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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-1555**

Bradley J. Pass, et al.,
Respondents,

vs.

Craig T. Seifert, et al.,
Appellants.

**Filed July 1, 2019
Affirmed
Worke, Judge
Dissenting, Jesson, Judge**

Hennepin County District Court
File No. 27-CV-HC-18-1943

Christopher T. Kalla, Douglass E. Turner, Hanbery & Turner, P.A., Minneapolis,
Minnesota (for respondents)

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Samuel Spaid, HOME Line, Minneapolis, Minnesota (for amicus curiae HOME Line)

Considered and decided by Worke, Presiding Judge; Jesson, Judge; and Florey,
Judge.

UNPUBLISHED OPINION

WORKE, Judge

Appellants challenge an eviction judgment, arguing that the district court erred by making a trial on the merits contingent on appellants depositing rent into court. We affirm.

FACTS

On May 11, 2018, respondents-landlords Bradley J. Pass and Carol A. Pass filed an eviction complaint against appellants-tenants Craig T. Seifert and Tracy R. Bradley.¹

Landlords claimed:

Tenants are still in possession of the . . . premises and have failed to pay rent for the month(s) of January – December 2015 in the amount of \$625/month for a total owing of \$6,380.00; January – December 2016 in the amount of \$675/month for a total owing of \$8,100.00; January – April 2018 in the amount of \$700/month for a total owing of \$2,155 plus court costs in the amount of \$369.00 for a total due of \$17,004.00.

Tenants have failed to vacate the property after [they] were given notice to vacate. Landlord[s] gave notice on March 28, 2018 for a vacate date of April 30, 2018.

On May 22, 2018, tenants filed an answer and moved for dismissal or summary judgment, claiming that they did not owe rent and that their account was current through April 2018.

On May 23, 2018, a referee held an eviction hearing. Although landlords claimed that tenants owed rent from 2015, 2016, and 2018, the referee narrowed the focus to 2018

¹ Also known as Traci R. Bradley.

and asked for proof that rent was paid. Tenants' counsel provided the referee with "a letter that says how much was due and . . . receipts."² The referee stated:

[Y]ou got a receipt here, \$800 – 1/6/18, \$800; 1/30/18, \$200; 1/29/18, back rent.

So back rent . . . There's one for \$800. It doesn't say back rent. It just says January 6, '18. It's got: Account, 855, payment, 800, due, balance due, 55.

And that's January. It looks like the other payments are for back rent.

The referee concluded: "I think [landlords] have a right to ask for rent through April. I would order deposit of that rent if [tenants] want to have a trial." The following exchange occurred between the referee and tenants' counsel:

Counsel: Your Honor, with respect, that rent has already been paid.

Referee: What's the proof? Where's the proof?

Counsel: Those receipts --

Referee: No, that's not --

Counsel: -- show a positive balance that covers all the way up and through the month of April. In fact, there's a credit for April.

Referee: This is January 29th, January 30th, January 6th.

Counsel: The amount of money there, Your Honor, covers all the way through --

Referee: No. It says back rent.

Counsel: It states that, Your Honor, but that's not the truth.

Referee: It says back rent.

The referee stated:

Unless you got other evidence . . . it's clear to me that there's rent owed for February, March, and April, because I have no receipts showing that there was rent paid for [those months]. If you got a receipt showing you paid rent for [those

² The receipts are not in the record. The description of the receipts is based on the referee's statements reflected in the record.

months], I'll give you credit for it. I asked you for what you had; that's what you gave me.

Tenants' counsel stated that if there was a posting order, tenants would file "an emergency judge review of the posting order." The referee responded:

[W]e have no proof you paid February, March, and April rent. [Tenants] want to stay in the property, because [they're] saying that [they] didn't get notice – if [they] want to stay in the property, [they] got to pay the rent that's owed. Give me proof. Give me a receipt that [they] paid [the] rent. Do they have a receipt? This is not doing it. [The receipts provided] [do not] do it for me.

Landlords agreed to waive their right to a hearing within the statutory timeframe to work with tenants on a settlement. See Minn. Stat. § 504B.341(a) (2018). The parties agreed to a June 4 posting date and a June 8 trial date. Because the referee required a posting, tenants indicated that they might amend their answer to include a *Fritz* defense. See *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973).

