Affirmed and Memorandum Opinion filed July 21, 2020.

In The

Fourteenth Court of Appeals

NO. 14-19-00206-CV

LOLITA TOLIVER, Appellant

V.

556 LINDA VISTA LP, Appellee

On Appeal from the County Civil Court at Law No. 4
Harris County, Texas
Trial Court Cause No. 1117243

M E M O R A N D U M O P I N I O N

Tenant Lolita Toliver appeals the judgment against her in this forcible-detainer and debt action brought by her landlord, 556 Linda Vista LP. Toliver contends that the trial court erred in excluding evidence that a governmental agency wrongfully terminated her housing subsidy. Because the lease did not require the landlord to look solely to a governmental agency for payment, we conclude that the trial court did not abuse its discretion in sustaining the objections that Toliver's evidence was irrelevant. Thus, we affirm the trial court's judgment.

I. BACKGROUND

The lease between "Lolita Toliver DRRH"[1] and the landlord required Toliver to pay the landlord monthly rent of $773, which included utilities. The initial lease term began on October 12, 2017 and ended on April 30, 2018; however, the lease provided that after April 30, 2018, the lease would automatically renew on a month-to-month basis unless either party gave the other sixty days' written notice of termination or intent to vacate.

The landlord stipulated that a government agency initially paid Toliver's rent, but as Toliver admitted under oath, the lease did not require the landlord to look to a governmental agency for payment. Although the lease was only for six months, it is undisputed that one unidentified governmental agency paid Toliver's rent through May 1, 2018, and that a program operated through the Harris County Community Services Department ("the Department") paid her rent on a month-to-month basis in June and July of 2018. Beginning on August 1, 2018, neither Toliver nor anyone else paid the rent on the apartment.

Although the landlord delivered to Toliver a notice to vacate the apartment by midnight on August 10, 2018, due to her non-payment of rent and other delinquent charges, Toliver continued holding over, and the landlord filed this forcible-detainer action in a Harris County justice court. The justice court ruled in favor of the landlord, and Toliver appealed by trial de novo to Harris County Court at Law No. 4.

In the county court at law, Toliver subpoenaed four employees of the Department to testify at trial. The County moved to quash the subpoenas on the grounds that (a) they were invalid, (b) some of the witnesses' names or titles were

[1] "DRRH" is unexplained.

wrong, and (c) the witnesses' testimony was irrelevant because they played no role in Toliver's eviction, of which they had no knowledge. The landlord joined in the County's objection that the witnesses' testimony was irrelevant, and the trial court quashed the subpoenas.

At trial, Toliver testified that she had moved in November 2018, but she admitted that she retained possession of the apartment, where some of her furniture remained. She offered evidence intended to prove that she was required to actively search for a job in order to receive a housing subsidy and that the Department terminated the subsidy even though Toliver had met that requirement; however, the trial court sustained the landlord's relevancy objection and excluded the evidence.

The jury found in favor of the landlord, and in accordance with the verdict, the trial court rendered judgment awarding the landlord possession of the apartment, $5,162.00 for past-due rent, and $3,368.75 for attorney's fees. Toliver now appeals.

II. Issues Presented

On appeal, Toliver argues that the trial court erred in quashing the trial subpoenas of four witnesses and in excluding Toliver's evidence. According to Toliver, her evidence would have shown that the Department was responsible for paying her rent.

III. Standard of Review

We review a trial court's evidentiary rulings for abuse of discretion. *Sw. Energy Prod. Co. v. Berry-Helfand*, 491 S.W.3d 699, 727–28 (Tex. 2016). A trial court abuses its discretion when it acts without reference to guiding rules or principles. *In re Thetford*, 574 S.W.3d 362, 374 (Tex. 2019) (orig. proceeding). Because the trial court abuses its discretion only if its ruling is arbitrary or unreasonable, *see Downer v. Aquamarine Operators, Inc*., 701 S.W.2d 238, 241–42

(Tex. 1985), we will uphold the trial court's ruling if there is any legitimate basis for it. *Owens–Corning Fiberglas Corp. v. Malone*, 972 S.W.2d 35, 43 (Tex. 1998); *Westview Drive Invs., LLC v. Landmark Am. Ins. Co.*, 522 S.W.3d 583, 600 (Tex. App.—Houston [14th Dist.] 2017, pet. denied).

