IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-190

No. COA20-453

Filed 4 May 2021

Davidson County, No. 19 CVD 2303

RONALD BRADLEY, Plaintiff,

v.

LORRAINE TAPIA, Defendant.

Appeal by Defendant from order entered 13 February 2020 by Judge Carlos Jańe in Davidson County District Court. Heard in the Court of Appeals 9 February 2021.

Brinkley Walser Stoner, PLLC, by Emery Drew Nelson, for the Plaintiff-Appellee.

Surratt Thompson & Ceberio PLLC, by Christopher M. Watford, for the Defendant-Appellant.

JACKSON, Judge.

¶ 1 Lorraine Tapia ("Defendant") appeals from the trial court's order awarding Ronald Bradley ("Plaintiff") possession of a residence located in Winston-Salem (the "Winston-Salem Property") in an action for summary ejectment. We hold that the trial court correctly concluded that the relationship between the parties was that of landlord and tenant. Because the right of Plaintiff, as landlord, to maintain this

action comes within the terms of the summary ejectment statute, we affirm the order of the trial court.

I. Background

¶ 2 For approximately six years, Plaintiff and Defendant were in an on-again-off-again romantic relationship. They also did business together. Plaintiff would acquire properties and Defendant would renovate the properties for resale.

¶ 3 In 2016, Plaintiff purchased the Winston-Salem Property by general warranty deed. Plaintiff financed the purchase price of the property with a mortgage secured by a deed of trust on which he was the sole obligor. The promissory note accompanying the deed of trust also only identified Plaintiff as the borrower.

¶ 4 However, the parties shared access to a joint bank account for the Winston-Salem Property and each agreed to pay half of the Winston-Salem Property expenses, including mortgage and utility payments. Defendant was also listed as a policyholder on the homeowners' insurance and as the primary homeowner on the homebuyers' warranty. When unrelated litigation arose between property owners in the community in which the Winston-Salem Property is located, Defendant paid for half of the costs of the litigation.

¶ 5 In 2018, the parties experienced a break in their romantic relationship and Plaintiff sent Defendant an eviction notice. Days after receiving this notice, the parties reconciled, and the issue of eviction did not arise again until 28 June 2019,

when Plaintiff provided Defendant with oral notice to vacate. As a result of Defendant's failure to pay her portion of the Winston-Salem Property expenses and vacate the premises, Plaintiff filed a complaint for summary ejectment on 13 August 2019 in the Small Claims Division of Davidson County District Court.

¶ 6 Both parties agree that the Winston-Salem Property was initially purchased for residential purposes; however, Defendant contends that the purpose changed to income-producing after she had been living there for some time. Furthermore, Defendant contends that a partnership existed between the parties and that her contributions to the expenses of the Winston-Salem Property were not rent but instead, were partnership expenses. Plaintiff, on the other hand, contends that the parties had a landlord-tenant relationship in which Defendant resided in the house on a month-to-month tenancy and owed him rent.

¶ 7 The matter came on for hearing on 17 September 2019 before Magistrate C. H. Smith in small claims court. After hearing the evidence, the magistrate issued a judgment in favor of Plaintiff for possession of the premises but declined to enter judgment as to the amount of rent owed. Defendant timely filed a notice of appeal from the magistrate's judgment.

¶ 8 On 4 November 2019, the matter came on for a *de novo* hearing before the Honorable Carlos Jańe in Davidson County District Court. Judge Jańe presided over a one-day bench trial. The trial court ultimately concluded that "a Landlord/Tenant

relationship exist[ed] between Plaintiff in the capacity as owner/Landlord and Defendant in the capacity as a tenant with respect to the subject property." The trial court therefore awarded possession of the Winston-Salem Property to Plaintiff. Like the small claims court magistrate, the trial court was unable to determine how much rent Defendant owed Plaintiff, if any.

¶ 9 Defendant timely appealed to our Court.

II. Standard of Review

¶ 10 In summary ejectment actions, "[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. P'ship v. Morris*, 217 N.C. App. 590, 592, 720 S.E.2d 426, 427 (2011) (internal citations omitted). The issue of subject matter jurisdiction can be raised at any time, and presents a question of law, which we review *de novo*. *Banks v. Hunter*, 251 N.C. App. 528, 531, 796 S.E.2d 361, 365 (2017).

