

housing:
breach of
lease agreement

In the Rosebud Sioux
Tribal Court of Appeals

LaQuita Moran, a/k/a
LaQuita Godfrey

DEFENDANT/APPELLANT

v.

Rosebud Housing Authority

PLAINTIFF/APPELLEE

APPEAL FROM THE ROSEBUD
SIOUX TRIBAL COURT OF THE
ROSEBUD SIOUX TRIBE

HONORABLE SHERMAN J. MARSHALL
Presiding Judge

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Before Justices Roubideaux, Valandra, & Pommersheim

Opinion filed 10-5-91

CA 90-09

Pommersheim, Justice

Background

The Rosebud Housing Authority (hereinafter RHA), the plaintiff/appellee herein, is a tribal agency of the Rosebud Sioux Tribe. It provides housing on the Rosebud Sioux Reservation to low income individuals, in accordance with federal programs from which it obtains funding. RHA administers these programs pursuant to federal regulations. RHA owns housing unit number 502-04 located in the White Horse Housing Project in Antelope community, which is a recognized community of the Rosebud Sioux Tribe.

On January 17, 1990, RHA entered into a written Dwelling Lease Agreement with LaQuita Moran (a/k/a Laquita Godfrey), the Defendant/Appellant herein, and Sylvan Godfrey for the lease of unit number 502-04. As part of this agreement, the Appellant agreed to pay a one hundred fifty dollar (\$150) security deposit payable in six monthly installments of twenty-five dollars (\$25) beginning on February 9, 1990 and ending on July 9, 1990. Appellant made no cash payments, though she alleged that a verbal agreement was made with Vera Farma, an employee of RHA, to deduct one hundred dollars (\$100) from the security deposit, if Appellant cleaned the unit before she moved in.

On the evening of May 22, 1990, Appellant and three other acquaintances, Larry Desersa, Tracy Godfrey, and Elizabeth Farmer were together at Appellant's residence in the White Horse Housing

These individuals had all been drinking.

Shortly thereafter, these same individuals became embroiled in violent disturbances at the neighboring residences of Kim Moran and Bonnie Halligan, both of whom are also RHA tenants. Though the views of the parties differ sharply as to who caused and what happened in these two altercations, suffice it to say that Kim Moran and Bonnie Halleja suffered extensive personal injuries and the units owned by the RHA received damage in excess of \$600. It is uncontraverted that at least some of the personal and property damage was inflicted with a baseball bat and a hammer used by the Appellant and/or her acquaintances.

On May 24, 1990 while the Appellant was in jail, she was personally served a notice to quit the premises known as unit 502-04 in the White Horse Housing Project. On May 29, 1990, RHA filed an action in the Rosebud Sioux Tribal Court to evict the Appellant and to obtain injunctive relief in the form of a temporary restraining order barring the Appellant from the White Horse Housing area. On the same date, a temporary restraining order was granted and a trial on the merits was scheduled for June 5, 1990.

On June 5, 1990, a trial on the merits was held. Appellant was represented by Ms. Bernadine Wilson, paralegal/tribal advocate, with Dakota Plains Legal Services of Mission, South Dakota. The trial court found for the plaintiff RHA on all issues and entered an order of eviction and a permanent injunction barring the

Appellant from the White Horse Housing Project/Antelope Community. Trial court judge also filed an appropriate set of Findings of Fact and Conclusions of Law. The Appellant subsequently filed a timely Notice of Appeal.

II. Issues

The Appellant raises numerous issues, which may be fairly consolidated into the following two dispositive questions:

- (A) Whether there was sufficient evidence to support the trial court's finding that the Appellant breached her Dwelling Lease Agreement and was therefore subject to eviction from the premises; and
- (B) Whether the injunctive relief ordered by the trial court was improperly granted as a matter of law.

III. Discussion

Each of these issues will be treated in turn.