Even if the trial court abused its discretion in making the challenged ruling, the error is reversible only if it "probably caused the rendition of an improper judgment." TEX. R. APP. P. 44.1(a). Thus, the complaining party must show on appeal both that the ruling was erroneous and that the error probably caused rendition of an improper judgment. *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 870 (Tex. 2009). To evaluate these contentions, we must review the entire record. *Gunn v. McCoy*, 554 S.W.3d 645, 668–69 (Tex. 2018). With exceptions inapplicable here, the erroneous exclusion of evidence that is "crucial to a key issue" is likely harmful. *JBS Carriers v. Washington*, 564 S.W.3d 830, 836 (Tex. 2018) (quoting *State v. Cent. Expressway Sign Assocs.*, 302 S.W.3d 866, 870 (Tex. 2009) (sub. op.)).

IV. RELEVANCE

Because all of Toliver's excluded evidence was the subject of relevancy objections, we begin with precept that only relevant evidence is admissible. TEX. R. EVID. 402. Evidence is relevant only if it has a tendency to make a fact that is of consequence in determining the action more or less probable. TEX. R. EVID. 401. Here, the "actions" are the landlord's forcible-detainer and breach-of-contract claims against Toliver for possession of the apartment and payment of back rent. Thus, the trial court did not abuse its discretion in excluding Toliver's proffered evidence if the evidence did not make any fact that is of consequence in determining those actions more or less probable.

A. Forcible Detainer

A forcible-detainer action determines which party has the superior right to immediate possession of real property. *See Rice v. Pinney*, 51 S.W.3d 705, 709 (Tex. App.—Dallas 2001, no pet.). A person commits a forcible detainer by refusing to surrender possession of real property in response to a proper and timely notice to vacate if the person "is a tenant or subtenant willfully and without force holding over after the tenant's right of possession." TEX. PROP. CODE ANN. § 24.002. To prevail, the landlord was required to prove only that (1) it owns the property; (2) Toliver is a tenant at will, tenant at sufferance, or a tenant or subtenant willfully holding over after the termination of the tenant's right of possession; (3) the landlord gave proper notice to Toliver to vacate the premises, and (4) Toliver refused to vacate the premises. *See Shields Ltd. P'ship v. Bradberry*, 526 S.W.3d 471, 478 (Tex. 2017).

B. Breach of Contract

To prevail on its breach-of contract claim, the landlord was required to prove that (1) a valid contact exists, (2) the landlord performed or tendered performance, (3) Toliver breached the contract by failing to perform or tender performance, and (4) the breach damaged the landlord. *See Pathfinder Oil & Gas, Inc. v. Great W. Drilling, Ltd.*, 574 S.W.3d 882, 890 (Tex. 2019).

Viewed against this backdrop, it is clear that none of Toliver's excluded evidence was relevant to the claims for possession of the apartment or for back rent.

V. THE EXCLUDED EVIDENCE

The only parties to the lease are Toliver and the landlord. Toliver agreed in the lease that if she did not timely pay rent, then she would be in default and the landlord could evict her and recover from her both unpaid rent and attorney's fees. Toliver conceded, both at trial and on appeal, that the rent was not paid, and the

balance is due. Moreover, she admitted at trial that the lease does not require the landlord to look to a government agency for payment of rent. She argues only that a government agency *should* have paid her rent. She contends that the Department agreed to pay her rent while she was actively searching for a job, and because she complied with that requirement, the Department should have continued paying her rent. According to Toliver, the Department instead terminated her housing subsidy in a discriminatory fashion after she was the victim of domestic violence. All of her excluded evidence pertains only to her contention that the Department breached its housing-subsidy agreement with her.

A. Quashed Subpoenas

Toliver first contends that the trial court erred in quashing the trial subpoenas for four individuals. The record shows that the witnesses moved to quash the subpoenas on the ground that they were not validly issued, and the witnesses and the landlord additionally objected that the witnesses' testimony was not relevant.[2]

At the hearing on the motion to quash, Toliver argued that the witnesses' testimony would show that the Department had been paying her rent "and part of the rent not being paid due to discrimination of domestic violence." She further asserted that the witnesses "stated that they stopped my rent due to not looking for a job search." But as the trial court advised her, "[t]his lawsuit isn't about that." *See also Serrano v. Fed. Home Loan Mortg. Corp*., No. 14-18-01110-CV, 2020 WL 2831931, at *2 (Tex. App.—Houston [14th Dist.] May 28, 2020, no pet. h.) (in a forcible-detainer appeal, the county court generally has no greater jurisdiction than the justice court had (citing *Salaymeh v. Plaza Centro, LLC*, 264 S.W.3d 431, 435

[2] Both at trial and on appeal, Toliver asserted that she needed the witnesses' testimony, but she has not responded to the objection that the subpoenas were invalid. This is an independent reason to affirm the trial court's ruling.