On May 23, 2018, the referee filed findings of fact, conclusions of law, and order for judgment. The referee noted that the issues for the June 8 trial were: "Notice to quit [and] rent owed prior to 4/30/18 [and] *Fritz* defense." The referee ordered tenants to serve and file an amended answer to assert a *Fritz* defense, and ordered that tenants "shall pay into [c]ourt the rent of \$2,155 . . . on or before 11 a.m. on June 4, 2018 . . . or the [c]ourt will issue a Writ of Recovery of Premises and Order to Vacate."

Tenants did not deposit \$2,155 by June 4, 2018. On June 5, 2018, tenants filed a request for judicial review, requesting that the district court determine whether the referee

erred by making a trial contingent on the deposit of rent. On June 6, 2018, the referee canceled the trial because tenants failed to deposit the required security.

On August 2, 2018, the district court held a hearing on tenants' request for review. Tenants argued that it was unconstitutional for the referee to make a trial contingent on the deposit of rent. The district court noted that the referee "effectively made a finding that the rent wasn't paid." Tenants' counsel replied:

If there had been a trial and the referee said I believe what it says on those rent receipts about this is for back rent and not for forward rent. I'm making that conclusion after evaluating the evidence.

I think we'd be in tough shape. I think you would have every right to defer to the referee under that circumstance.

But that's exactly the point: We didn't get that opportunity to have that trial. And I think the evidence that [tenants] would have been able to present at trial . . . will be compelling.

Tenants' counsel also noted that tenants elected not to assert a *Fritz* defense.

On September 18, 2018, the district court affirmed the referee's decision. The district court found that the referee ordered tenants to deposit the disputed rent if they wanted a trial. The district court also found that tenants claimed a *Fritz* defense. The district court concluded that the referee did not have authority under rule 608 to require the deposit of rent because the rule authorizes such action when a tenant withholds rent in reliance on a defense, not in the present case when there is a dispute whether rent has been paid. See Minn. R. Gen. Prac. 608. The district court determined, however, that because tenants raised a *Fritz* defense, the referee was required to order posting of rent. The district court also determined that tenants were not deprived of due process because they filed an

answer, appeared at the preliminary hearing, and presented arguments through their attorney. This appeal followed.

DECISION

Tenants argue that the district court erred by affirming the referee's eviction-action decision. An eviction action "merely determines the right to present possession." *Dahlberg v. Young*, 42 N.W.2d 570, 576 (Minn. 1950). The proceedings are summary in nature and limited in scope. *Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445 (Minn. App. 2001). We review a district court's findings of fact for clear error. *Cimarron Vill. v. Washington*, 659 N.W.2d 811, 817 (Minn. App. 2003). A factual finding is clearly erroneous if there is a "clear demonstration that it is without substantial evidentiary support or that it was induced by an erroneous view of the law." *Schuett Inv. Co. v. Anderson*, 386 N.W.2d 249, 252 (Minn. App. 1986) (quotation omitted). This court applies a de novo standard of review to the district court's conclusions of law. *W. Insulation Servs. v. Cent. Nat'l Ins. Co. of Omaha*, 460 N.W.2d 355, 357 (Minn. App. 1990).

Tenants assert that this court must determine whether the district court lawfully ordered disputed rent deposited into court as a condition for a trial on the merits. Tenants present two arguments: (1) *Fritz*, the "authority relied upon by the district court . . . states only that tenants may be ordered to pay undisputed rent into court," and (2) the district court's order "violate[s] constitutional guarantees . . . of equal access to justice." We agree, as do landlords, that *Fritz* does not apply here, but we disagree that the district court violated tenants' constitutional rights.

In *Fritz*, unlawful-detainer actions were commenced on the grounds of nonpayment of rent. 213 N.W.2d at 340. The tenants alleged that no rent was due because the landlord violated statutory covenants of habitability. *Id.* The supreme court held that the implied covenants of habitability and payment of rent are mutually dependent. *Id.* at 341. Therefore, a tenant could assert a breach of the covenants of habitability as a defense to the landlord's unlawful-detainer action for nonpayment of rent. *Id.* at 342. Recognizing that problems could arise, however, if a landlord were deprived of rent pending a final determination, the supreme court stated that "once the [district] court has determined that a fact question exists as to the breach of the covenants of habitability," the court will order the tenant to deposit into the court the rent withheld from the landlord. *Id.* at 343.

