

SEP 16 2009

EARLE B. TURNER, CLERK

**CLEVELAND MUNICIPAL COURT
HOUSING DIVISION
JUDGE RAYMOND L. PIANKA**

NEW LONGWOOD ASSOCS.,
Plaintiff(s)

DATE: SEPTEMBER 16, 2009

-VS-

CASE NO. 09-CVG-12569

RAVEN WELLS,
Defendant(s)

JUDGMENT ENTRY


Upon review, the Magistrate's Decision is approved and confirmed.

The Court is compelled to note that this case is one of first impression with the Cleveland Municipal Court, Housing Division.

As such, it is worth expanding upon the Magistrate's Decision to stress the importance of applying the spirit and enforcing the provisions in the Violence Against Women Act. The Court is mindful of the domestic violence statistics in Ohio: in 2007, there were 21,485 domestic violence civil protection orders issued; there were 42,569 calls related to domestic violence; there were 133 fatalities¹.

The Housing Court, as a holistic and therapeutic Court, is in a unique position to have in its employ a number of well-qualified staff members with social work backgrounds. Among those are a team of Housing Specialists, who can not only provide valuable information and assistance about civil cases, but can also link litigants with special problems, such as those who are victims of domestic abuse, with service providers, to assist in problem-solving. Ms. Wells is urged to seek the assistance of Housing Specialist Flores.

Judgment for the defendant.


JUDGE RAYMOND L. PIANKA
HOUSING DIVISION

SERVICE

A copy of this Judgment Entry was sent by regular U.S. mail to the parties on
09/16/09 jm

¹ See Ohio DV Stats Sheet, <http://www.odvn.org>.

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CLEVELAND MUNICIPAL COURT
CUYAHOGA COUNTY, OHIO
HOUSING DIVISIONNEW LONGWOOD ASSOCS.,
Plaintiff(s)

DATE: SEPTEMBER 16, 2009

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CASE NO. 09-CVG-12569

RAVEN WELLS,
Defendant(s)MAGISTRATE'S DECISION

This case came for trial on August 26, 2009 before Magistrate Heather A. Veljković, to whom it was referred by Judge Raymond L. Pianka pursuant to Civil Rule 53, to take evidence and render a decision on plaintiff's first cause of action for restitution of rental premises. Plaintiff was present, and represented by counsel. Defendant was present, pro se.

New Longwood, a private landlord receiving subsidies from the federal government to assist with housing payments for qualified tenants, seeks to evict Raven Wells on the basis of breach of lease. Specifically, New Longwood has cited to a pattern involving numerous domestic incidents involving Wells and a third party, Mercedes Gray, and the ensuing involvement of security personnel and law enforcement officials.

FINDINGS OF FACT:

{¶1.} New Longwood Associates ("New Longwood") is the owner of the residential rental premises located at 2474 East 35th Street, Cleveland, Ohio.

{¶2.} Raven Wells is a tenant at the premises pursuant to a written rental agreement.

{¶3.} Wells's tenancy is federally subsidized through the project-based section eight program. Her monthly rental obligation is \$0.

{¶4.} An agent of New Longwood served Wells with a thirty day notice of termination on or about April 21, 2009. A copy of this notice was admitted as Plaintiff's Exhibit B and is attached to the complaint.

{¶5.} Thereafter, New Longwood served Wells with a notice under R.C. 1923.04 on or about June 1, 2009. A copy of the notice was admitted as Plaintiff's Exhibit C and is attached to the complaint.

{¶6.} The ground alleged for this eviction is breach of lease.

Jason Leasher and Steve McBride are employees of TD Security which provides security services to the residents at New Longwood. Leasher and McBride testified about incidents they witnessed involving Wells.

{¶7.} Mercedes Gray is a person with whom Wells has been in the past, and continues to be, involved romantically.

{¶8.} On March 2, 2009, Gray attempted to enter Wells's home without her consent. Security responded and gave Gray a criminal trespass notice. A copy of the notice was admitted as plaintiff's Exhibit D. That same day, Gray broke into Wells's home again, and vandalized both personal and private property inside. The Cleveland Police Department ("CPD") responded. There was no testimony about charges being brought against Gray as a result of these incidents.