III. Analysis

A. Challenged Findings

¶ 11 Defendant raises a number of challenges to the trial court's findings of fact. Defendant challenges the evidentiary basis for several findings of fact and argues that several findings of fact were summations of arguments, mere recitations of testimony, or erroneous and mischaracterized conclusions of law. We address the

evidentiary challenges first.

1. Evidentiary Challenges

a. Findings of Fact 15 and 26

¶ 12 Defendant challenges the evidentiary basis for findings of fact 15 and 26, in which the trial court found:

> 15. Defendant breached [her] obligation [to pay half of the expenses] by failing to fully and timely pay one-half of the house, including mortgage payments and utilities, etc.
>
> . . .
>
> 26. The Court could not determine the extent of the actual breach or a monetary amount that Plaintiff was owed with the evidence presented.

Defendant contends that these findings were not supported by competent evidence. We disagree.

¶ 13 During the 4 November 2019 *de novo* hearing before Judge Jańe in district court, Plaintiff testified as follows regarding Defendant's failure to contribute her share of the expenses:

> Q: Okay. Did you-all have any discussion about her staying with you and any upkeep or maintenance or costs that she was going to pay, or were you just going to allow her to live there free of charge?
>
> A: No. So the deal was she would pay half the mortgage and half of the bills and utilities.
>
> Q: Okay. Approximately what was that monthly mortgage payment and her half of that obligation?

> A: It was approximately $2200, so half of that would have been [$]1100.
>
> Q: And did she, from time to time, make payments of that half of the mortgage payment?
>
> A: In the beginning, yes, she did from time to time.
>
> Q: Okay. About when did she stop making payments on that mortgage?
>
> A: Hard to say for sure, but it was probably sometime in 2018.

Although Defendant admitted to agreeing to contribute to the expenses, including the mortgage, she testified that Plaintiff had also agreed to "pay [her] back for many things[,]" such as gifts for Plaintiff's family members she paid for and for which she would receive credit against her share of the expenses.

¶ 14 We hold that the trial court's finding that Defendant breached her obligation to fully and timely pay half of the expenses was supported by competent evidence. The trial court was free to credit Plaintiff's testimony that Defendant did not pay her share of the expenses. Bank statements submitted by Defendant showed only sporadic contributions by Defendant, corroborating Plaintiff's testimony. The parties' testimony also demonstrates that Plaintiff accepted in-kind payments from Defendant. This testimony, coupled with the absence of any evidence to suggest how much money Defendant owed in rent, supported finding of fact 26, relating to the court's inability to determine the amount Plaintiff was owed for rent.

b. Finding of Fact 16

¶ 15 Defendant also challenges the trial court's sixteenth finding of fact, in which the court found:

> 16. Plaintiff made demand upon Defendant for payment and Defendant failed to cure the breach.

Defendant contends that the evidence did not support this finding. Specifically, Defendant argues that Plaintiff's "couch conversation" about relocating to Charlotte did not amount to adequate notice to vacate and had nothing to do with nonpayment.

¶ 16 As noted previously, in September 2018, Plaintiff gave Defendant an eviction notice. The notice was in the form of a letter. In the letter, Plaintiff informed Defendant that her "month to month tenancy . . . will terminate on October 2, 2018." Plaintiff also testified that in June 2019 he had a conversation with Defendant in which he informed her that he would be taking a job in Charlotte and she needed to find a new place to live. Although Defendant denied that this conversation ever took place, the trial court was free to discredit her denial. Accordingly, we hold that the testimony related to the eviction notice and the June 2019 conversation was competent to support the trial court's sixteenth finding of fact.

c. Finding of Fact 21

¶ 17 Next, Defendant challenges portions of finding of fact 21, in which the trial court found:

> 21. Defendant testified that the property was to become

> income producing along with the other investment properties described above. However, in Paragraph #22 of the verified complaint filed in 16 CVS 2543, Defendant Tapia plead the property was not to be income producing, inconsistent and in direct contradiction to her testimony in this action that the property was designed to be income producing.

