

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA17-659

Filed: 19 December 2017

Mecklenburg County, No. 16 CVD 15122

LINDA BERNARD, ALAN BERNARD, Plaintiffs,

v.

MARY ANN DEBLANCO, Defendant.

Appeal by defendant from order entered 3 November 2016 by Judge Karen Eady-Williams in Mecklenburg County District Court. Heard in the Court of Appeals 15 November 2017.

Horack, Talley, Pharr & Lowndes, P.A., by Henry N. Pharr III and Keith B. Nichols, for plaintiff-appellees.

Wesley S. White for defendant-appellant.

ARROWOOD, Judge.

Mary Ann DeBlanco (“defendant”) appeals from summary ejectment order in favor of Linda Bernard (“Mrs. Bernard”) and Alan Bernard (together “plaintiffs”). For the following reasons, we affirm.

I. Background

Plaintiffs initiated this action by filing a “Complaint in Summary Ejectment” in Mecklenburg County Small Claims Court in early August 2016. The complaint alleged that defendant leased a property from plaintiffs pursuant to an oral lease, but that the lease ended 31 July 2016 and defendant was holding over after the end of the lease period. A summons was issued on 3 August 2016, mailed on 5 August 2016, and filed on 9 August 2016.

The matter was initially heard before a magistrate judge on 15 August 2016. That same day, the magistrate filed a “Judgment in Action for Summary Ejectment” that ordered defendant be removed from and plaintiffs be put in possession of the property. The magistrate’s judgment also ordered that defendant pay plaintiffs rent in arrears. Defendant filed notice of appeal to the District Court and filed bond to stay execution of the magistrate’s summary ejectment judgment on 25 August 2016. An assistant clerk ordered a stay of the execution of the judgment the following day.

The matter was heard *de novo* in Mecklenburg County District Court before the Honorable Judge Karen Eady-Williams on 3 November 2016. At the conclusion of the hearing, the judge announced her decision and entered an order granting plaintiffs possession of the property. In the order, the trial court found as fact that plaintiffs and defendant entered into a six-month oral lease agreement and defendant became a holdover tenant as of 1 July 2016. The trial court further found that defendant was given proper, timely notice to vacate and failed to vacate, and there

was no written agreement for the sale/purchase of plaintiffs' home. Based on these findings of fact, the trial court concluded that defendant breached the oral lease agreement by failing to vacate after being given proper notice. In addition to ordering possession to plaintiffs, the trial court ordered that the rent bond be paid to plaintiffs immediately. Explaining the decision in open court, the trial court indicated that the bond was to be "paid over" to plaintiffs so that plaintiffs could pay the mortgage; yet, "if there are any further appeals, that bond will continue to be paid to the Clerk of Court." Defendant filed notice of appeal to this Court on 2 December 2016.

II. Discussion

The sole issue on appeal is whether the trial court erred in granting plaintiffs possession of the property and ejecting defendant. Defendant contends the trial court did err because "a month to month tenancy was not created" and "the notice to quit was defective." We are not convinced the trial court erred.

In a summary ejectment action, "[a] trial court's findings of fact are binding on appeal if supported by competent evidence. Unchallenged findings of fact are also binding on appeal. However, we review questions of law *de novo*." *Durham Hosiery Mill Ltd. Partnership v. Morris*, 217 N.C. App. 590, 592, 720 S.E.2d 426, 427 (2011) (internal citations omitted).

A. Month-to-Month Tenancy

In arguing the tenancy was not month-to-month, defendant contends the trial court erred in finding there was a six-month oral lease because there was evidence that she would rent the property until she purchased the property from plaintiffs. While we acknowledge that there was testimony tending to show that defendant and plaintiffs discussed defendant renting the property until defendant purchased the property, it is not this Court's role to reweigh the evidence or judge the credibility of the witnesses; that is solely the role of the trial court. *See Matter of Estate of Trogon*, 330 N.C. 143, 147-48, 409 S.E.2d 897, 900 (1991). Thus, we look only to see if the trial court's findings are supported by competent evidence.

