

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

JENNIFER SMITH,

Appellant,

v.

CARMEN NUNEZ,

Appellee.

CASE NO.: 2013-CV-000048-A-O

Lower Case No.: 2013-SC-002382-O

Appeal from the County Court
for Orange County, Florida,
Adam McGinnis, County Judge.

Jennifer Smith, Pro Se, Appellant.

No Appearance for Appellee.

Before HIGBEE, DAVIS, and BLACKWELL, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant, Jennifer Smith (“Smith”), timely appeals the Trial Court’s entry of Final Judgment for Plaintiff entered on June 5, 2013 in favor of Appellee, Carmen Nunez (“Nunez”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

On March 8, 2013, Nunez filed a Statement of Claim against Smith requesting damages in the amount of \$5,000 for an illegal eviction, loss of personal items, return of personal items,

and emotional and mental distress.¹ Ultimately on June 5, 2013, a non-jury trial was held. There was no court reporter present, thus, no transcript of the trial. Nor is there a statement of the proceedings that meets the criteria of Rule 9.200(b)(4), Florida Rules of Appellate Procedure. According to the court minutes, both Nunez pro se and Smith with counsel appeared and testified. Also, Smith had three other witnesses testify. The evidence presented by Nunez included photos, miscellaneous receipts, and household documents. The evidence presented by Smith was miscellaneous rental documents. At the conclusion of the trial, the Trial Court reserved ruling and thereafter entered the Final Judgment awarding Nunez only court costs of \$350.00.

Argument on Appeal

On appeal, Smtih argues: 1) She was not the proper party to sue and thus, the action should have been dismissed and 2) The evidence supports a finding in her favor instead because Nunez first changed the locks in violation of section 83.53, Florida Statutes. Nunez did not file an answer brief in this appeal.

Standard of Review

The standard of review applicable to a trial court decision based upon a finding of fact during a non-jury trial is whether the decision is supported by competent substantial evidence. *Wekiva Springs Reserve Homeowners v. Binns*, 61 So. 3d 1190, 1191 (Fla. 5th DCA 2011). The function of trial judge as the trier of fact, is to evaluate and weigh the testimony and evidence based the observation of the bearing, demeanor, and credibility of witnesses appearing in the cause. *Shaw v. Shaw*, 334 So. 2d 13, 16 (Fla. 1976). The standard of review of a trial court's application of the law to the facts is de novo. *State v. Pruitt*, 967 So. 2d 1021, 1023 (Fla. 2d DCA 2007).

¹ The prior eviction action was in case no. 2012-CC-018305-O.

Lastly, 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. 1980) and *Wright v. Wright*, 431 So. 2d 177, 178 (Fla. 5th DCA 1983).

Analysis

In Smith's first argument, she claims that the action should have been brought against Prosperity Place Properties LLC ("PPP") instead of her. From review of the lower court record, PPP appears on the letterhead for the rental documents and on a check. Also, in the Affidavit from maintenance employee, Arthur Cowart, he states that he does maintenance work for PPP and has been working for Jennifer Smith, owner of PPP. In Smith's own Affidavit she states that she is the sole owner of PPP and that she owns the subject property. In Smith's trial brief under the witness list portion, Smith states that she is the property owner. However, there is nothing in the record revealing that Smith moved to dismiss this action nor is there any defense alleged based on her being an improper party to the action. Therefore, this argument was not preserved for appeal and should be barred from review. *Tillman v. State*, 471 So. 2d 32, 35 (Fla. 1985); *Florida Emergency Physicians-Kang & Associates, M.D., P.A. v. Parker*, 800 So. 2d 631, 636 (Fla. 5th DCA 2001).

Further, even if this argument was preserved for appeal, because there is no transcript nor an approved statement of proceedings from the trial, review of the Trial Court's ruling can only be from what is contained in the court record which is very limited. Also, the record is void of additional documents in the record supporting the existence of PPP such as articles of incorporation etc.

In Smith's second argument, she explains that Trial Court entered the Final Judgment awarding court costs to Nunez because Smith changed the locks. Smith argues that the Trial Court erred in awarding Nunez court costs based on an illegal lock out because Nunez had first changed the locks thus, necessitating Smith to break into the apartment and then to change the locks again. While Smith's allegations on this issue are included in her trial brief, there is no evidence in the record supporting these allegations. Further, because this issue involves a finding of fact, without the transcript of the trial testimony or approved statement of proceedings and/or findings in the Final Judgment, appellate review is limited on this issue as there is no way that a determination can be made as to whether or not competent substantial evidence existed in support of the Trial Court's ruling.

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment for Plaintiff entered by the Trial Court on June 5, 2013 is **AFFIRMED**.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this 17th day of June, 2014.

/S/

HEATHER L. HIGBEE
Presiding Circuit Judge

DAVIS and BLACKWELL, J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Jennifer Smith**, P.O. Box 2168, Orlando, Florida 32802 and **Carmen Nunez**, 4312 Aetna Drive, Orlando, Florida 32808, on the 17th day of June, 2014.

/S/

Judicial Assistant