¶ 18 Defendant argues that portions of this finding are unsupported by the greater weight of the evidence and that the finding mischaracterizes her testimony. Specifically, Defendant objects to the final clause of the finding, in which the trial court characterized her testimony as inconsistent and contradictory.

¶ 19 During the 4 November 2019 hearing, the following colloquy related to Defendant's statements in other litigation transpired:

> Q: Now in your lawsuit that you filed in Superior Court, did you state in there in the verified complaint that "The parties agreed [the Winston Salem Property] would not be income producing, the parties agreed to split monthly mortgage payments, with Plaintiff –" that would be you – "paying one-half of monthly mortgage obligation"? Did you state that in your Superior Court lawsuit?
>
> A: I do not have that in front of me. I would have to look at it. What I will tell you is that when we purchased the property, we purchased it to finish the upstairs and to live in it and to rent it, and that is why we did an offer for two lots to build our dream home.
>
> And the Realtor I spoke to yesterday – and she could not be here today – she is willing to testify that he told her, "The only reason Lori is not going to be on the offer is because she deals with all of the contractors, and we want to limit liability."

Q: So just to make sure I got all that right, it's your testimony now that the [Winston Salem Property] was supposed to be some sort of rental or income-producing property?

A: It was bought with the intention of us buying it, completing it, and then deciding what we wanted to do with it, whether it was a rental or whether it turned into an income-producing.

. . .

Q: So to follow up on a question I asked you about the – this will be a copy of the verified complaint. I'm going to show it to you. This is the only copy I have, so excuse me.

A: So can I hold it?

Q: Yeah.

A: Okay. And where am I going to?

Q: I believe the third page with the sticky next to it. I'll know the number when I'm looking at it.

A: Right here?

Q: Yes. Would you read that to the Court?

A: "That the parties agreed [the Winston Salem Property] would not be an income-producing. The parties agreed to split the monthly mortgage with the Plaintiff paying one-half of the monthly mortgage obligations." That was the intention when we purchased it.

Q: And is this part of your verified complaint that you filed in Superior Court?

A: It definitely is, and we changed our mind, and that's why we put it off on another – on two pieces of land to build our dream home, and that is also stated.

¶ 20 Defendant's objection to the trial court's characterization of this testimony amounts to a request that we re-assess the credibility of her testimony, which "we cannot and will not do." *Laprade v. Barry*, 253 N.C. App. 296, 302, 800 S.E.2d 112, 116 (2017) (internal citation omitted). The trial court was in the best position to pass upon the "credibility of the witnesses and the weight to be given [to] their testimony." *In re Gleisner*, 141 N.C. App. 475, 480, 539 S.E.2d 362, 365 (2000) (internal citation omitted). We also note that Defendant's testimony was, in fact, inconsistent with the allegations in the complaint in the other case referenced during cross-examination.

B. The Trial Court's Unchallenged Findings

¶ 21 The trial court also made the following unchallenged findings of fact in its 12 February 2020 order:

> 1. Plaintiff[,] Ronald N. Bradley[,] is a citizen and resident of the State of North Carolina.
>
> 2. Defendant, Lorraine S. Tapia, is a citizen and resident of Davidson County, North Carolina.
>
> 3. Defendant currently occupies the residence at 453 Inverness Drive, Winston-Salem (hereinafter "subject property"[)] which lies within the physical limits and boundaries of Davidson County, North Carolina.
>
> 4. Plaintiff purchased the subject property on or about June 10, 2016, by virtue of General Warranty Deed, recorded in the Office of the Register of Deeds of Davidson County, Book 2225, Page 640. Ronald N. Bradley is the only identified Grantee on the Warranty Deed.
>
> 5. Plaintiff undertook a mortgage to purchase the

subject property and is the sole obligor on said purchase money deed of trust and the accompanying promissory note.

6. Plaintiff and Defendant were in a romantic relationship of an "on and off" nature, reconciling at various points over a period of approximately six years. The parties never married.

