

*This opinion is nonprecedential except as provided by
Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0701**

ESA P Portfolio Operating Lessee LLC dba
Extended Stay America Suites-Eden Prairie-Valley View Road,
Respondent,

vs.

Jessie Lin,
Appellant.

**Filed December 11, 2023
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-CV-HC-23-1332

Kevin T. McCarthy, Elliot T. Moormann, Larson King, LLP, St. Paul, Minnesota (for
respondent)

Jessie Lin, Baxter, Minnesota (pro se appellant)

Considered and decided by Johnson, Presiding Judge; Frisch, Judge; and Kirk,
Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to
Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

On appeal from final judgment in this eviction action, appellant-tenant challenges the district court's orders requiring her to deposit withheld rent into court and canceling trial when appellant failed to do so. Self-represented appellant also contends that judicial misconduct occurred because, according to appellant, the referee and district court judge are the same person. We affirm.

FACTS

Respondent ESA P Portfolio Operating Lessee LLC, dba Extended Stay America Suites-Eden Prairie-Valley View Road (ESA) operates an extended-stay hotel in Brooklyn Center, where appellant Jessie Lin resided. On December 8, 2022, ESA gave written notice to Lin that she needed to vacate the premises by December 22, 2022, because of her nonpayment of rent. Lin did not vacate the premises by December 22, 2022.

In February 2023, ESA commenced an eviction action against Lin, alleging that Lin was still in possession of the premises and had failed to pay rent from December 1, 2022, through February 2023. ESA subsequently filed an amended complaint, asserting that Lin had also failed to pay rent for March.

At the initial hearing, Lin presented several possible defenses to her non-payment of rent, including ESA's "failure to effectuate service," "failure to possess a certificate of authority," "[f]raud," and a "general denial (breach)." Lin's subsequent answer raised the issue of whether ESA failed to comply with the statutory covenants of habitability. The district court ordered Lin to pay into court \$5,000 by April 10, 2023. Lin moved to vacate

the order, arguing that ESA violated its covenant of habitability, and thus she was not required to pay the \$5,000 deposit. ESA responded, asserting that Lin did not provide a legitimate basis for withholding rent; Lin “admitted that she ha[d] not paid rent to ESA and ha[d] no defenses to prevent an eviction.” ESA further argued that the deposit requirement was proper under *Fritz v. Warthen*, 213 N.W.2d 339, 343 (Minn. 1973). Lin did not make the \$5,000 deposit by April 10, 2023.

On April 11, 2023, the district court vacated the \$5,000 deposit requirement, stating that because Lin asserted that ESA “failed to comply with the covenants of landlord . . . requirements under Minn. Stat. § 504B.161,” Lin “should not be required to post the bond as ordered by the [c]ourt.” ESA requested that the court reconsider its order vacating Lin’s deposit requirement. The district court granted ESA’s motion to reconsider based on ESA’s argument that Lin had asserted a *Fritz* defense. The district court ordered Lin to pay \$5,403.43 into court by May 9, 2023, along with future weekly rent while the matter was pending. Lin did not deposit the funds by May 9, 2023. The district court subsequently canceled the trial and issued a writ of recovery.

Lin appeals.

DECISION

Lin argues that the district court erred because it improperly imposed a deposit requirement and then canceled the trial when she did not deposit withheld rent into court,

and that judicial misconduct occurred because the housing court referee and district court judge are the same person.¹ We affirm.

Minnesota Statutes chapter 504B governs eviction actions. An eviction action is a summary proceeding to determine the present possessory right to property. *See Amresco Residential Mortg. Corp. v. Stange*, 631 N.W.2d 444, 445-46 (Minn. App. 2001). A landlord may bring an eviction action against a tenant for nonpayment of rent. Minn. Stat. § 504B.291 (2022); *see also* Minn. Stat. § 504B.285 (2022) (providing additional grounds for eviction actions). When this court reviews a confirmed referee decision, “[t]he findings of a referee, to the extent adopted by the court, shall be considered as the findings of the court.” Minn. R. Civ. P. 52.01.

We review appeals from eviction actions to determine “whether the district court’s findings of fact are clearly erroneous.” *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.

¹ Lin also asks this court to determine whether the eviction order violates her constitutional and statutory rights. We generally must only consider the issues that the record shows were presented to and considered by the district court in deciding the issue before it. *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988). Lin did not raise these issues below, and we thus consider them forfeited.

Lin further raises the issue of fraud in her reply brief. But because Lin did not raise this issue in her principal brief, we thus consider the issue forfeited. *Moorhead Econ. Dev. Auth. v. Anda*, 789 N.W.2d 860, 887 (Minn. 2010); *see Wood v. Diamonds Sports Bar & Grill, Inc.*, 654 N.W.2d 704, 707 (Minn. App. 2002) (“If an argument is raised in a reply brief but not raised in an appellant’s main brief, and it exceeds the scope of the respondent’s brief, it is not properly before [the court of appeals]”), *rev. denied* (Minn. Feb. 26, 2003).

App. 1986) (quotation omitted). We review a district court’s conclusions of law de novo. *W. Insulation Servs. Inc. v. Cent. Nat’l Ins. Co. of Omaha*, 460 N.W.2d 355, 357 (Minn. App. 1990). “When reviewing mixed questions of law and fact, we correct erroneous applications of law, but accord the district court discretion in its ultimate conclusions and review such conclusions under an abuse of discretion standard.” *In re Est. of Sullivan*, 868 N.W.2d 750, 754 (Minn. App. 2015) (quotation omitted).