{¶9.} On March 5, 2009, there was a domestic incident involving Gray at Wells's home to which Leasher and CPD officers responded. By the time they arrived, Wells had left the premises. The door was unlocked; three children were inside. Upon entering the unit, Leasher noticed that one of the children had a pair of scissors in his hand. Antowan Taylor appeared, saying he was watching the children. Taylor appeared to Leasher to be intoxicated; however there was no testimony that any sobriety tests were performed. Wells returned home approximately ten minutes later. There was no testimony about charges being brought against Gray, Wells or Taylor as a result of this incident.

{¶10.} On March 26, 2009, TD Security received a tip that Gray was back on the property; Leasher responded and watched the unit. During the surveillance, Leasher observed Gray enter the front of the unit. Upon request, Wells allowed security to enter via the front door; they asked her if Gray was present in her unit, and she stated no. Leasher observed that Gray's mother was in the unit at that time; she was motioning toward the back bedroom door, which was closed. Leasher took this to mean that Gray was in the back bedroom; however, Leasher did not observe Gray in the unit, and Gray was not apprehended at that time.

{¶11.} On April 21, 2009, New Longwood issued Wells a written thirty day notice of New Longwood's intention to terminate Wells's lease based upon a number of alleged lease violations, primarily involving altercations between Gray and Wells. A copy of the notice was admitted into evidence as Plaintiff's Exhibit A, attached to the complaint.

{¶12.} On June 1, 2009, New Longwood served Wells a three day notice to vacate, under R.C. 1923.04. A copy of that notice was admitted into evidence as Plaintiff's Exhibit B, attached to the complaint.

{¶13.} Leasher responded to a domestic call from Wells's home on June 16, 2009. He approached the scene alone, and witnessed the Wells and Gray arguing inside. Wells told Leasher that she wanted Gray out of her unit; Leasher asked Gray to leave the property. Gray left - throwing a lit cigar at Wells as he did. Wells then grabbed a baseball bat and pepper spray, and tried to spray Gray. Leasher instructed Wells to put

the items down; however, some of the spray got into Leasher's eyes, requiring medical attention. There was no testimony to suggest that Leasher was the intended target of Wells's actions.

{¶14.} On July 8, 2009, on routine patrol, officer McBride observed a Cleveland Police Department Officer at Wells's home, talking to Wells and Gray. The CPD Officer relayed to McBride that Gray had punched and kicked Wells, and would not leave her unit. Officer McBride testified that he did not know if charges had been issued as a result of this incident.

{¶15.} On July 24, 2009, Wells called Security and stated that earlier in the day, Gray threatened to cause damage to her home. Wells did not want to press charges against him.

{¶16.} Officer Leasher responded to yet another domestic call from Wells's unit on August 10, 2009. Apparently, Wells had allowed Gray into her unit the night before and Gray had spent the night. The altercation occurred the following morning. Wells told Leasher that Gray threatened her and also threatened to slap her child. A physical altercation between Gray and Wells followed. Gray left, but returned twenty minutes later. When Wells failed to allow Gray into her home, Gray tried to kick in the front door, and then threw a brick through the front window. Wells refused to press charges stemming from this incident.

{¶17.} On August 12, 2009, Gray was spotted by Leasher inside Wells's car. Leasher approached Wells at her home and asked her if she knew Gray was driving her car. On this date, when Leasher spoke to Gray, Gray told the officers that they "wouldn't be able to keep [him] off the property."

{¶18.} On a routine patrol on August 18, 2009, Leasher observed Gray outside of Wells's unit in her car. Officer Leasher asked Gray why he was on the property; Wells came out of her home; Leasher asked Wells what she wanted them to do about Gray being on the property. She did not respond but instead got into the car and drove off with Gray.

{¶19.} By Wells's own testimony, she is in an abusive relationship. She testified further that if she did not let Gray into her home; he would force his way in, and cause damage to her home or physically harm her.

{¶20.} New Longwood did not offer evidence regarding an alleged dispute between Wells and a neighbor on March 16, 2009.

{¶21.} New Longwood did not offer evidence regarding alleged reckless driving on March 23, 2009.

CONCLUSIONS OF LAW:

{¶22.} In order to prove its claim in forcible entry and detainer on the basis of breach of lease, New Longwood must prove by a preponderance of the evidence that it has served

a notice of termination pursuant to federal law; has served a three day notice in conformity with R.C. 1923.04; and that Wells has breached the terms of her written rental agreement.

