

IN THE COURT OF APPEALS

FILED
January 31, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

STERLING MEADOWS,)	KNOX CHANCERY
)	C. A. NO. 03A01-9509-CH-00328
)	
Plaintiff - Appellee)	
)	
)	
)	
vs.)	SHARON BELL
)	CHANCELLOR
)	
)	
)	
DANIEL R. GREENE,)	AFFIRMED AND REMANDED
)	
Defendant - Appellant)	

DANIEL R. GREENE, Knoxville, Appellant Pro Se.

J. TERRY HOLLAND, Knoxville, for Appellee

O P I N I O N

McMurray, J.

This appeal involves a dispute arising from a lease agreement between the parties. Mr. Meadows, the lessor, filed suit against Mr. Greene, the lessee, claiming breach of the lease agreement. The trial court found in favor of Mr. Meadows and awarded judgment. Mr. Greene has appealed claiming that the trial court erred in so doing. We affirm the judgment of the trial court.

These parties entered into a lease agreement on February 1, 1990. The lease term was for a period of five years and involved a commercial building and certain specified equipment. This particular location was used as a convenient market/deli/gas station. Pat Dixon managed the day-to-day operation of the business.

Approximately one year before the lease agreement was to have expired, Mr. Greene wrote Mr. Meadows a letter complaining of Mr. Meadows' behavior while on the leased premises and stating that due to such behavior, he was vacating the premises. Between the time that Mr. Greene mailed the letter and the time that Mr. Meadows received the letter, Mr. Dixon vacated the premises. Shortly thereafter, Mr. Greene sent Mr. Meadows another letter essentially recanting some of the complaints set out in the first letter.

On February 4, 1994, the parties inspected the premises and subsequently signed a document stating that all pertinent equipment was in the building. This document did not mention the condition of the equipment.

The record reflects that Mr. Meadows performed a number of repairs on the building and on the equipment. In March, 1994, he relet the premises. The new lease was for a lesser amount of rent than that with Mr. Greene. In July or August of 1994, the new tenants also vacated the premises, leaving behind equipment they had purchased as payment towards future rent owed.

Mr. Meadows filed a complaint against Mr. Greene alleging that Mr. Greene had wrongfully vacated the premises, had not given proper notice, and had failed to pay proper rents as required by the lease terms. Additionally, Mr. Meadows alleged that Mr. Greene had failed to pay the appropriate amount of property taxes and had left the premises in such a state of disrepair that he (Mr. Meadows) had to spend substantial sums of money to return the premises to a reasonable level of repair for occupancy by a new tenant.

Mr. Greene answered denying all the allegations of the complaint. He alleged as affirmative defenses that Mr. Meadows had

breached the lease by failing to properly maintain the premises and by appearing on the premises in a drunken or disorderly manner and thus interfering with Mr. Greene's "peaceable and quiet enjoyment of the building"

After receiving extensive evidence the chancellor rendered a memorandum opinion in which she made extensive findings of fact and conclusions of law. She found in favor of the plaintiff, Mr. Meadows, on most issues before the court. Judgment was entered in accordance with the chancellor's opinion awarding Mr. Meadows rental in the amount of \$1,750.00; unpaid taxes in the amount of \$600.00; \$8,641.22 for repairs to the premises including labor and materials; and for attorney's fees in the amount of \$4,677.50.

Mr. Greene has appealed from this judgment listing numerous issues for our review. In sum and substance, the issues presented by the appellant, Mr. Greene, are simply a challenge to the sufficiency of the evidence.

Our standard of review of findings of fact by the trial court is de novo upon the record of the trial court, accompanied by a presumption of the correctness of the finding, unless the preponderance of the evidence is otherwise. T. R. A. P. 13(d).

The record fails to establish that the evidence preponderates against the findings of the chancellor. Further, we find no error in her conclusions of law. We find the appellant's issues to be without merit.

In addition to the issues presented by the appellant, the appellee has presented two issues for our review:

1. Did the trial court err in failing to award plaintiff one third of the total property taxes due on the entire tract of land in accordance with their previous custom and usage between the parties as opposed to the \$600.00 alleged to be the agreement between the parties but never consummated by the cashing of the alleged tender.
2. Did the trial court err in the application of the law by denying plaintiff the \$250.00 per month for five months rental reduction granted to the subsequent tenant for the five months in which the reduction is granted to the tenant.

Mr. Meadows first takes issue with the amount of property taxes that Mr. Greene was found to have owed. The court stated in its opinion that it believed that Mr. Meadows agreed to the \$600.00 payment as payment in full. Since the evidence on this issue was conflicting, the credibility of the witnesses becomes an important factor. Findings of the trial court which are dependent on determining the credibility of witnesses are entitled to great weight on appeal because the trial judge had the opportunity to

observe the manner and demeanor of the witnesses while testifying. Galbreath v. Harris, 811 S.W2d 88 (Tenn. App. 1990) citing Town of Alam v. Forcum-James Co., 327 S.W2d 47 (Tenn. 1959). . . . [O]n an issue which hinges on witness credibility, the trial court will not be reversed unless there is found in the record clear, concrete, and convincing evidence other than the oral testimony of witnesses which contradict the trial court's findings. See Tennessee Valley Kaolin Corp. v. Perry, 526 S.W2d 488 (Tenn. App. 1974).

Lastly, Mr. Meadows takes issue with the allowance of a rent deduction afforded subsequent tenants of the premises. The trial court found that this was a mere accommodation made in an effort to entice new tenants into the building. Additionally, the trial court found that there was no evidence that the rental value of the building was any less than \$1750.00 charged to the lessee after repairs were made. Since the evidence does not preponderate against these findings, we are of the opinion that there was no error of law in the conclusions reached by the chancellor.

The trial court is affirmed in all respects. Costs of this appeal are taxed, in our discretion, one-half to the appellant and one-half to the appellee. This cause is remanded to the trial court for the collection thereof.

Don T. Murray, J.

CONCUR:

Houston M. Goddard, Presiding Judge

Charles D. Susano, Jr., J.

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DANIEL R. GREENE,)	AFFIRMED AND REMANDED
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ORDER

This appeal came on to be heard upon the record from the Chancery Court of Knox County and briefs filed on behalf of the respective parties. Upon consideration thereof, this Court is of opinion that there was no reversible error in the trial court.

The trial court is affirmed in all respects. Costs of this appeal are taxed one-half to the appellant and one-half to the appellee. This cause is remanded to the trial court for the collection thereof.

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