Lin argues that the district court erred when it imposed the deposit requirement and canceled the trial when she failed to make the deposit. Specifically, she contends that “genuine issues of material fact exist concerning the habitability of the premises and the amount of rent owed,” and that there was insufficient service of process. We address each of her arguments in turn.

First, Lin argues that the district court erred because ESA failed to “maintain leased premises in reasonably good condition,” thus violating the statutory covenants of habitability under Minn. Stat. § 504B.161 (2022). In *Fritz*, the supreme court held that once a district court determines that a fact issue exists as to a habitability defense, the district court should order the tenant to pay into the court any rent withheld from the landlord and any future rent owed until the matter is resolved on the merits. 213 N.W.2d at 343. It concluded that this requirement was proper because while an eviction case is pending, a landlord is deprived of rent payments while the tenant remains in possession of the property. *Id.* Without some rental income, the landlord “may be unable to correct the very conditions that the tenant contends render the premises untenable.” *Id.* The supreme court concluded that “once the [district] court has determined that a fact question

exists as to the breach of the covenants of habitability, that court will order the tenant to pay the rent to be withheld from the landlord into court,” including “any future rent withheld” during the pendency of the case. *Id.*

We discern no reason, and Lin has provided no caselaw persuading us, to depart from the court’s decision in *Fritz*.² Here, after Lin failed to pay rent, ESA gave written notice to Lin to vacate the property by December 22, 2022. Lin failed to vacate the property. Approximately two months after it gave notice to Lin to vacate the premises, ESA filed its eviction complaint, alleging that Lin owed rent for December, January, and part of February. The parties appeared at a hearing, where Lin articulated several defenses for nonpayment of rent. The district court ordered Lin to deposit into court \$5,000. And in Lin’s subsequent answer, she raised a specific habitability defense. Accordingly, under *Fritz*, the district court could impose the deposit requirement because Lin asserted a defense to nonpayment of rent. Because Lin did not make the deposit, we determine that the district court appropriately canceled the trial.

Second, Lin argues that the district court erred when it imposed the deposit requirement and later canceled the trial because the amount of rent owed is a disputed fact. In the district court’s initial order, it required Lin to pay \$5,000 into court. Over one month later, the district court explained that Lin was still in possession of the premises, that ESA

² We recognize that the result may be different after January 1, 2024, based on changes to Minnesota law. *See* 2023 Minn. Laws ch. 52, art. 19, §§ 107, 116, at 950-51 (amending Minn. Stat. § 504B.335 (2022)).

claimed rent for December 2022 through March 2023, and that Lin owed for April 2023 as well, and thus adjusted the deposit amount to \$5,403.43.

Because Lin remained on the premises without paying rent *after* the district court ordered the deposit, the amount owed to ESA necessarily increased. And although Lin presented evidence that allegedly showed that ESA charged different daily rates, the district court did not find that evidence persuasive. On appeal, Lin has not shown that the district court clearly erred in determining how much rent was owed for purposes of the deposit requirement.

Lin relies on *Bell v. Tsintolas Realty Co.*, 430 F.2d 474, 483-84 (D.C. Cir. 1970), a federal appellate decision, to argue that the district court erred in requiring her to pay back rent as part of the deposit requirement. The *Bell* court explained that “the protective purpose of the rent payment requirement ordinarily will be well served simply by requiring only future payments,” but it also explained the discretion that must be afforded to the district court, noting that “the [district] court may properly consider the amount of rent alleged to be due.” 430 F.2d at 483-84.

We are not persuaded that *Bell* applies here. Not only has this court (or the supreme court) never relied on *Bell*, but Lin fails to set forth an explanation for why this court should follow *Bell*, a federal appellate decision, when Minnesota precedential caselaw under *Fritz* appropriately covers the issue. See *Citizens for a Balanced City v. Plymouth Congregational Church*, 672 N.W.2d 13, 20 (Minn. App. 2003) (stating that this court is bound by the Supreme Court but not other federal courts).

Third, Lin challenges sufficiency of process and notice requirements under Minnesota Rule of Civil Procedure 12.02(d). But an assignment of error in a brief based on “mere assertion” and not supported by argument or authority is waived unless prejudicial error is obvious on mere inspection. *Schoepke v. Alexander Smith & Sons Carpet Co.*, 187 N.W.2d 133, 135 (Minn. 1971). And Lin does not explain how she was prejudiced. We therefore decline to consider this issue.

Finally, we address Lin’s assertion that the assigned housing court referee and countersigning district court judge are the “same person,” and that judicial misconduct occurred when one person was assigned to both roles. Specifically, Lin argues that “[t]he possibility that [the referee and judge] are the same person creates a conflict of interest and detracts from the dignity of the court.” We have carefully considered this argument, and we conclude that it is factually unsupported. The assigned referee and district court judge are not the same person. Accordingly, we reject Lin’s claim of judicial misconduct.

In sum, we conclude that the district court did not abuse its discretion by requiring a deposit requirement under *Fritz* or canceling the trial when Lin failed to satisfy it. Furthermore, we conclude that the district court did not commit judicial misconduct.

Affirmed.