Here, *Fritz* does not apply. First, although tenants suggested that they might raise a *Fritz* defense, this suggestion was made *after* the referee required the deposit of the rent. Additionally, tenants did not amend their answer to include a *Fritz* defense and tenants' counsel notified the district court at the review hearing that tenants elected not to assert a *Fritz* defense. And, as tenants argue, they did not claim to withhold rent due to a breach of the covenants of habitability; rather, tenants claimed that they paid the rent.

Finally, the district court determined that rule 608 did not apply because it applies when a tenant withholds rent in reliance on a defense. See Minn. R. Gen. Prac. 608. But the district court determined that the referee was required to order the deposit of rent under *Fritz*, although *Fritz* also states that it applies when a tenant asserts that rent was withheld because the landlord breached the covenants of habitability (in reliance on a defense). See *Ellis v. Doe*, 915 N.W.2d 24, 27 (Minn. App. 2018) ("Minnesota caselaw and statutes have

recognized a limited number of defenses to an eviction action that a tenant may assert, one of which is breach of the statutory covenants of habitability that the supreme court first recognized in *Fritz . . .*”), *aff’d*, 924 N.W.2d 258 (Minn. Mar. 6, 2019). The district court misapplied *Fritz* when the facts here show that tenants did not withhold rent in reliance on a defense, but rather claimed to have paid the rent.

Landlords assert, however, that *Fritz* is irrelevant because the evidence supports summary judgment in their favor. Landlords claim that the referee was not required to give tenants the option of having a trial. Because the record demonstrates that the referee appropriately followed the procedure in this summary proceeding, we agree with landlords and see no infringement on tenants’ constitutional rights.

For the process afforded to meet due-process requirements and be constitutionally sufficient, it must provide an individual with notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 333, 348, 96 S. Ct. 893, 902, 909 (1976). Due process is flexible, calling for procedural protections as a particular situation demands. *Id.* at 334, 96 S. Ct. at 902.

“To bring an eviction action, [landlords] shall file a complaint with the court . . . stating the facts which authorize the recovery of possession, and asking for recovery thereof.” Minn. Stat. § 504B.321, subd. 1(a) (2018). The district court will issue a summons, commanding tenants to appear before the court on a particular date. *Id.*, subd. 1(c). “At the court appearance specified in the summons, [tenants] may answer the complaint, and the court shall hear and decide the action, unless it grants a continuance of the trial as provided in section 504B.341.” Minn. Stat. § 504B.335(a) (2018). Under

section 504B.341, it is within a district court’s discretion to grant a continuance for no more than six days unless the parties agree to longer. Minn. Stat. § 504B.341(a).

Here, landlords filed their complaint on May 11, 2018. The eviction summons and complaint were served on May 14, 2018. The summons directed tenants to appear on May 23, 2018, and stated that on this day “the judicial officer will decide whether you will have to move or whether you can continue to stay in your home.” The summons notified tenants of their right “to come to court and tell [their] side of the case.”³ On May 22, 2018, tenants filed their answer and motion for dismissal or summary judgment, claiming that they did not “owe the rent alleged.”

Under the relevant statutes, the district court was to decide the action at the May 23 hearing, and tenants were aware that at this hearing, they would have to support their assertion that they did not owe rent in order to have their motion for dismissal or summary judgment granted. In other words, tenants should have been prepared to have the matter decided on the merits at the May 23 hearing without any expectation of a future trial date.

Tenants appeared at the May 23 hearing, with counsel, and *they* provided receipts that purported to show that they did not owe the rent.⁴ The referee stated that other than

³ The Minnesota Judicial Branch website instructs tenants to prepare for court by reading the summons and complaint carefully, and writing down what they want to tell the court. It also informs tenants on what to bring to court, including: “[r]eceipts or canceled check[s] to prove payment,” and witnesses and other documents to support their case. *See generally*, Hennepin Housing Court, <http://www.mncourts.gov/Find-Courts/Hennepin/Housing-Court.aspx>.

⁴ The dissent seems to indicate that the receipts upon which the referee relied were insufficient and required explanation with live testimony. However, *tenants* provided the receipts and were on notice that the referee would decide the action at the May 23 hearing; thus, presumably tenants relied on the receipts to support their case. The referee found that

one receipt, the receipts were for “back rent.” The referee stated: “Unless you got other evidence . . . it’s clear to me that there’s rent owed from February, March, and April I asked you for what you had; that’s what you gave me.”

