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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0740**

In the Matter of Reba Mitchell's Termination of Section 8 Benefits.

**Filed February 22, 2021
Reversed
Hooten, Judge
Dissenting, Smith, Tracy M., Judge**

St. Paul Public Housing Agency

Tara Skar, Southern Minnesota Regional Legal Services, Inc., St. Paul, Minnesota (for relator Reba Mitchell)

Lyndsey M. Olson, St. Paul City Attorney, K. Meghan Kisch, Assistant City Attorney, St. Paul, Minnesota (for respondent Public Housing Agency of the City of St. Paul)

Considered and decided by Frisch, Presiding Judge; Hooten, Judge; and Smith, Tracy M., Judge.

NONPRECEDENTIAL OPINION

HOOTEN, Judge

In this certiorari appeal from the termination of her section 8 public housing assistance, relator argues that respondent Public Housing Agency of the City of St. Paul (PHA) erred as a matter of law in upholding the termination of her benefits because it was premised on an improper eviction. Relator also argues that the conclusion that she was evicted for a serious violation of her lease was not supported by substantial evidence. Because the conclusion that relator was evicted for a serious violation of her lease is not supported by substantial evidence, we reverse.

FACTS

The United States Department of Housing and Urban Development's section 8 housing choice voucher program provides qualifying participants with funds to subsidize their monthly rent payments. 42 U.S.C. § 1437f(o) (2018); 24 C.F.R. § 982.1(a) (2018). Under the program, a participant chooses a rental unit, and if the unit is approved, rent subsidy payments are made directly to the landlord on the participant's behalf. 24 C.F.R. § 982.1(a)(2). The amount of these subsidy payments can be as much as 100% of a participant's monthly rent obligation. See 42 U.S.C. § 1437f(o). Local government agencies in Minnesota are authorized to administer the voucher choice program. *Peterson v. Washington Cty. Hous. & Redevelopment Auth.*, 805 N.W.2d 558, 561 (Minn. App. 2011), *review denied* (Minn. Oct. 26, 2011). In the City of St. Paul, the program is administered by PHA.

On December 19, 2015, relator Reba Mitchell signed a residential lease for a property located in the city of St. Paul. Under the terms of the lease, relator was obligated to make monthly rent payments. The lease also stated that relator was responsible for all expenses related to plumbing issues that she caused.

On September 30, 2019, relator signed a section 8 family obligations certification as part of the process of applying for a section 8 rent subsidy. As a condition of her receipt of section 8 assistance, this certification required relator not to commit any serious or repeated violations of her residential lease. The certification also stated: "I further understand that if any serious or repeated lease violation results in a court-ordered eviction, the PHA must terminate my section 8 assistance." Relator also signed a section 8 housing

choice voucher program agreement on December 30, 2019. This agreement likewise required relator not to commit any serious or repeated violations of her lease.

Meanwhile, on December 20, 2019, relator's landlord filed an eviction complaint against her. The complaint alleged that relator had committed lease violations, including failure to pay rent; failure to pay costs associated with a clogged main plumbing line; and failure to pay other fees and expenses. The allegedly-unpaid amounts totaled \$3,742.50. The district court issued an eviction summons on December 24, 2019, and set an initial hearing for January 7, 2020. Relator appeared at the initial hearing without legal representation; her landlord was represented by counsel. It also appears that the father of relator's children, who lived with her at the property, was unable to appear at the initial hearing because he was hospitalized with "an illness related to working for the landlord."

After this initial hearing, the parties reached a settlement agreement under which relator was obligated to pay \$4,202 by January 22, 2020 and to vacate the premises by January 31, 2020. This settlement agreement indicated that if its terms were violated, "judgment may be entered and [landlord] will obtain a Writ of Recovery, upon filing of an affidavit establishing the violation and an Affidavit of Service." Importantly, the settlement agreement did not include any admission by relator that she had committed any violation of her lease. The district court adopted the parties' settlement agreement on January 15, 2020. On the form it used to do so, the district court did not check the box to indicate that the allegations of the complaint were true.

