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IN THE COURT OF APPEALS OF NORTH CAROLINA

2022-NCCOA-100

No. COA21-361

Filed 15 February 2022

Vance County, No. 20 CVD 1268

PATRICIA COGHILL, Plaintiff,

v.

FRANK BROWN and VALERIE BROWN, Defendants.

Appeal by defendants from judgment entered 12 February 2021 by Judge John W. Davis in Vance County District Court. Heard in the Court of Appeals 15 December 2021.

Bratcher Adams Folk, PLLC, by Brice Bratcher, for defendants-appellants.

No appellee brief filed.

DIETZ, Judge.

¶ 1 Defendants Frank and Valerie Brown appeal the trial court's order entering summary judgment against them in this ejectment proceeding. As explained below, the trial court properly determined that there were no genuine issues of material fact and that Plaintiff Patricia Coghill was entitled to judgment as a matter of law. We therefore affirm the trial court's order.

Facts and Procedural History

¶ 2 Frank and Valerie Brown leased a home from Patricia Coghill on a month-to-month basis. In July 2020, Coghill gave the Browns a notice of termination, explaining that she intended to sell the property.

¶ 3 The Browns told Coghill that they were interested in buying the home and attempted to secure financing. On 5 November 2020, Coghill sent a new notice of termination to the Browns explaining that she had hoped they could buy the home but, because they could not do so, she needed to terminate the lease so that she could put the home on the market:

To: Frank and Val Brown

From: Patricia Coghill

Subject: Notice to move

Since you are unable to purchase my property in the allotted time, this is your 30 day notice for you to move. The 30 days starts when you receive this notice. I had hoped that you would have been able to buy the house, but it is clear that you can't. Therefore, I have no other choice but to put the house on the market as soon as possible. There will be no extension on the time of the move out date.

On 16 December 2020, Coghill filed a complaint for summary ejectment. A magistrate judge entered an order in favor of Coghill and the Browns appealed to district court.

¶ 4 On 26 January 2021, Coghill moved for summary judgment. At the summary judgment hearing, Coghill appeared through counsel and the Browns appeared *pro*

se.

¶ 5

When addressing the trial court, the Browns explained that they wanted to buy the property from Coghill but that, due to the COVID-19 pandemic, they could not secure their due diligence money. When the Browns referenced Coghill's unwillingness to "acknowledge North Carolina Association of Realtors' COVID-19 addendum to our purchase offer" and attempted to make other references to the negotiations to purchase the property, the trial court repeatedly interrupted the Browns and explained that these arguments concerning the potential purchase of the property were "not relevant" to the summary ejectment proceeding. The court explained that, because Coghill owns the property, "right now, and while it's in her name and as long as the issue was given—you were given proper notice, as required by law, she can evict you."

¶ 6

Following the hearing, the court entered a written order granting summary judgment in favor of Coghill. The Browns timely appealed.

Analysis

¶ 7

This Court reviews the grant of a motion for summary judgment *de novo*. *In re Will of Jones*, 362 N.C. 569, 573, 669 S.E.2d 572, 576 (2008). We examine whether the evidence forecast by the parties shows there is "no genuine issue as to any material fact and that any party is entitled to a judgment as a matter of law." N.C. R. Civ. P. 56(c).

¶ 8 A month-to-month tenancy may be terminated by notice given seven days or more before the end of the current month of the tenancy. N.C. Gen. Stat. § 42-14; *Havelock Yacht Club, Inc. v. Crystal Lake Yacht Club, Inc.*, 215 N.C. App. 153, 155, 714 S.E.2d 788, 789 (2011). Once proper notice has been provided by the landowner, a tenant holding over may be dispossessed by summary ejectment. N.C. Gen. Stat. § 42-26(a).

¶ 9 Here, Coghill submitted documentation of the parties' month-to-month lease agreement, and copies of the 6 July 2020 termination notice and the 5 November 2020 termination notice. Coghill also provided the trial court with a letter that the Browns sent to Coghill's counsel and that counsel described to the trial court as "their answer, admitting all of the Plaintiff's allegations that they were given notice, that they received it, no other defenses raised." The trial court reviewed the letter and asked the Browns to "stipulate that this is what you sent to" Coghill's counsel. The Browns responded, "That was sent."

¶ 10 This letter, which the parties and the trial court treated as the Browns' answer, is not included in the record on appeal. An appellant "bears the burden of seeing that the record on appeal is properly settled and filed with this Court." *McLeod v. Faust*, 92 N.C. App. 370, 371, 374 S.E.2d 417, 418 (1988). "Where the record is silent upon a particular point, it will be presumed that the trial court acted correctly in performing his judicial acts and duties." *State v. Fennell*, 307 N.C. 258, 262, 297 S.E.2d 393, 396

(1982). Here, based on the hearing transcript containing the description of the letter, the Browns’ stipulation that they sent it, and the trial court’s review of it, in the absence of the letter itself we must presume that it contained what is described in the transcript. *Id.*

¶ 11 Based on this evidence, the trial court properly determined that there were no genuine issues of material fact; that the lease was a month-to-month tenancy; that Coghill provided timely notice of termination on 5 November 2020, more than seven days before the end of the current month of tenancy; and that the Browns held over after the lease was properly terminated.

¶ 12 The Browns also argue that that the trial court “cut short” their arguments at the hearing as “irrelevant” and that this precluded them from raising arguments of estoppel or improper notice. But in our review of the transcript, we do not find any portion in which the trial court prohibited the Browns from raising these arguments. To be sure, the trial court interrupted the Browns several times as they attempted to explain the history of their unsuccessful efforts to secure financing to purchase the property, but the trial court explained to the Browns that those issues were not relevant to the ejectment proceeding. We find nothing in the record suggesting that the trial court precluded the Browns from raising other arguments such as lack of notice of termination or estoppel. Accordingly, the trial court properly entered summary judgment against the Browns and in favor of Coghill.

Conclusion

¶ 13

We affirm the trial court's order.

AFFIRMED.

Judges COLLINS and JACKSON concur.

Report per Rule 30(e).