7. Prior to the purchase of the subject property, Defendant moved with Plaintiff from homes in Atlanta, Georgia and Charlotte, North Carolina to the subject property in 2016 after the purchase of the home by Plaintiff as herein described. Plaintiff and Defendant both classified the purchase of these properties as investments. There was no evidence the Defendant was required to pay rent at these properties.

. . .

10. Plaintiff did not present Defendant with a written lease or other rental agreement for the subject property. Instead, an agreement existed wherein the Defendant was to pay one-half (1/2) of the expenses of the house, including mortgage payments and utilities, etc.

11. The approximate amount due was $ 1,100.00 each month, due and payable on the third week of each month to coincide when the Defendant was expected to receive social security checks.

12. Defendant did in fact pay some sums of money to Plaintiff in support of the above obligations.

13. On September 2, 2018, Plaintiff gave Defendant an eviction letter providing 30 days' notice to vacate.

. . .

17. Defendant contends that a larger, more complex partnership exists between Plaintiff and the Defendant

> and that the subject property was included therein such that Defendant was not paying rent but rather paying her share of partnership expenses.
>
> 18. Defendant agreed she maintained an obligation to pay one-half of the expenses of the subject property but as a partner and not as a tenant.
>
> . . .
>
> 20. The Court received into evidence declaration pages from various insurance policies, home warranty statements, and bank statements wherein the Defendant Tapia was listed as an insured, account holder, claimant or maintained some obligation under said policies or warranties with respect to real estate.
>
> . . .
>
> 29. Defendant Tapia has continued to occupy the premises and has not, to this date of hearing, vacated the premises.
>
> 30. Defendant and her two minor children reside at the property. It is in the best interest of the children not to be displaced during an active school semester.

Because these findings are unchallenged, they are binding on appeal. *Durham Hosiery Mill Ltd. P'ship*, 217 N.C. App. at 592, 720 S.E.2d at 427.

C. Other Challenges

¶ 22 Defendant also argues that several findings of fact were summations of arguments, mere recitations of testimony, or erroneous and mischaracterized conclusions of law. She also contends that the trial court erred in concluding that a landlord-tenant relationship existed between her and Plaintiff, and therefore lacked

jurisdiction over this case. We agree that several of the trial court's findings of fact are actually conclusions of law and that several of the trial court's findings of fact are summations of arguments and mere recitations of testimony. However, we hold that the trial court's improperly labeled legal conclusions are correct and the findings merely summarizing the parties' contentions or reciting their testimony were not necessary to support the trial court's legal conclusions.

1. Improperly Labeled Legal Conclusions

d. Findings of Fact 24, 25, 27, and 28

¶ 23 Defendant challenges the trial court's twenty-fourth, twenty-fifth, twenty-seventh, and twenty-eighth findings of fact, in which the court found:

> 24. The Court finds a Landlord/Tenant relationship exists between Plaintiff in the capacity as owner/Landlord and Defendant in the capacity as a tenant with respect to the subject property.
>
> 25. The Court finds that summary ejectment is proper pursuant to North Carolina General Statute Chapter 42A.
>
> . . .
>
> 27. A breach by nonpayment by Defendant occurred.
>
> 28. Plaintiff gave proper notice of termination of the tenancy.

Defendant contends that these findings are conclusions of law. We agree.

Because determining whether there had been breach, proper notice, and the existence of a landlord-tenant relationship required the court to evaluate evidence

and exercise its judgment to apply legal principles, we hold that findings of fact 24, 27, and 28 are "more appropriately [considered] conclusion[s] of law. *See Guox v. Satterly*, 164 N.C. App. 578, 582, 596 S.E.2d 452, 455 (2004). Similarly, determining whether summary ejectment was proper required the court to apply N.C. Gen. Stat. § 42-26 and determine whether its elements were met.

¶ 24 However, while we agree that these findings are properly considered conclusions of law, we hold that they are correct and that Defendant has not—and indeed, cannot—demonstrate otherwise, on this record.

e. Findings of Fact 19, 22, 23

¶ 25 Defendant also challenges the trial court's nineteenth, twenty-second, and twenty-third findings of fact, in which the court found:

> 19. There is no written partnership agreement exists between the parties [sic].
>
> . . .
>
> 22. Defendant Tapia could have easily reduced to writing or taken steps to add her name to the deed or legitimate her claim if a partnership existed.
>
> 23. The Court does not find a meeting of the minds occurred relating to the creating of a partnership between Plaintiff and Defendant.