On January 22, 2020, relator's landlord filed an affidavit stating that relator had failed to comply with the settlement agreement by failing to pay any amount toward the

\$4,202 settlement. This affidavit did not state that relator had committed any serious lease violation. That same day, the district court issued a writ of recovery ordering relator's eviction. In doing so, the district court did not make any finding that relator had committed any serious lease violation. The Ramsey County Sheriff's Office posted the writ of recovery at the premises on January 23, 2020. There is no indication in the record that relator appealed from her eviction.

On February 5, 2020, PHA notified relator that her section 8 assistance would "be terminated for serious or repeated violations of the lease resulting in an eviction." The next day, relator petitioned for review of the termination of her assistance. On March 11, 2020, a hearing officer held an informal hearing to review PHA's termination of relator's section 8 assistance. At the hearing, relator was again without legal representation. Relator presented her testimony, along with that of the father of her children and her case manager who worked with the family. The hearing officer also heard testimony from an assistant manager of PHA.

On March 23, 2020, the hearing officer issued an order concluding that relator was evicted for a serious violation of her lease. Accordingly, the hearing officer upheld PHA's decision to terminate relator's section 8 assistance. Relator made a request for reconsideration on May 11, 2020. That request appears to have been denied. Mitchell now appeals the termination of her assistance by writ of certiorari.

DECISION

"We will uphold a housing authority's quasi-judicial decision to terminate a participant's housing benefits unless we conclude that the authority's decision is

unconstitutional, outside [the PHA's] jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious.” *Peterson*, 805 N.W.2d at 561 (quotation omitted). “Substantial evidence is defined as (1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety.” *Cannon v. Minneapolis Police Dep’t*, 783 N.W.2d 182, 189 (Minn. App. 2010) (quotation omitted).

PHA and the hearing officer both concluded that relator was evicted for a serious violation of her lease. In reaching that conclusion, the hearing officer did not find that relator had failed to pay her rent when it was due. Nor did the hearing officer find that relator had failed to pay for any tenant-caused damage to the property. In fact, the hearing officer found credible the testimony presented by relator at the review hearing—testimony which contradicted the lease violations alleged in the original eviction complaint. The hearing officer appears to have relied solely on the fact that relator was evicted after failing to comply with the settlement agreement as establishing that relator was evicted for a serious violation of her lease.

Relator argues that the PHA's decision to terminate her assistance is unsupported by substantial evidence. Specifically, relator contends that there is no evidence in the record that she violated her lease and that her assistance was instead terminated because she failed to make the payment required by the settlement agreement reached with her landlord. Respondent asserts that relator “made a tacit admission” to the allegations in the original eviction complaint “by entering into a settlement agreement to pay for all of the

items listed in the complaint, plus an additional \$459.50.” Respondent further maintains that, because relator tacitly admitted to a serious violation of her lease and because the district court issued a writ of recovery after relator failed to comply with the settlement that allegedly included that tacit admission, relator was in fact evicted for a serious violation of her lease.

On the particular facts of this case, the conclusion that relator was evicted for a serious violation of her lease is not supported by substantial evidence. The eviction action began when relator’s landlord filed an eviction complaint alleging failure to pay rent and other fees and charges. Importantly, the allegations in such a complaint are not evidence, let alone substantial evidence. *Leiendecker v. Asian Women United of Minnesota*, 848 N.W.2d 224, 230 (Minn. 2014), *reh’g granted, opinion modified*, 855 N.W.2d 233 (Minn. 2014). The parties then entered into a settlement agreement that was adopted by the district court. This agreement did not contain any explicit admission by relator to the allegations in the eviction complaint. We also decline to treat relator’s entry into this settlement agreement—made without the benefit of legal representation and while under the threat of eviction during January in Minnesota—as an implicit admission to the allegations in the eviction complaint.

After relator failed to comply with the terms of the settlement agreement, her landlord filed an affidavit to that effect. A writ of recovery was then issued and posted. Importantly, there is nothing in the record to suggest that the district court ever found that relator had committed any of the lease violations alleged in the original eviction complaint. As is noted above, the district court did not check the box to indicate that the allegations

of the complaint were true on the form it used to adopt the parties' settlement agreement. As such, relator appears to have been evicted solely because of her failure to comply with the parties' settlement agreement, not because of any violation of her lease.

