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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-279

Filed 15 October 2024

Onslow County, No. 23 CVS 2039

TAMMY ADAMS, TOMMY ADAMS, and GLORIA ADAMS, Plaintiffs,

v.

WILLIE HARRISON, Defendant.

Appeal by defendant from judgment entered 7 November 2023 by Judge John E. Nobles, Jr. in Superior Court, Onslow County. Heard in the Court of Appeals 25 September 2024.

*Faleris Law Firm, PLLC, By Beth A. Faleris, for plaintiffs-appellees.*

*Starling Law Firm, PLLC, by Casey S. Starling, for defendant-appellant.*

ARROWOOD, Judge.

Willie Harrison (“defendant”) appeals from a summary judgment and summary eviction entered in favor of Tommy Adams, Tammy Adams, and Gloria Adams (“plaintiffs”). On appeal, defendant argues the trial court erred in granting summary judgment for the plaintiff and the action should have been barred by the doctrine of *res judicata*. For the following reasons, we affirm.

I. Background

Plaintiffs own the home located at 2478 Piney Green Road in Midway Park, North Carolina (“property”) as tenants in common. Around February 2021, plaintiff Tommy Adams orally permitted defendant to reside at the property upon his release from prison. Around this time, defendant filled out a residential lease form with himself listed as the “Tenant” and only Tommy Adams as the “Landlord”. Defendant allegedly brought this form to plaintiff Tommy Adams to sign, however no signatures appear on the lease form. Furthermore, the lease stated that the tenancy term would begin on 5 February 2021 and continue “until Tenant Exprie [sic] In Deaft [sic] or Life.” Neither party signed the lease. Tammy Adams and Gloria Adams were not listed as parties to the lease, nor did they sign the lease. The rent charged on the lease was \$185.00 to be paid monthly only to Tommy Adams. No rental payments from the lease were given to plaintiffs Tammy Adams and Gloria Adams. Finally, the lease was never recorded at the Onslow County Register of Deeds.

While defendant resided at the property, plaintiffs’ counsel stated that defendant caused “extensive trash, debris, inoperable vehicles, and other items to be littered throughout the property.” These actions were reported to the county and a notice of violation remained pending at the time of appeal.

On 5 June 2023, plaintiffs sent defendant a notice to vacate the premises within 30 days, by 5 July 2023. Plaintiffs listed the reason for the notice to vacate as “[t]he property is being sold.” Defendant refused to vacate the property. Following

the notice to vacate the property, plaintiffs brought a claim in small claims court for summary ejection. That claim was ultimately dismissed with prejudice because it was filed on 12 June 2023, within the 30 days listed on the notice to vacate.

Plaintiffs then filed this claim for a declaratory judgment to invalidate the purported lease because the terms of the lease were vague and created a lease in perpetuity. Plaintiffs also requested a writ of possession for the property. On 10 October 2023, plaintiffs filed a motion for summary judgment supported by the Verified Complaint and the Affidavits of each of the plaintiffs. Defendant did not file any materials in opposition to the motion.

The motion was heard on 23 October 2023. On 1 November 2023, the trial court granted plaintiffs' motion for summary judgment on all their claims, including for declaratory judgment and summary ejectment, and ordered defendant vacate within 30 days. Defendant filed written notice of appeal on 29 November 2023.

## II. Discussion

On appeal, defendant argues that the trial court erred in granting summary judgment in favor of plaintiffs to invalidate the lease, ordering defendant to vacate the property within 30 days, and concluding that plaintiffs are entitled to apply for a Writ of Possession with the Clerk of Court. Furthermore, defendant argues that this claim is barred through *res judicata*. We address each argument in turn.

### A. Standard of Review

This Court's "standard of review from an order granting summary judgment is

*de novo.*” *Bryan v. Kittinger*, 282 N.C. App. 435, 437 (2022) (citing *Forbis v. Neal*, 361 N.C. 519, 524 (2007)). Summary judgment is appropriate when “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that 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.G.S. § 1A-1, Rule 56(c) (2023). We note here the defendant did not offer any evidence in contravention to plaintiffs’ Verified Complaint or Affidavits, thus all the evidence before the trial court is uncontroverted.

B. Nonjoinder of Co-Tenants

Defendant argues the trial court erred in granting summary judgment in favor of plaintiffs because the lease was valid for the remainder of his natural life. Specifically, defendant argues that plaintiff Tommy Adams had the right to enter into the lease without needing ratification from plaintiffs Tammy Adams and Gloria Adams. We disagree.

“North Carolina courts have recognized that the acts of one co-tenant with relation to the common property may be presumed to have been done with authority and for the benefit of all co-tenants if there are circumstances on which to base that presumption.” *Terry v. Bros. Inv. Co.*, 77 N.C. App. 1, 10 (1985). When there are several tenants in common that co-own a property, a lease by one tenant in common “is valid and effectual to the extent of the lessor’s interest, and entitled the lessee to occupy, use, and enjoy the premises as fully as the lessor himself might do but for the

lease.” *Rogers v. Kelly*, 66 N.C. App. 264, 267 (1984) (cleaned up). However, “[t]he lease does not bind the *interests* of nonjoining owners, absent ratification or authorization by them, and in so far as it purports to bind those interests it is invalid.” *Id.* (citation omitted, emphasis in original). *Rogers* goes on to state that such leases, however, are not voidable by nonjoining owners so long as they are receiving a portion of the fair rental value. *Id.* at 268–69.

This concept is further clarified in *LDDC, Inc. v. Pressley*, where this court stated that a co-tenant “cannot subject the common property to particular servitudes, by which the rights of his cotenants will be affected.” *LDDC, Inc. v. Pressley*, 71 N.C. App. 431, 434 (1984) (quoting *Investment Co. v. Telegraph Co.*, 156 N.C. 259, 264 (1911)).

