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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1266**

Red River Apartments, LLC,
Respondent,

vs.

June Lacey, by her trustee, Joyce Lacey,
Appellant,

John Doe, et al.
Defendants.

**Filed June 24, 2019
Affirmed; motion denied
Ross, Judge**

Otter Tail County District Court
File No. 56-CV-18-1060

Daniel N. Moak, Cyrus C. Malek, Briggs and Morgan, P.A., Minneapolis, Minnesota (for respondent);

Michael Kemp, Hansen, Dordell, Bradt, Odlaug & Bradt, P.L.L.P., St. Paul, Minnesota (for appellant)

Considered and decided by Cleary, Chief Judge; Ross, Judge; and Johnson, Judge.

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

ROSS, Judge

Red River Apartments in Otter Tail County served eviction papers on tenant June Lacey after a fire inspector discovered that her hoarded belongings and garbage made the apartment virtually un navigable. The district court rejected Lacey’s retaliation defense to

the eviction, and she died pending this appeal of that decision. We accepted her daughter's notice of substitution as the appellant, and Red River moved to dismiss the appeal on various grounds. We hold that the district court properly rejected Lacey's retaliation defense based on her failure to have made the prerequisite good-faith attempt to secure a legal right.

FACTS

June Lacey began leasing a home from Red River Apartments LLC in 2011. June suffered a stroke in 2015 in her mid-eighties and lost her short-term memory and most of her ability to see, hear, speak, and walk. She used a wheelchair and required supplemental oxygen. She could not drive, cook, or perform basic household maintenance, requiring her daughter's assistance for almost every activity.

Joyce Lacey, June's daughter, began caring for her after the stroke, but the one-person-occupancy lease prohibited her from moving in. The parties dispute whether Joyce promptly asked to rent a place of her own in the building and whether she had essentially moved in with her mother, violating the lease's terms. According to Joyce, who also uses a wheelchair, she asked Red River to provide her an apartment shortly after her mother's 2015 stroke, and according to Red River, she did not request an apartment until October 2017. Joyce spent the night in her mother's apartment frequently enough that others would have reasonably supposed she lived there.

Either June's or Joyce's belongings began to accumulate in June's assigned garage stall in the enclosed parking lot. Red River notified tenants in November 2017 that they were prohibited from storing personal property in garage stalls. Furniture and plants

remained in June's garage stall despite the notice, and Joyce sent Red River a strongly worded letter asserting that she had requested an apartment in 2015, that she had moved many of her belongings into her mother's apartment anticipating receiving her own, and that Red River had improperly refused to lease her an apartment. In that letter Joyce disclosed, "I have been . . . staying with my mother."

In early December 2017, Red River discovered that the Laceys' belongings had filled five storage lockers in addition to those June was renting. This was the third time Red River had found the Laceys to be excessively storing personal property in unassigned storage lockers. At about the same time, other tenants were calling Red River's manager with concerns about an alleged fire-safety hazard created by June's oxygen tanks. The manager contacted the Fergus Falls Fire Department to explore the stated concerns. Fire Safety Inspector Dean Anderson assured the manager that, typically, oxygen tanks are not dangerous, and he agreed to attend a meeting where he could ease the tenants' fears. But during that same call, Inspector Anderson disclosed that the fire department was recently denied access to June's apartment for a routine fire inspection.

Red River notified June that the fire department would inspect her apartment the following week. Joyce telephoned the apartment caretaker three times after receiving the letter, irate, insisting that she would permit no one inside the apartment. She called the manager attempting to postpone the inspection. The night before the inspection, the manager saw a moving truck being loaded with personal property from June's apartment.

The manager entered the apartment for the inspection the next day. She could barely pass inside because of personal property blocking the door. She saw and photographed a

cascade of mishmash and garbage inundating the apartment from the living room through the kitchen. Even the stove was being used for storage and “full of belongings,” making it unusable for cooking. And the refrigerator “was completely full from top to bottom” so that they “weren’t even able to shut it on the first try after [they] opened it.” The bathroom floor was covered in belongings piled up to the sink counter, and the shower-curtain rod served as a clothes rack. The manager was especially surprised at the overwhelming magnitude of the clutter knowing that a moving truck had hauled away an extensive load from inside the apartment the preceding day.

