted.)

Appellants state in their appellate brief that the leases "set[] forth a definite time period for [the leases] to begin and end. To this extent, [each] lease can be construed as a single lease for a three year period." But appellants assert that the term concerning the land being used for black dirt or sod

> means that the tenancy *could* end prior to the completion of the three year term, but not at a specific date or time, or may not become effective at all. When including this term, the lease may be construed as a yearly lease with lease rights available to the tenant for three consecutive years.

Appellants rely on this assertion to support their argument that "the exercise of the black dirt or sod clause created a tenancy at will." They argue that because they were tenants at will, respondents were required to provide written notice of termination to appellants three months in advance of the termination date. *See* Minn. Stat. § 504B.135 (providing that tenancy at will may only be terminated by providing notice in writing and time of notice must be lesser interval between time rent is due or three months).

Appellants' argument is unavailing. A tenancy at will is "a tenancy in which the tenant holds possession by permission of the landlord but without a fixed ending date." Minn. Stat. § 504B.001, subd. 13 (2012). The "chief characteristics" of a tenancy at will are "(1) uncertainty respecting the term, and (2) the right of either party to terminate it by proper notice." *Thompson v. Baxter*, 107 Minn. 122, 124, 119 N.W. 796, 798 (1909). In contrast, a tenancy for years exists when a lease provides for a definite term and then expires at the end of that term unless it is renewed by the parties. *Quade v. Fitzloff*, 93 Minn. 115, 116, 100 N.W. 660, 661 (1904).

The leases state that they are "for 3 years." This plain language creates a fixed three-year term. Moreover, appellants concede that "the lease[s] can [each] be construed as a single lease for a three year period." The leases also provide that "[t]he Three year term will not apply if the land is turned into wetland bank or required for black dirt or sod." These unambiguous terms limit the tenancies by three years or by respondents' exercise of the black-dirt-or-sod clauses. The tenancies would therefore terminate after either the expiration of three years or respondents' exercise of the black-dirt-or-sod provisions. Because respondents chose to exercise the black-dirt-or-sod provisions in

each lease, this event terminated the tenancies; this event did not create tenancies at will. We conclude therefore that the district court did not err in holding that Minn. Stat. § 504B.135's notice requirement is not applicable.

Appellants argue that respondents' behavior "demonstrates that [they] believed the lease[s were] renewable each year and terminable at the end of the year, and supports the tenancy[-]at-will argument because respondents "sought to terminate the lease[s] *before* the commencement of the term beginning April 1, 2012." We disagree. After receiving the rent for the 2012 farming season in the middle of March, respondents mailed letters at the end of the month informing Petersons that because they were exercising the black-dirt-or-sod clauses, that event terminated the leases and returned the rent. In light of all of the circumstances, including that the farming season begins in the spring and respondents received the rent for the 2012 farming season from Petersons, neither respondents' mailing of the letters nor the timing of mailing the letters demonstrates that respondents believed the tenancies to be tenancies at will.

Appellants argue that the district court erred by concluding that under the terms of the leases and *Anderson* no notice was required to terminate the leases. In *Anderson*, the plaintiffs sublet an apartment to the defendant "upon the condition and agreement that [the] defendant would vacate and surrender the premises to [the] plaintiffs when plaintiff . . . Anderson returned from service" in the United States Armed Forces. 222 Minn. at 409, 24 N.W.2d at 718. When plaintiff Anderson returned, the defendant refused to vacate and argued, in part, that plaintiffs failed to provide statutory notice to quit as required for a tenancy at will. *Id.* at 410, 24 N.W.2d at 719. The Minnesota Supreme

Court stated that "[w]hen a lease is determinable on a certain event, or at a particular period, no notice to quit is necessary, because both parties are equally appri[s]ed of the determination of the term." *Id.* at 416, 24 N.W.2d at 721 (quotation omitted). The court concluded that "the sublease was determinable upon the return of plaintiff . . . Anderson from the armed forces. That event having occurred, nothing more was required to terminate the sublease. No notice to quit was necessary." *Id.* at 416, 24 N.W.2d at 721–22.

Appellants argue that *Anderson* is not controlling because in *Anderson* the event was certain to occur, but here, the event was not fixed or certain. Appellants point to the language in the lease in *Anderson*, which used "when" to describe the event of the soldier returning and distinguish that from the language in the leases here, which used "if" to describe the event of the land being used for black dirt or sod. *See id.* at 409, 24 N.W.2d at 718 (stating terms of lease). But this distinction does not make *Anderson* inapplicable. Here, the leases were limited by (1) the certain expiration of three years and (2) respondents' possible exercise of the black-dirt-or-sod provisions. The plain language of the leases contains no notice requirement in the event that respondents elected to exercise the black-dirt-or-sod clauses. Under the terms of the leases and *Anderson*, respondents' exercise of the clauses was an event that terminated the leases and no notice to quit was necessary.

Appellants cite an unpublished opinion of this court to support their argument on appeal. "Unpublished opinions of the [c]ourt of [a]ppeals are not precedential." Minn. Stat. § 480A.08, subd. 3 (2012).

Appellants also raised a second issue in their main brief, arguing that the district court erred by declining to make a finding of fact concerning the truthfulness of respondents' reason for terminating the leases. But because in their reply brief appellants withdraw the argument, we do not address it.

Affirmed.