

**IN THE CIRCUIT COURT OF THE  
NINTH JUDICIAL CIRCUIT, IN AND  
FOR ORANGE COUNTY, FLORIDA**

**CASE NO.: 2010-CV-11**

Lower Court Case No.: 2008-CC-19708

**CRISARLA HOUSTON**

Appellant,

v.

**NATALYA LOPEZ and  
KIMIA BESHARATPOUR,**

Appellees.

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Appeal from the County Court,  
for Orange County,  
Heather L. Higbee, County Judge.

Eunice M. Caussade-Garcia, Esquire,  
for Appellant.

Kevin B. Weiss, Esquire,  
for Appellees.

Before RODRIGUEZ, LUPET, THORPE, J.J.

PER CURIAM.

**FINAL ORDER AFFIRMING TRIAL COURT'S FINAL JUDGMENT**

Natalya Lopez and Kimia Besharatpour ("Appellees") brought an action against Crisarla Houston ("Appellant") for eviction and damages. Appellant timely appeals the trial court's order rendered February 10, 2010 granting a final judgment in favor of Appellees. This Court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1)(A) and dispenses with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

The claims in the lower court action arose from a landlord-tenant dispute between the parties. Appellees sought eviction of Appellant for failure to pay rent for the month of September 2008 and subsequent periods. Appellant claimed that the eviction action was retaliatory in response to Appellant's previous requests for Appellees to repair water leaks in the leased property and for the previous suit Appellant filed against Appellees for breach of the lease agreement.

In this appeal, Appellant argues that the trial court erred in rendering its Final Judgment in favor of Appellees by failing to consider her affirmative defenses and counterclaims. Appellant also requests an award of appellate attorney's fees and costs. Specifically, Appellant argues:

1) The trial court erred by failing to consider her argument that Appellees waived their right to bring an action under § 83.56(5), Florida Statutes.

2) The trial court erred by not granting her motion to dismiss based upon Appellees failure to comply with the statutory conditions imposed when bringing an action for eviction under § 83.56(3), Florida Statutes.

3) The trial court erred by failing to consider her argument that Appellees did not comply with the service requirements under Florida Rule of Civil Procedure 1.070(e).

4) The trial court erred by failing to consider her argument that Appellees breached the statutory warranty of habitability by failing to maintain the premises as required by § 83.51(1)(b), Florida Statutes.

5) The trial court erred by failing to dismiss the eviction action based upon Appellees material noncompliance with § 83.51(1), Florida Statutes, requiring landlords to maintain the premises.

6) The trial court erred by determining that Appellees interruption of her water service did not constitute a prohibited practice under § 83.67, Florida Statutes.

7) The trial court erred by denying her claim for retaliatory eviction under § 83.64, Florida Statutes.

8) The trial court erred by denying her claim for bad faith under § 83.44, Florida Statutes.

9) The trial court erred by making a ruling with regard to the security deposit that is contrary to § 83.49, Florida Statutes, and the relevant Florida case law.

10) The trial court erred by making a ruling in regard to attorney's fees pursuant to § 83.625, Florida Statutes.

Conversely, Appellees argue that the trial court's Final Judgment must be affirmed because the Appellant has failed to present an adequate record on appeal and Appellant has failed to demonstrate any errors which would require a reversal of the trial court's ruling. Appellees also seek an award of appellate attorney's fees and costs.

#### *Standard of Review*

The standard of review for final judgment is de novo and the court's actual findings are reviewed to determine whether they are supported by competent substantial evidence. An appellate court will not disturb a final judgment if there is competent substantial evidence to support a ruling on which a judgment is based. *Berges v. Infinity Insurance Co.*, 896 So. 2d 665, 676 (Fla. 2004). It is well established that in appellate proceedings the decision of a trial court is presumed to be correct and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 So. 2d 1150, 1152 (Fla. 1979) and *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Upon review of the appellate record in this case, it is important to note that Appellant only filed portions of the trial transcript with her brief. Among the portions of the transcript lacking was the complete testimony of witnesses referenced in Appellant's brief. Accordingly, this Court provided Appellant with an opportunity to submit the complete transcript via its Order entered on August 12, 2011. Appellant subsequently filed a motion for reconsideration of the Order and informed this Court that she was unable to provide the entire transcript due to financial hardship. Whereupon, on September 14, 2011, this Court denied the motion for reconsideration and informed Appellant that it would base its decision on the documents contained in the court file.