The referee did not believe that a genuine fact issue existed for trial. The referee found that tenants owed the rent when it stated that it is clear that rent was owed. *See* Minn. R. Civ. P. 52.01 (providing that it is sufficient for findings of fact to be stated orally). Thus, the referee decided that, because tenants failed to offer evidence to show that they paid the rent owed, landlords were entitled to a writ of recovery. But within the discretion afforded, the referee scheduled a trial. *See* Minn. Stat. § 504B.335(a) (providing that the referee must hear and decide the case at the court appearance specified in the summons “unless it grants a continuance of the trial”).

The referee’s May 23 order shows that the referee decided the case at the May 23 hearing, but chose to not make that decision final in the event tenants posted the rent. The order states that tenants “shall pay into [c]ourt the rent of \$2,155 . . . or the [c]ourt will issue a Writ of Recovery of Premises and Order to Vacate.” Tenants were not denied due process because they received notice of the complaint, received notice that the matter would be decided on May 23, and were given an opportunity to, and did in fact, present evidence to support their position at the May 23 hearing.

Not only were tenants afforded a meaningful opportunity to be heard at the May 23 hearing, they were afforded that opportunity again at the August 2 judge-review hearing.

the receipts were for back rent and tenants did not provide any other proof to support their claim when prodded by the referee.

Tenants first appeared on May 23, and had until June 4 to deposit the rent. If tenants had evidence of payment, they could have presented it to the referee during this timeframe and, if convincing evidence, the referee likely would not have required the deposit of the rent. But tenants did not offer any evidence or proof during this period.

The judge-review hearing was held on August 2, 2018. Tenants' counsel conceded that if the referee, after a trial, agreed with landlords and "believe[d] what it says on those rent receipts" regarding back rent, tenants would "be in tough shape." Tenants claimed, however, that they did not have an opportunity to provide evidence and that the evidence they had for trial "will be compelling." Tenants did not indicate, however, what evidence outside the "rent receipts" existed; counsel referred specifically to the receipts as the evidence the referee would review at trial. Trial was scheduled for June 8, and counsel made these statements on August 2; if the evidence for the trial scheduled in June was "compelling," tenants had an opportunity to present it between May 23 and June 4, but did not do so. Tenants cannot show that they were prejudiced by the posting requirement because there is no indication that evidence of payment existed.

The referee appropriately followed the legal requirements of an eviction proceeding. Tenants received notice by way of the summons that directed tenants to be prepared to argue their case at the first hearing date. The law does not mandate an additional trial, and contemplates that the action will be decided at the court appearance specified in the summons. Further, the referee has inherent authority to manage the case calendar. Accordingly, the referee appropriately rendered a decision, but scheduled a trial in the event tenants deposited the disputed rent before the decision became final.

Finally, tenants argue that by making the trial contingent on the deposit of rent, the district court violated their constitutional guarantee “to obtain justice freely and without purchase.” Tenants cite *Weller v. City of St. Paul*, which stated that a law requiring payment of unpaid taxes in order to bring an action to vacate and set aside an illegal tax or special assessment conflicted with Minn. Const. art. 1, § 8, which provides that every person “ought to obtain justice freely and without purchase.” 5 Minn. 95, 101, 5 Gil. 70, 75-76 (1860). But the law, here, provides tenants with an opportunity to answer the complaint and appear at a hearing. Scheduling a trial after the initial hearing is discretionary with the district court. The eviction statute does not prevent tenants from obtaining justice without purchase.

Additionally, the referee fairly required deposit of rent that was narrowed to 2018. The referee required only \$2,155 deposited, despite landlords’ claim that tenants owed approximately \$17,000. The requirement of posting the rent did not prevent tenants from obtaining justice without purchase.

Affirmed.

JESSON, Judge (dissenting)

While I agree with the majority that the district court misapplied *Fritz v. Warthen*, 213 N.W.2d 339 (Minn. 1973), I disagree with the conclusion that tenants Craig T. Seifert and Tracy R. Bradley were afforded a meaningful opportunity to be heard at the May 23 hearing. As a result, I respectfully dissent.

Eviction proceedings are necessarily summary in nature and limited in scope. But even summary proceedings face parameters established by the governing statute, as well as the Constitution. Here, the initial court hearing following the answer in eviction proceedings mandates a *trial*. Minn. Stat. § 504B.335(a) (2018) (“[T]he court shall hear and decide the action, unless it grants a continuance *of the trial*. . .” (emphasis added)). Even if it did not, procedural due process requires both notice and a meaningful opportunity to be heard. *Mathews v. Eldridge*, 424 U.S. 319, 348, 96 S. Ct. 893, 909 (1976).¹ In this more-than-summary hearing, tenants received neither the promised trial nor the required meaningful opportunity to be heard.