The day after the inspection, Red River gave June a 60-day notice to quit. She asked for more time so she could find another apartment. The manager inspected again two weeks later and, on seeing a reduction in clutter, offered June an additional 60 days to vacate. Red River refused to enter a new lease with June, citing its concern that the facility was not adequately equipped for the live-in nursing care that June apparently required. Red River filed its eviction petition.

June defended against the eviction at trial. She argued that she should be allowed to stay in the apartment because Red River commenced the eviction in retaliation for her attempt to obtain accommodations for her disability. The district court found instead that Red River terminated June’s lease because of the uninhabitable condition of the apartment at the time of the fire inspection. The district court granted Red River’s eviction petition, and the landlord posted a \$5,500 bond to execute the writ of recovery.

June filed her notice of appeal but soon died. We accepted Joyce’s notice of substitution as trustee to pursue the appeal as a substitute party.

DECISION

On behalf of June Lacey, Joyce Lacey appeals from the district court's judgment of eviction. Before discussing the grounds of the appeal, we first address a motion filed by Red River urging us to dismiss the appeal on jurisdictional grounds.

Red River argues that Joyce lacks standing to pursue this eviction appeal in June's place. To have standing, a party must have "a sufficient stake in a justiciable controversy." *Glaze v. State*, 909 N.W.2d 322, 325 (Minn. 2018). We consider a party's standing de novo. *Id.* Red River argues that Minnesota Statutes, section 573.01 (2018), which provides that all causes of action other than those for personal injury survive to the personal representative of the decedent's estate, applies here and that Joyce lacks standing because she is not the personal representative of June's estate. But when a trustee brings an appeal from a matter that originated in the decedent's lifetime, section 573.01 does not control whether the trustee may maintain the action because the action is not a survival action. *See In re Rosckes v. County of Carver*, 783 N.W.2d 220, 224 (Minn. App. 2010). After June's death, the district court appointed Joyce trustee under Minnesota Statutes, section 573.02 (2018), to maintain this eviction appeal and to potentially bring a wrongful-death action against Red River in the event it is determined that Red River's eviction wrongfully caused June's death. The validity of June's eviction bears on a potential wrongful-death action, giving Joyce a stake in the outcome of this appeal as trustee.

Red River emphasizes that section 573.02 allows a trustee to maintain an action for special damages arising out of the decedent's personal injury and argues Joyce does not qualify because she did not plead special damages. It is true that section 573.02 describes

the claims that can be brought by trustees and that this eviction action does not directly involve the described claim. But Joyce’s potential wrongful-death action as trustee is such a claim, and this appeal may directly impact a critical element of that claim. Her standing is therefore not diminished by the trustee-claim description in section 573.02.

Red River also asks us to dismiss the appeal because the eviction is moot now that June has died and has vacated the premises. A matter is moot if an event occurs that resolves the issue or renders effective relief impossible. *Isaacs v. Am. Iron & Steel Co.*, 690 N.W.2d 373, 376 (Minn. App. 2004), *review denied* (Minn. Apr. 4, 2005). Red River chose to post a bond and recover possession of the premises pending this appeal, enforcing its rights afforded by statute. *See* Minn. Stat. § 504B.371, subd. 7 (2018) (permitting landlord to recover premises during appeal from eviction based on holding over after notice to quit). Red River did so by posting a \$5,500 letter of credit to reimburse moving costs and other damages from a wrongful eviction, depending on whether the eviction is unlawful—the issue to be resolved in this appeal. In other words, if Joyce were to prevail in this appeal, she has potential recourse against the letter of credit to recover those costs. Effective relief therefore is available to June’s successors, undermining Red River’s mootness argument. Having determined these jurisdictional issues, we turn to the merits of the appeal.