"It is an elemental principle of appellate procedure that every judgment, order or decree of a trial court brought up for review is clothed with the presumption of correctness and that the burden is upon the appellant in all of such proceedings to make error clearly appear." *State v. Town of Sweetwater*, 112 So. 2d 852, 854 (Fla. 1959). Along with the burden of demonstrating error, the appellant also bears the burden of furnishing an adequate appellate record in accordance with the Florida Rules of Appellate Procedure. Fla. R. App. P. 9.200(e). Without an adequate transcript of the trial proceedings, appellate review is limited to errors of law that are apparent on the face of the record. *Maslow v. Edwards*, 886 So. 2d 1027, 1028 (Fla. 5th DCA 2004).

Accordingly, in the absence of a complete transcript, particularly of the testimony from witnesses referenced in Appellant's brief, this Court is unable to evaluate the sufficiency of the evidence considered by the trial court in support of its extensive factual findings. Instead, this Court must presume that such findings are correct. *Goonan v.*

*Hensley*, 852 So. 2d 361, 362 (Fla. 5th DCA 2003) and *Hirsch v. Hirsch*, 642 So. 2d 20, 21 (Fla. 5th DCA 1994).

From review of the lower court and appellate records provided, including the Final Judgment, this Court must presume that the trial court correctly based its findings on the evidence and testimony presented at the non-jury trial held on June 24, 2009. Further, in support of this presumption, the Final Judgment addressed in detail Appellant's defenses and made several findings.

Among the findings in the Final Judgment, the trial court first memorialized its previous denial of Appellant's Motion to Dismiss based upon a defective three date notice finding that the defective notice was not jurisdictional. The trial court then rejected Appellant's allegation that the disconnection of the utilities should have resulted in three (3) months free rent and commented that the evidence was "scant" regarding damages to Appellant and found it to be significant that Appellant didn't know that the utilities had been temporarily turned off. The trial court also discarded Appellant's claim of retaliatory eviction, finding no relationship between prior litigation and the instant lawsuit. As to the security deposit, the trial court agreed to place the security deposit money into the pool of monies available to resolve the damages of this case. The trial court also denied Appellant's claim of bad faith, specifically finding that it appeared that the Appellees had been more reasonable than Appellant. The trial court concluded that the Appellees were entitled to rent for the months of September, October, November, and December 2008, as well as \$280.00 in court costs and \$20.00 for the service of process fee. Also, the trial court directed the Clerk to release \$3,150 to Appellees (based on the money being held in the Registry of the Court, minus the security deposit of \$950.00 held

by Appellees). Lastly, the trial court found that the Appellees were entitled to a statutory award of attorney's fees and costs and noted Appellant's objection on the record indicating that a subsequent hearing could be held if the parties could not resolve that matter.

Based on the foregoing, this Court finds that the trial court did not err in granting the Final Judgment in favor of Appellees. Accordingly, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment rendered February 10, 2010 is **AFFIRMED** and Appellant's request for an award of appellate attorney's fees and costs is **DENIED**. Further, pursuant to § 83.625, Florida Statutes, and Fla. R. App. P. 9.400, Appellees' Motion to Tax Appellate Attorney Fees and Costs filed March 23, 2011 is **GRANTED** and is **REMANDED** to the trial court for a determination as to the amount of fees and costs to be awarded.

**DONE AND ORDERED** in Chambers, at Orlando, Orange County, Florida on this 27th day of October, 2011.

\_\_\_\_\_/S/\_\_\_\_\_  
**MARC L. LUBET**  
**Circuit Judge**

\_\_\_\_\_/S/\_\_\_\_\_  
**JANET C. THORPE**  
**Circuit Judge**

\_\_\_\_\_/S/\_\_\_\_\_  
**JOSE R. RODRIGUEZ**  
**Circuit Judge**

**CERTIFICATE OF SERVICE**

I **HEREBY CERTIFY** that a true and correct copy of the foregoing order was furnished via U.S. mail on this 27th day of October, 2011 to: **Eunice M. Caussade-Garcia, Esquire**, 201 Beggs Avenue, Orlando, Florida 32801 and **Kevin B. Weiss, Esquire**, Weiss Legal Group, P.A., 698 North Maitland Avenue, Maitland, Florida 32751.

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/S/  
Judicial Assistant