In this case, there was evidence that plaintiffs and defendant entered into an oral lease whereby defendant was to rent plaintiffs' property from September 2015 to 30 June 2016. Mrs. Bernard acknowledged that term in her testimony and stated the duration of the lease was for six months. Specifically, in response to a question regarding the term or duration of the oral lease, Mrs. Bernard stated, "[s]ix-month lease, end at the end of June." It is evident the trial court found Mrs. Bernard's testimony credible, as its findings of fact reflect her testimony. Although Mrs. Bernard's testimony supports the trial court's finding, we acknowledge that the alleged term of the lease, from September 2015 to 30 June 2016, was more than six months. Yet, the discrepancy in the evidence is of little consequence in this case. What is important is that the duration of the oral lease was for a term of less than

one year and ended on 30 June 2016. Thus, as the trial court found, “defendant became a holdover tenant as of July 1, 2016.”

Under North Carolina Law, if a tenant holds over after the term of a lease and rent is accepted, the lease is extended. This Court has explained as follows:

North Carolina law specifically addresses holdover tenants: “Nothing else appearing, when a tenant for a fixed term of one year or more holds over after the expiration of such term, the lessor has an election. He may treat him as a trespasser and bring an action to evict him and to recover reasonable compensation for the use of the property, or he may recognize him as still a tenant, having the same rights and duties as under the original lease, except that the tenancy is one from year to year and is terminable by either party upon giving to the other 30 days’ notice directed to the end of any year of such new tenancy.”

Fairway Outdoor Advertising v. Edwards, 197 N.C. App. 650, 655-56, 678 S.E.2d 765, 769 (2009) (quoting *Coulter v. Capitol Finance Co.*, 266 N.C. 214, 217, 146 S.E.2d 97, 100 (1966)) (emphasis omitted). Where the period of the initial lease is for less than one year, the term of the holdover tenancy is determined based on the interval between the rental payments. See *Kent v. Humphries*, 303 N.C. 675, 678, 281 S.E.2d 43, 46 (1981) (adopting the rule that when an invalid lease is entered into, a periodic tenancy is created with the period determined by the interval between rental payments).

In this case, the oral lease for a period of less than one year provided that defendant would pay rent monthly to plaintiffs. Thus, by holding over after the initial term of the lease ended on 30 June 2016, and by plaintiffs’ acceptance of a rental

payment deposited in plaintiffs' bank account by defendant for July, a month-to-month tenancy was created.

B. Notice to Quit

The record in this case shows that plaintiffs provided notice to quit to defendant dated 20 July 2016. That notice stated as follows:

PLEASE TAKE NOTICE that your tenancy under which you hold the possession of the herein described premises is hereby terminated as of July 31, 2016. YOU ARE HEREBY required to quit and surrender possession thereof to [plaintiffs] on or before July 31, 2016. Failure to do so will result in a Summary Ejectment against you to recover rent, damages and possession of said premises.

Defendant argues that even if a month-to-month tenancy was created after the initial term of the oral lease ended, this notice to quit was defective.

N.C. Gen. Stat. § 42-14 governs “notice to quit in certain tenancies[.]”

Pertinent to this case, it provides as follows:

A tenancy from year to year may be terminated by a notice to quit given one month or more before the end of the current year of the tenancy; a tenancy from month to month by a like notice of seven days; a tenancy from week to week, of two days.

N.C. Gen. Stat. § 42-14 (2015). Given that the lease in this case was month-to-month after defendant held over at the end of the initial term ending 30 June 2016, plaintiffs were required to provide notice of seven days.

In this case, it is clear that notice of more than seven days was provided. Defendant, however, argues that because plaintiffs accepted rent for July, the notice

to quit is defective because it deprives her of time for which rent was accepted. Defendant claims the notice to quit was off by one day because it required her to quit and surrender possession “on or before July 31, 2016.” Defendant’s argument is frivolous. It is clear from the notice to quit that the last day of defendant’s tenancy was 31 July 2016, and that defendant must be out of the property by the end of that day. The notice did not deprive defendant of possession of the property during the time for which defendant had paid rent to plaintiffs.

III. Conclusion

For the reasons discussed, we uphold the trial court’s findings and conclusion that “[defendant] breached the oral lease agreement by failing to vacate after being given proper notice.” Thus, pursuant to N.C. Gen. Stat. § 42-26(a)(1), the trial court did not err in granting summary ejectment in favor of plaintiffs.

AFFIRMED.

Judges STROUD and ZACHARY concur.

Report per Rule 30(e).