If the settlement agreement had included an admission by relator that she had committed a serious violation of her lease, the outcome here would be different. Likewise, if the district court had made a finding that relator had committed a serious violation of her lease, there would be evidence in the record to support the conclusion of the PHA and the hearing officer that relator had been evicted for such a violation. And if PHA had presented any evidence at the review hearing tending to corroborate the allegations in the eviction complaint, we would be forced to consider whether such evidence was "substantial" enough to support the conclusion that relator had been evicted for a serious lease violation. But PHA should not have terminated relator's assistance solely on the basis of allegations in the eviction complaint, which are not evidence. *Leiendecker*, 848 N.W.2d at 230. Because the settlement agreement did not contain any admission by relator that she had violated her lease, because the district court did not make any finding that relator had violated her lease, and because there is no evidence whatsoever in the record that relator violated her lease, PHA's conclusion that relator was evicted for a serious violation of her lease is unsupported by substantial evidence.

Relator also argues that PHA erred as a matter of law in terminating her section 8 assistance. Specifically, relator contends that her eviction itself was improper, both because her landlord was barred from seeking to evict her for unpaid rent after accepting subsequent rent payments from PHA and because the unpaid repair charges alleged in the

eviction complaint were not incurred as a result of tenant-caused damage. Relator goes on to assert that by terminating her section 8 assistance because of a failure to comply with this settlement agreement, which itself followed from an improper eviction complaint, PHA erred as a matter of law. In raising this argument, relator essentially attempts to relitigate the propriety of her eviction, both before the PHA and before this court. Because we conclude PHA's conclusion that relator was evicted for a serious violation of her lease is not supported by substantial evidence, we need not reach relator's second argument.

Reversed.

SMITH, TRACY M., Judge (dissenting)

I respectfully dissent from the majority's determination that substantial evidence does not support the conclusion that relator was evicted for a serious violation of the lease. Because I conclude that substantial evidence supports the decision by respondent Public Housing Agency of the City of St. Paul (PHA), and that the decision was not based on an erroneous legal theory, I would affirm the termination of relator Reba Mitchell's housing benefits.

Federal regulations mandate the termination of section 8 housing benefits when a participant is evicted for a serious violation of the lease. 24 C.F.R. § 982.552(b)(2) (2018). ("The PHA must terminate program assistance for a family evicted from housing assisted under the program for serious violation of the lease."). Termination is not discretionary.

When a public-housing authority receives evidence, hears testimony, and makes a determination to deny an individual section 8 benefits, it acts in a quasi-judicial capacity. *Carter v. Olmsted Cty. Hous. & Redev. Auth.*, 574 N.W.2d 725, 729 (Minn. App. 1998). In a certiorari appeal from a quasi-judicial decision, our standard of review is limited. "An agency's quasi-judicial determinations will be upheld unless they are unconstitutional, outside the agency's jurisdiction, procedurally defective, based on an erroneous legal theory, unsupported by substantial evidence, or arbitrary and capricious." *Id.* Substantial evidence is "(1) such relevant evidence as a reasonable mind might accept as adequate to support a conclusion; (2) more than a scintilla of evidence; (3) more than some evidence; (4) more than any evidence; or (5) the evidence considered in its entirety." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 466 (Minn. 2002).

Here, relator's landlord filed an eviction complaint in December 2019 alleging failure to pay rent, failure to pay costs associated with a clogged main plumbing line, and failure to pay other fees and expenses. These allegations constitute serious violations of the lease. See 24 C.F.R. § 982.310(a)(1) (2018) (defining, for purposes of lease termination, "serious violation" to include without limitation "failure to pay rent or other amounts due under the lease" and "repeated violation of the terms and conditions of the lease"); see also *Cole v. Metro. Council HRA*, 686 N.W.2d 334, 337 (Minn. App. 2004) (applying 24 C.F.R. § 982.310(a)(1) to determine whether lease violation was a "serious violation" for purposes of benefits termination under 24 C.F.R. § 982.552(b)(2)).

An initial hearing in the eviction action was held on January 7, 2020. On January 15, before trial, the parties informed the district court that they had settled the eviction action.¹ Under the terms of the settlement agreement filed with the district court on January 15, relator agreed to pay an amount approximating the amount allegedly in arrears by noon on January 22 and to move out by January 31. If relator satisfied the terms of the settlement

¹ The majority correctly notes that relator was self-represented in court, while landlord (an LLC) had counsel. The eviction summons explains:

If you want a lawyer, you must get one right away.