A. There is no dispute between the parties that a tenant may be properly evicted from a RHA unit for any of the following reasons:

- (1) Causing or permitting guests and/or relatives to cause injury to tenants in the White Horse Housing Project;
- (2) Causing or permitting guests and/or relatives to cause physical damage to RHA units in the White Horse Housing Project; and
- (2) Failing to pay a required security deposit for the premises.

All of these obligations are explicitly set out in the tenant's lease and the attendant Rules of Occupancy. Appellant concedes, as she must, that any violation of these conditions does constitute a

of her lease agreement, subjecting her to potential
ion. Appellant's claim, instead, focuses on the argument that
ere was insufficient evidence to support the conclusion of a
each of any of these conditions.

In order to evaluate Appellant's claim, it is necessary first
to identify the proper standard of review on the question of the
sufficiency of the evidence. Both sides agree that the appropriate
litmus test in this area is the venerable "clearly erroneous"
standard. This standard is not specifically identified in the
Rosebud Sioux Tribal Code but is, nevertheless, the proper
cornerstone for analysis. Rule 15 of the Rules of Procedure of the
Rosebud Sioux Tribal Court of Appeals specifically directs, in the
absence of any explicit tribal law on point, this court to apply
the applicable Federal Rule of Civil Procedure.

Rule 52(a) of the Federal Rules of Civil Procedure, in turn,
defines the appropriate factual standard as follows:

Findings of fact, whether based on oral or documentary
evidence, shall not be set aside unless clearly
erroneous, and due regard shall be given to the
opportunity of the trial court to judge of (sic) the
credibility of the witness. (emphasis added).

It is therefore the trial court's province to evaluate the
credibility of witnesses, to assess their demeanor, and to decide
what weight, if any, to give each witness' testimony. United
States v. Edwards, 333 F.2d 575 (5th Cir. 1964). This 'weighing
of the evidence' is not reducible to a mathematical formula, but
rather is best defined as a process in which the trial court must

uate all the evidence and accord it the relative importance it
serves in deciding the issues before it.

The most felicitous reviewing benchmark for an appellate court in such circumstances is that it shall not disturb the trial court's findings of fact unless, after reviewing all the evidence and giving due regard to the trial court's assessment of each witness' credibility of demeanor, the court is left with a definite and firm conviction that a mistake has been made. Williams v. Eaton 468 F.2d 1079 (10th Cir. 1972). This definition accords with the most common and apt approach in construing the clearly erroneous standard.

Under this standard, the complaining party has the burden of clearly demonstrating error in the trial court's findings. This is a heavy burden where the findings are primarily based on oral testimony and the trial judge has viewed the demeanor and credibility of witnesses. Hedger v. Reynolds, 216 F.2d 202 (2nd Cir. 1954). The reviewing court is required to accept the lower court's findings as presumptively correct and must not simply substitute its judgment for the lower court's first-hand evaluation. Consequently, the mere existence of contradictory evidence alone is not sufficient to sustain the clearly erroneous burden. Williams v. Eaton, supra, Lawlor v. National Screen Service Corp., 270 F.2d 146 (3rd Cir. 1959). Therefore, the burden is on the appealing party to rebut this presumption of correctness by demonstrating that contrary findings are warranted when the evidence is taken as a whole and considered in the light most

avorable to the nonmoving party. Komie v. Buenler Corp., 449 F.2d 544 (9th Cir. 1971).

The next step in this analysis is to apply the standard to the findings and record of the court below. The record of the trial court is replete with strong and graphic evidence that Appellant allowed guests of hers to cause substantial personal and property damage to her neighbors. Damage that the Appellant herself helped to inflict. This damage included smashing the windows of Kim Moran's car and tearing down the bathroom door in the house of Bonnie Halligan a neighbor, as well as knocking out windows in Kim Moran's house. This physical damage was assessed in excess of \$600 by the RHA. Even more telling are the physical beatings inflicted with fists and a baseball bat on Kim Moran and Bonnie Halligan that resulted in a broken arm and stitches for Ms. Moran and a broken arm and broken leg and four hours of surgery for Ms. Halligan.