(Tex. App.—Houston [14th Dist.] 2008, no pet.))). Whether the agency breached an agreement *with Toliver* does not make it more or less probable that Toliver breached her independent agreement with the landlord or committed forcible detainer. Thus, the trial court properly quashed the subpoenas on the ground that the witnesses' testimony was not relevant.

B. Excluded Trial Exhibits

Toliver also contends that the trial court erred in excluding six exhibits, which we group into three categories.

1. Evidence of the June 2018 Rent Payment

Toliver's first offered exhibit is a receipt showing that her rent was paid on June 1, 2018, "[b]y Government Subsidy." The landlord objected that payment in June 2018 was not relevant because the forcible-detainer action was brought based on non-payment of rent beginning in August 2018. Moreover, the landlord stipulated that a government agency paid Toliver's rent through July 2018. Thus, the trial court properly excluded this evidence, which pertains only to a stipulated fact.

2. Communications Regarding Toliver's Search for Employment

Toliver's second, third, fourth, and fifth exhibits concerned communications regarding her search for employment. Her second exhibit appears to be a "screenshot" of excerpts from an email chain in which Toliver expressed interest in a position with a temporary staffing agency and arranged to meet with a member of the agency, then emailed a person named Jamaica Starks, "Per our conversation here is the email for me to start the position in August and September." Toliver offered this exhibit to prove that she was actively seeking employment at the time her rental subsidies were terminated. Toliver's third exhibit is a partial email indicating that a staffing agency assigned her two days' work during the week before the February

2019 trial de novo of this case. Her fourth exhibit is an October 26, 2018, letter from the Department denying her request to appeal the termination of her "Housing for Harvey" assistance. She stated that she offered the letter to show that the Department's stated reason for terminating her housing subsidy was that she had failed to provide evidence of an active job search. Her fifth exhibit is Toliver's signed consent to allow the Department to collect and enter her personal and household information in a particular computer system. Toliver explained that she offered this as "proof that Harris County was taking control."

The landlord objected that the issues to be tried were whether the Toliver should be required to surrender possession of the apartment and pay the outstanding rent owed, regardless of the governmental agency's reasons for terminating Toliver's subsidy. We agree. Because none of the excluded exhibits purport to modify Toliver's contract with the landlord, the trial court did not abuse its discretion in excluding them.

3. Excerpt from the Justice Court Judgment

Finally, Toliver's sixth exhibit is the second page of the justice court's two-page judgment. This page informs parties wishing to appeal a forcible-detainer judgment of the justice court that they have the rights (a) to request appointment of an attorney; (b) to appeal by pauper's affidavit or surety bond; and (c) if a government agency is responsible for all or a portion of the rent, to contest the determination of the portion of rent to be paid by the tenant into the registry of the court during the pendency of the appeal. Toliver represented herself, appealed by a pauper's affidavit, and was not required to pay a portion of the rent into the registry of the court during the appeal. Thus, once again, the excluded evidence was not relevant to any fact in dispute.

We overrule Toliver's complaints about the trial court's evidentiary rulings.

V. UNPRESERVED COMPLAINTS

Toliver also asserts on appeal that her landlord (a) falsified documents in order to evict her, (b) wrongfully charged her a $75.00 fee after she was the victim of domestic violence, and (c) harassed her by turning off her cable and entering her apartment without notice. The complaints, however, have not been preserved for review.

A party may complain on appeal that the trial court erroneously excluded evidence "only if the error affects a substantial right of the party and . . . a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context." TEX. R. EVID. 103(a)(2). Thus, the complaining party must preserve the error by offering the evidence and obtaining an adverse ruling from the court. TEX. R. APP. P. 33.1(a); *Matter of Marriage of Rangel & Tovias-Rangel*, 580 S.W.3d 675, 679 (Tex. App.—Houston [14th Dist.] 2019, no pet.). Because the record does not show that Toliver offered evidence in support of these assertions and obtained a ruling excluding the evidence, these complaints have not been preserved for review.

Finally, we note that Toliver appended over sixty pages of documents to her brief. She does not refer to these documents in her brief, and in any event, "we cannot consider documents attached to a brief that are not part of the appellate record." *Johnson v. Nat'l Oilwell Varco, LP*, 574 S.W.3d 1, 20 (Tex. App.—Houston [14th Dist.] 2018, no pet.); *see also* TEX. R. APP. P. 34.1 ("The appellate record consists of the clerk's record and, if necessary to the appeal, the reporter's record."). We therefore have not reviewed this material.

VI. CONCLUSION

Having overruled all of the appellate complaints preserved for review, we affirm the trial court's judgment.

/s/ Tracy Christopher
Justice

Panel consists of Justices Christopher, Wise, and Zimmerer.