Plaintiffs filed a verified complaint with attached affidavits detailing facts that establish the lease was invalid, whereas defendant’s answer was not verified and he filed no affidavits to contest summary judgment motion or supporting documents. Accordingly, defendant has provided no verified evidence to contest the summary judgment order from the trial court.

All the evidence established that neither plaintiffs Tammy nor Gloria Adams were named as parties on the lease, did not agree to the lease, and did not receive any portion of the rent payments from defendant. Furthermore, neither plaintiff signed the lease, and the lease was never recorded with Onslow County by any of the parties in this case, exhibiting that none of the plaintiffs intended to ratify the lease.

These uncontroverted facts establish plaintiffs' right for summary judgment on all their claims under applicable North Carolina law.

Defendant's counsel claimed during the trial court's hearing that he had drafted and recorded a memorandum of the lease in Onslow County but no memorandum was introduced during the hearing or included in the record. This attempt by defendant is of no legal effect in defeating plaintiffs' claims as it does not negate any of the facts established by plaintiffs' evidence.

Defendant argues that, like in *Rogers*, ratification by non-joining co-tenants was not necessary because plaintiff Tommy Adams was free to lease the entire property, and defendant stands in the shoes of co-tenant Tommy Adams. However, this argument neglects to address the remaining considerations as detailed above, namely the receipt of a portion of fair rental value. Therefore, because neither Tammy Adams nor Gloria Adams ratified the lease nor received any portion of the rent payments, the lease is not effective to bind them, and summary judgement was appropriate.

C. Perpetual Lease Agreement

Defendant further argues that the lease is valid for the duration of his natural life and contains all the necessary elements of a lease. Plaintiffs argue that the lease term related to the duration of the lease is vague and could create the possibility of the lease continuing in perpetuity. Because we have found that the lease was invalid, we need not reach this contention. However, we note that even if defendant had

prevailed on the first issue, summary judgment would still be appropriate.

There are four essential elements of a lease: “(1) the names of the parties (lessor and lessee); (2) a description of the demised realty; (3) a statement of the term for the lease; and (4) the rent or other consideration.” *Satterfield v. Pappas*, 67 N.C. App. 28, 35 (1984). “Although not invalid as a matter of law, perpetual leases and covenants for perpetual renewals are not favored and will not be enforced absent language in the lease agreement which expressly or by clear implication indicates that this was the intent of the parties.” *Lattimore v. Fisher’s Food Shoppe, Inc.*, 313 N.C. 467, 470 (1985). Language creating a perpetual lease must be in “clear and unequivocal terms.” *Id.* at 471. Previous cases have found perpetual leases when the lease includes “customary words of perpetuity” such as “forever”, “for all time”, and “in perpetuity.” *Id.* at 472. These words must expressly and unmistakably appear in the lease agreement to create such a perpetual lease. *See id.* Absent such clear language of perpetuity, the lease term will be considered vague. “[W]hen a tenant enters into possession under an invalid lease and tenders rent which is accepted by the landlord, a periodic tenancy is created.” *Kent v. Humphries*, 303 N.C. 675, 679 (1981). A month-to-month tenancy requires 7 days’ notice prior to termination of the lease. *See* N.C.G.S. § 42-14 (2023).

Here, the purported lease term continued “until Tenant Exprie [sic] In Deaft [sic] or Life”. This provision does not include the traditional words of perpetuity, such as “forever”, “for all time”, or “in perpetuity.” The language is ambiguous at best;

therefore, because of the lack of these traditional words of perpetuity, we find that it does not contain a valid term agreement. Accordingly, this lease would be invalid, and each rental payment would create a periodic tenancy. Because plaintiffs gave defendant 30 days' notice for the termination of the lease, the trial court properly granted summary judgment in favor of plaintiffs.

D. Res Judicata

Finally, Defendant argues that the claim at issue is barred by the doctrine of *res judicata* because plaintiffs previously brought an action in small claims court to remove defendant from the premises. We disagree.

“[U]nder *res judicata* as traditionally applied, a final judgment on the merits in a prior action will prevent a second suit based on the same cause of action between the same parties or those in privity with them.” *Thomas M. McInnis & Associates, Inc. v. Hall*, 318 N.C. 428, 482 (1986). The claimant must show (1) the previous suit resulted in a final judgment on the merits, (2) the same cause of action was involved, and (3) plaintiff and defendant were either parties or stand in privity with the parties in the previous action. *Williams v. Peabody*, 217 N.C. App. 1, 5 (2011).

Here, defendant argues that the small claims court ruling bars this action because the case was dismissed with prejudice. However, the case in small claims court was dismissed with prejudice because the 30-day notice period had not yet passed, rather than a judgment on the merits of the lease. In small claims court, the court never reached the merits of whether or not the lease was valid. In addition,



neither Tammy nor Gloria Adams were parties to the action, thus they are not bound by the result.

Furthermore, the two causes of action are different. In the small claims action, only plaintiff Tommy Adams brought a claim for summary ejectment and never discussed the validity of the lease. In the current case, all plaintiffs are requesting a declaratory judgment to invalidate the lease because of the vagueness of the term of the lease and are requesting a writ of possession of the property. Specifically, plaintiffs argue in the present case that the lease should be invalid due to the vagueness of the term in which the lease was due to run. Because the parties are not the same, the two causes of action are different, and the requested relief is different between this case and the case in small claims court, this case is not barred by *res judicata*. Accordingly, the trial court appropriately granted summary judgment in favor of plaintiffs.

### III. Conclusion

For the foregoing reasons, we affirm the trial court.

AFFIRMED.

Judges CARPENTER and STADING concur.

Report per Rule 30(e).