Joyce argues that the district court improperly evicted June. Our review of an eviction is limited to whether the district court’s factual findings are clearly erroneous unless legal issues are presented. *Minneapolis Comty. Dev. Agency v. Smallwood*, 379 N.W.2d 554, 555 (Minn. App. 1985), *review denied* (Minn. Feb. 19, 1986).

Joyce argues that the eviction was unlawful because the notice to quit was unlawfully retaliatory, intended to punish June for attempting to secure or enforce a legal right. A tenant may defeat an eviction petition arising from a termination by notice to quit if the “termination was intended in whole or part as a penalty for the [tenant’s] good-faith attempt to secure or enforce rights under a lease or contract, oral or written, under the laws of the state or any of its governmental subdivisions, or of the United States.” Minn. Stat. § 504B.285, subd. 2 (1) (2018). The retaliation-based defense therefore fails if June made no good-faith attempt to secure or enforce any legal rights.

The district court found that June made no such attempt, and our review of the record gives us no ground to conclude that the finding is clearly erroneous. Joyce contends that three requests she made on June’s behalf constitute June’s good-faith attempt to secure or enforce a legal right. Assuming, without deciding, that Joyce’s alleged requests can be attributed to June for the purposes of the retaliation provision, the contention fails. Joyce points to three alleged requests. She asserts that she asked Red River to provide exercise equipment for the community gym designed for use by disabled persons, to open windows in the building’s common areas, and to lease her an apartment.

Joyce’s testimony undermines the assertion that her alleged request for exercise equipment constituted a good-faith assertion of June’s right to a disability-based accommodation. She testified, “I had mentioned about getting the, you know, NuStep. I had mentioned that for the—just asking for that for all the residents.” This so-described request “for all the residents” is not a request an apartment manager would necessarily, or even likely, construe to be a request for a statutorily mandated, disability-based

accommodation for June. The district court had ample evidentiary grounds to reject the assertion that Joyce's alleged request constituted an attempt to secure or enforce any legal rights for June.

The evidence likewise fails to compel a finding that Joyce made a good-faith attempt to secure a legal right on June's behalf by requesting that Red River open common-area windows. The only evidence about this request was the testimony of a Red River employee. The employee had heard that Joyce "was concerned about the level of heat in the building" and that Joyce had said she had come upon a tenant "who had nearly passed out" from heat in the stairwell. The witness qualified her testimony, however, doubting that the incident ever occurred. She emphasized that neither June nor Joyce, who both relied on wheelchairs, used the stairs. And no witness said that Joyce made the request on June's behalf, let alone on June's behalf in the context of securing or enforcing any legal rights.

Finally, the evidence also does not require a finding that Joyce made a good-faith attempt to secure a legal right on June's behalf by requesting that Red River offer Joyce the opportunity to lease an apartment for herself. Joyce's letter does implicitly threaten a report to the Office of Housing and Urban Development about Red River's alleged "promising someone an apartment and not fulfilling [that] promise." But that threat does not refer to June or suggest that Joyce's interest in having her own apartment had anything to do with June. Other than twice mentioning that Joyce had moved her things into June's apartment supposedly to facilitate her transition to her own apartment, the letter does not say or imply *anything* about June. By contrast, the short letter was signed by Joyce alone and refers to Joyce by name or pronoun more than 35 times. If June's alleged legal rights,

or even June's health issues, were on Joyce's mind when she drafted the letter, her words do not reveal it. That the factual premise of the letter (that Joyce had previously requested her own Red River apartment) was strongly disputed at trial only strengthens the district court's well-supported factual finding that Joyce's claimed prior request for an apartment was not June's good-faith attempt to secure or enforce any legal right.

Because the district court did not clearly err by finding that June failed to prove that she ever made a good-faith attempt to secure or enforce a legal right that could serve as the basis for her retaliation defense, the defense failed as a matter of law and could not prevent the eviction.

Affirmed.