¶ 26 Defendant contends that these findings were made under a misapprehension of law. Specifically, Defendant argues that the trial court shifted the burden of proof and issued a *de facto* sanction against Defendant for failing to establish a written

partnership agreement. We disagree.

¶ 27 Taken together, findings of fact 19, 22, and 23 represent the court's evaluation of factors that could ultimately indicate the intent of the parties to form an express partnership. The court ultimately concluded that there was no partnership between the parties with respect to the Winston-Salem Property, correctly in our view. We are unable to discern any shifting of the burden of proof to Defendant by the trial court from these findings, which we hold were supported by competent evidence, and we do not believe these findings support the idea that Defendant was prejudiced in some way, much less issued a *de facto* sanction.

2. Jurisdiction

¶ 28 Defendant also challenges the jurisdiction of both the magistrate and trial court because she asserts that the summary ejectment statute does not apply to her, as Plaintiff's partner rather than his tenant. We disagree.

¶ 29 Section 42-26 of the North Carolina General Statutes provides, in relevant part, that in an action for summary ejectment:

> (a) Any *tenant or lessee* of any house or land . . . who holds over and continues in the possession of the demised premises, or any part thereof, without the permission of the landlord, and after demand made for its surrender, may be removed from such premises in the manner hereinafter prescribed in any of the following cases:
>
> (1) When a *tenant* in possession of real estate holds over after his term has expired.

> (2) When the *tenant or lessee*, or other person under him, has done or omitted any act by which, according to the stipulations of the lease, his estate has ceased.

N.C. Gen. Stat. § 42-26 (2019) (emphasis added).

¶ 30 Jurisdiction "in summary ejectment proceedings is purely statutory, and may be exercised only in cases where the relationship of landlord and tenant exists, and the tenant holds over after the expiration of his term, or has otherwise violated the provisions of his lease." *Howell v. Branson*, 226 N.C. 264, 265, 37 S.E.2d 687, 688 (1946). While it is not necessary to allege that a landlord/tenant relationship exists in the complaint, it is necessary to show that a landlord/tenant relationship exists between the parties "in order to bring the case[.]" *Jones v. Swain*, 89 N.C. App. 663, 668, 367 S.E.2d 136, 138-39 (1988).

¶ 31 Our Supreme Court has held:

> Partnership is a legal concept, but the determination of the existence or not of a partnership, . . . involves inferences drawn from an analysis of all the circumstances attendant on its creation and operation.
>
> Not only may a partnership be formed orally, but it may be created by the agreement or conduct of the parties, either express or implied . . . . A voluntary association of partners may be shown without proving an express agreement to form a partnership; and a finding of its existence may be based upon a rational consideration of the acts and declarations of the parties, warranting the inference that the parties understood that they were partners, and acted as such.

Eggleston v. Eggleston, 228 N.C. 668, 674, 47 S.E.2d 243, 247 (1948) (internal marks

and citations omitted).

¶ 32 We hold that the legal relationship between the parties was one of a landlord and tenant, not a partnership, and that neither the trial court nor the magistrate erred. As the trial court noted in one of its unchallenged findings of fact, there was no written partnership agreement in which the parties attempted to establish an express partnership, and while the record evidence before us presents a close question on this issue, we hold that it is insufficient to imply a partnership from the parties' conduct. The parties' romantic entanglement and sharing of expenses unrelated to any business they did together seems to support viewing their business relationship as a partnership, even though their legal relationship with respect to their business dealings is unrelated to the personal relationship they once had. As previously noted, Plaintiff was not on the deed, deed of trust, or promissory note for the Winston-Salem Property, and we are not satisfied that the parties' sharing of expenses and course of dealing is sufficient, by itself, to imply a legal partnership with respect to the Winston-Salem Property. Accordingly, we hold that the magistrate and trial court had subject matter jurisdiction over this action.