This dispute centered on whether tenants had paid rent for February, March, and April 2018. The referee received a letter from the landlords setting forth how much the landlords believed to be due. But that letter was not received into evidence. It is not in the record in this case. The landlords did not personally appear. Never placed under oath. Not available for cross-examination.

¹ I agree with the majority that tenants received *notice* to appear on May 23, 2018, and that “the court shall hear and decide the action” on that date, unless a continuance is granted. Minn Stat. § 504B.335(a).

Tenants appeared at the hearing. And they submitted receipts for rent checks. All but one of the receipts—according to the transcript, as the documents were not received into evidence—included the notation “back rent.” Tenants’ counsel clearly stated that the notation was “not the truth.” But there was no testimony about who made that notation—the landlords or the tenants. In fact, there was no testimony as we commonly understand that fundamental concept.

On this record, the referee concluded that tenants owed rent from February through April 2018. The referee did so without live testimony, which is required at most trials, to support the landlord’s case. *See* Minn. R. Civ. P. 43.01. Not even a sworn affidavit was submitted. In fact, even though tenants appeared at the May 23 hearing, they were not sworn in as witnesses. No documents were accepted into evidence. And, which is particularly problematic in the procedural-due-process analysis, there was no opportunity to confront and cross-examine witnesses over the issue of who placed the “back rent” notation on the check receipt and why. *Fosselman v. Comm’r of Human Servs.*, 612 N.W.2d 456, 462 (Minn. App. 2000) (quoting *Goldberg v. Kelly*, 397 U.S. 254, 269, 90 S. Ct. 1011, 1021 (1970)) (“In almost every setting where important decisions turn on questions of fact, due process requires an opportunity to confront and cross-examine witnesses.”).

Yet the referee decided the central question of whether the disputed rent was paid. In doing so without requiring the parties to submit evidence under oath, without permitting the opportunity for cross-examination in some fashion, and without including the

documents in the record to permit appropriate appeal, the referee denied tenants the trial promised by statute, as well as a meaningful opportunity to be heard.²

But the landlords argue that a trial was not necessary. Rather, the referee's decision was an appropriate, sua sponte summary judgment decision. I disagree. Summary judgment is appropriate only where there are undisputed material facts. Minn. R. Civ. P. 56.01. At the May 23 hearing, tenants clearly disputed whether the payment reflected current or back rent.³ And I further note that summary judgment also requires documents submitted under oath. Minn. R. Civ. P. 56.03(a). No such evidence exists here.

Eviction proceedings are quick and summary in nature. But the landlords here want that summary nature to bend only in their favor. Landlords insist that tenants need more than their word at a hearing to establish a factual dispute over rent payment. Yet landlords neither personally appeared at that hearing to permit cross-examination, nor offer any sworn testimony for their version of the truth. This hearing does not meet the standards set out for a trial in Minnesota Statutes section 504B.335 (2018). Nor did it provide tenants

² I also disagree with the suggestion in the majority decision that if tenants had evidence of payment, they could have presented it between May 23 and the August 2 judge-review hearing, or at the review hearing itself. As the district court pointed out, "a judge's review of a decision recommended by the referee shall be based upon the record established before the referee." Minn. Gen. R. Prac. 611(a).

³ The cases cited by the landlord to the contrary are distinguishable. *Harmon v. Comm'r of Revenue*, 894 N.W.2d 155, 159 (Minn. 2017) (stating that Commissioner of Revenue's assessment of tax liability "enjoys a presumption of validity," supporting the tax court's granting of summary judgment); *Cargill Inc. v. Jorgenson Farms*, 719 N.W.2d 226, 233-34 (Minn. App. 2006) (stating that, based upon the record, summary judgment motion was supported by sworn affidavits of the only two people with knowledge of the alleged contract, and nonmoving party submitted no evidence to refute either that no contract was formed or the credibility of one affiant).

with the meaningful opportunity to be heard promised by the Constitution.⁴ Accordingly, I would reverse and remand for trial.

⁴ Because I would reverse and remand this case to the district court on these grounds, I do not reach the additional issues raised by the tenants.