Attorneys may be available at the courthouse to provide legal advice regarding your hearing, if you are income eligible. Plan to arrive by 8:15a.m. if you wish to speak to an attorney right before your hearing. The attorneys will meet with clients on a first-come, first-serve basis.

A corporation or LLC must be represented by an attorney in District Court. This includes having an attorney sign court papers on behalf of the client corporation or LLC.

agreement, landlord would not oppose expungement of the eviction record. If relator violated the terms of the settlement agreement, judgment would be entered and a writ of recovery issued.

When payment was not received by January 22, landlord filed an affidavit stating that relator had failed to make the required payment, and the district court entered judgment and issued the writ. Relator did not appeal the eviction judgment. *See* Minn. Stat. § 504B.371, subd. 2 (2018) (providing for appeal to this court from eviction judgment).

In sum, judgment was entered against relator in a breach-of-lease eviction action in which the alleged violations were serious. I would conclude, based on this record, that there is “more than a scintilla,” “some,” or “any” evidence that relator was evicted for a serious violation of the lease. *Cf. Cole*, 686 N.W.2d at 337 (concluding default judgment in breach-of-lease eviction action was sufficient to support termination of benefits based on serious violation of lease).

The majority highlights the absence of certain evidence in the record. It observes that the settlement agreement does not contain an admission of a lease violation. But the court form for landlord-tenant settlements that was used by the parties does not include a field for admission of liability. Nor would I expect parties to supplement the court form with the tenant’s admission of having committed a serious lease violation when expungement is anticipated upon satisfaction of the agreement’s terms. Similarly, I am not surprised by the absence of a factual finding by the district court that relator violated the

lease; because the case settled before trial, any factual finding by the district court would have been procedurally improper.²

Moreover, the issue before this court is not whether relator *committed* a serious violation of the lease; rather, it is whether relator was *evicted* for a serious violation of the lease. Whether relator committed a lease violation was at issue in the eviction action. That question was beyond the scope of the termination proceedings, which began after the eviction judgment became final, and is therefore beyond the scope of this appeal. The issue before us is what the basis for the eviction judgment was, not whether the judgment was warranted or correct. *See State v. Joseph*, 636 N.W.2d 322, 329 n.4 (Minn. 2001) (“We have held that, in considering whether a judgment may preclude litigation of the same claim in a subsequent proceeding, it is immaterial whether a judgment on the merits unappealed from was right or wrong.”). And, again, in my view, substantial evidence supports the PHA’s determination that the eviction judgment was based on serious lease violations.

I am sympathetic to relator’s plight. Termination of housing benefits has serious ramifications for the entire household. But even if policy reasons were an appropriate consideration for this intermediate appellate court, they weigh in both directions here. Settlements in eviction actions are common and can be beneficial to both parties. It cannot

² The majority concludes that relator was evicted for breach of the settlement agreement. Although breach of the settlement agreement precipitated entry of judgment, there is no indication in the record that the complaint alleging breach of lease was amended to include breach of the settlement agreement or was dismissed. And breach-of-settlement-agreement is not an independent statutory ground for eviction. *See, e.g.*, Minn. Stat. §§ 504B.285, .291, .301 (2018) (identifying grounds for eviction).

be in tenants' best interests for landlords participating in the section 8 program to be encouraged to go to trial in eviction actions in order to get judicial findings of serious lease violations or to demand that tenants admit liability as a condition of settlement. Given PHA's obligations and the lengthy waiting lists for benefits, this could be the natural result of the majority's reasoning. See 24 C.F.R. § 982.552(b)(2) (requiring termination when relator is evicted for serious violation of lease); *Awnuh v. Pub. Hous. Agency of City of St. Paul*, No. 19-CV-2765, 2019 WL 6492465, at *1 (D. Minn. Dec. 3, 2019) (explaining that "there are approximately 3,000 applicants on the current waitlist" for housing vouchers administered by PHA).

In sum, I would conclude that substantial evidence supports the determination that relator was evicted for a serious violation of the lease and that termination was not based on an erroneous legal theory. I would therefore affirm the decision.