3. Findings of Fact 8, 9, and 14

¶ 33 Defendant challenges the trial court's eighth, ninth, and fourteenth findings of fact, in which the court found:

> 8. Plaintiff contends that he is the sole owner of the

> subject property and that the Defendant rented the property from him.
>
> 9. Defendant contends that she was in a business partnership with the Plaintiff wherein the Plaintiff would acquire the property and [D]efendant would utilize her time and skill to renovate and improve the property prior to selling the property for profit, and that the subject property was owned consistent with this practice. Defendant indicated she has renovated 32 houses and "flipped" them with previous partners, including a prior husband.
>
> . . .
>
> 14. That Plaintiff testified he gave Defendant oral notice to vacate on June 28, 2019, and such notice or desire to vacate has not been withdrawn.

¶ 34 Defendant contends that these findings of fact are not findings at all; rather, they are recitations of testimony or summations of arguments because they do not represent a judicial determination of any disputed factual question. We agree.

¶ 35 "In [ ] nonjury trial[s], it is the duty of the trial judge to consider and weigh all of the competent evidence, and to determine the credibility of the witnesses and the weight to be given [to] their testimony." *Gleisner*, 141 N.C. App. at 480, 539 S.E.2d at 365. "Any determination reached through logical reasoning from the evidentiary facts is [ ] properly classified [as] a finding of fact." *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997) (internal marks and citations omitted). "A determination which requires the exercise of judgment or the application of legal principles is [ ] appropriately [considered] a conclusion of law." *Guox*, 164 N.C. App.

at 582, 596 S.E.2d at 455. "[R]ecitations of the testimony of each witness do not constitute findings of fact by the trial judge, because they do not reflect a conscious choice between the conflicting versions of the incident in question which emerged from all the evidence presented." *In re Green*, 67 N.C. App. 501, 505 n.1, 313 S.E.2d 193, 195 n.1 (1984).

¶ 36 However, "to the extent that [a] finding is simply a 'recitation,' it is not necessary to support the trial court's conclusions of law." *Cox v. Cox*, 238 N.C. App. 22, 26, 768 S.E.2d 308, 312 (2014). In other words, where a challenged finding is not necessary to support a trial court's conclusions, appellate review is sometimes unnecessary. *See In re C.J.*, 373 N.C. 260, 262, 837 S.E.2d 859, 860 (2020).

¶ 37 Findings of fact eight and nine summarize the parties' arguments, as demonstrated by the trial court's statement that the Plaintiff or Defendant "contend" certain points of view. Finding of fact 14, on the other hand, is a recitation of Plaintiff's testimony. "This is indicated by the trial court's [ ] statements that [Plaintiff] 'testified' to certain facts." *Williamson v. Williamson*, 140 N.C. App. 362, 364, 536 S.E.2d 337, 339 (2000). This finding does *not* reflect a "determination reached through logical reasoning from the evidentiary facts[.]" *Helms*, 127 N.C. App. at 510, 491 S.E.2d at 675 (internal marks and citation omitted).

¶ 38 However, as previously noted, the trial court's unchallenged findings are binding on appeal. *In re Schiphof*, 192 N.C. App. 696, 700, 666 S.E.2d 497, 500 (2008).

And, as we have held, findings of fact 15, 16, 21, and 26 were supported by competent evidence. Accordingly, we hold that findings of fact eight, nine, and 14 were "not necessary to support the trial court's conclusions of law." *Cox*, 238 N.C. App. at 26, 768 S.E.2d at 312. Even if unsupported by evidence, their existence in the trial court's order does not require reversal. *See In re C.J.*, 373 N.C. at 262, 837 S.E.2d at 860.

IV. Conclusion

¶ 39 We affirm the trial court's award of summary ejectment to Plaintiff because the court correctly concluded that the legal relationship between the parties was one of a landlord and tenant rather than a partnership. As the landlord, Plaintiff enjoyed the right to maintain this action under the summary ejectment statute for Defendant's failure to timely pay rent, and failing that, vacate the property upon 30 days' notice.

AFFIRMED.

Judges COLLINS and GORE concur.

Report per Rule 30(e).