The contrary evidence of the Appellant, which is cast largely in terms of wide ranging denials, is simply insufficient to overturn the findings of the trial court below. While it is true that the findings of fact of trial court itself are somewhat general in nature, the underlying record and transcript are quite specific and detailed relative to the property and personal harm inflicted and provide a most sturdy foundation on which to uphold the trial court's findings.

B. The Appellant claims that the injunctive relief- a temporary restraining order which culminated in a permanent

injunction- granted by the trial court was improper, and in the alternative, if proper, too extensive in scope. The permanent injunction issued by the trial court permanently enjoined the Appellant from entering the vicinity of the White Horse Housing Project/Antelope community. This relief was granted pursuant to Rule 65 of the Rosebud Sioux Tribal Rules of Civil Procedure.

Injunctions are a remedy in equity and, therefore, are not available if a substitute legal remedy would be adequate. It is clear that when injunctive is sought, Rule 65(c) requires:

- (1) That the party making application has no adequate legal remedy;
- (2) That the party making application has exhausted all administrative remedies;
- (3) That irreparable harm will result which cannot be solved by the awarding of money damages unless the injunction or temporary restraining order is granted, and
- (4) That greater harm will be done to the party making application by the refusal of the injunctive relief than will be occasioned to the opposing party by the granting of such relief.

The trial court found all of these requirements met in its ample and appropriate findings of fact and conclusions of law. The U.S. Supreme Court has noted in this regard that "in shaping equity decrees, the trial court is vested with broad discretionary power; appellate review is correspondingly narrow." Lemon v. Kurtzman 411 U.S. 192, 200 (1973). In determining the scope of an injunction, the court must remember that "equitable remedies are a

special blend of what is necessary, what is fair, and what is workable." Id. Given that the trial court has the discretion in granting injunctive relief, appellate review may overturn an injunction only if the trial court abused its discretion. The abuse of discretion standard is aptly described as "discretion exercised to an end or purpose not justified by, and clearly against reason and evidence: State v. Pfaff, 456 N.W.2d 558, 561 (S.D. 1990).

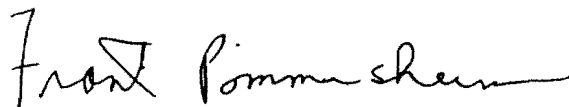
In this instance, the Appellant glaringly fails to demonstrate any abuse of discretion by the trial court in its granting of injunctive relief. However, that does not end this Court's inquiry. There is the additional issue-- impliedly raised by the Appellant--concerning the scope and potential modification of the injunctive relief granted by the trial court. The U.S. Supreme Court recognizes the propriety of modifying injunctive relief where a change of facts occurs, new facts come to light or when the order is found ambiguous or overbroad. Pasadena City Board of Education v. Spangler 427 U.S. 424, 437-438 (1976).

The injunction issued by the trial court appears to be overbroad in two respects. The injunction issued by the trial court enjoined the Appellant from "entering the vicinity of the White Horse Housing Project/Antelope Community." At oral argument, both sides agreed that the quoted language was ambiguous and should not be read to include the whole of Antelope Community within its preview. This court agrees.

In addition, the Appellant claims that barring her from all of White Horse Housing Project (which includes over fifty housing units) will prevent her and her children from having contact with Appellant's grandmother who resides in the White Horse Housing Project. This limitation, which seems to cut at the heart of the Lakota commitment to, and emphasis on, elders and the extended family or tiyospaye, needs to be reconsidered by the trial court in order to provide ample opportunity to develop a more detailed and adequate record on this issue. If necessary, the trial court may then structure more precise injunctive relief to both protect RHA property and tenants and to allow the appellant and her children access to their grandmother who is also a resident of the White Horse Housing Project.

Reversed and remanded for proceedings not inconsistent with this opinion.

IT IS SO ORDERED.



Frank Pommersheim

Associate Justice