The Notices

{¶23.} In the 30 day notice issued to her on April 21, 2009, Wells was notified that her tenancy was being terminated "as a result of your violation of the Lease Agreement." The written notice went on to cite the following provisions of the Lease: Paragraph 13 (General Restrictions), Paragraph 23 (Termination of Tenancy), Lease Addendum for Drug-Free Housing #5 and #6, and House Rules 13, 29 and 34.

{¶24.} The Notice listed the following specific events:

- "March 2, 2009, Management received security report #09-APV-0013 regarding attempted criminal damaged (sic) and disorderly conduct involving (Marcedes Gray).
- March 5, 2009, Management received a security report #09-APV-0016 and you received a NTV#2814 regarding criminal damaged (sic), disorderly conduct involving (Marcedes Gray) and child endangerment.
- March 16, 2009, Management received a security report #09-APV-0131 and you received an NTV#2820 regarding disorderly conduct and a dispute with your neighbor.
- March 23, 2009, Management received security report #09-APV-0144 regarding wreck less (sic) driving and harassment.
- March 26, 2009 Management received security report #09-APV-0146 regarding criminal trespassing for (Marcedes Gray)."

{¶25.} New Longwood served Wells a 3 day notice on June 1, 2009, with the same specific information contained therein as the notice of termination.

{¶26.} The magistrate concludes that the notices were served in conformity with applicable law.

Law: Violence Against Women Act

1. Overview

{¶27.} In January 2006, Congress passed the Violence Against Women and Department of Justice Reauthorization Act ("VAWA"). Through the VAWA, public housing authorities, federally assisted housing projects, and private landlords accepting housing vouchers can not evict tenants based on criminal activity directly related to domestic violence. See, generally, Whitehorn, *Unlawful Evictions of Female Victims of Domestic*

Violence: Extending Title VII's Sex Stereotyping theories to the Fair Housing Act (2007), 101 Nw.U.L.Rev.1419.

{¶28.} There are different provisions of the VAWA that apply to each of the various varieties of federally subsidized housing. The instant case involves project-based section 8 housing. The applicable section of the VAWA, 42 U.S.C.A. § 1437f(c)(9) provides: "(B) An incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and shall not be good cause for terminating the assistance, tenancy, or occupancy rights of the victim of such violence."

{¶29.} This section further provides, "Criminal activity directly relating to domestic violence, dating violence, or stalking, engaged in by a member of a tenant's household or any guest or other person under the tenant's control shall not be cause for termination of assistance, tenancy, or occupancy rights if the tenant or an immediate member of the tenant's family is the victim or threatened victim of that domestic violence, dating violence, or stalking." 42 U.S.C.A. § 1437f(c)(9)(C)(i).

{¶30.} The VAWA has provided specific examples of what is permissible for public landlords to do in the instance of domestic violence occurring on premises they own. The landlord may bifurcate the lease to remove the offender. 42 U.S.C.A. § 1437f(c)(9)(C)(ii). The landlord may honor court orders addressing rights of access to or control of the property, including civil protection orders issued to protect the victim and issued to address the distribution or possession of property among the household members in cases where a family breaks up. 42 U.S.C.A. § 1437f(c)(9)(C)(iii). The landlord may terminate for any violation of a lease not premised on the act or acts of violence in question against the tenant. 42 U.S.C.A. § 1437f(c)(9)(C)(iv). The landlord may evict or terminate from assistance any tenant or lawful occupant if the owner, manager or public housing agency can demonstrate an actual and imminent threat to other tenants or those employed at or providing service to the property if that tenant is not evicted or terminated from assistance. 42 U.S.C.A. § 1437f(c)(9)(C)(v).

{¶31.} Additionally, the provisions of the VAWA require that "Contracts to make assistance payments entered into by a public housing agency with an owner of existing housing units *shall provide* (with respect to any unit) that * * *during the term of the lease * * *an incident or incidents of actual or threatened domestic violence, dating violence, or stalking will not be construed as a serious or repeated violation of the lease by the victim or threatened victim of that violence and will not be good cause for terminating the tenancy or occupancy rights of the victim of such violence * * *." 42 U.S.C.A. § 1437f(d)(1)(B)(ii) [emphasis added].

2. Definitions

{¶32.} The VAWA provides reference to the definitions of the terms "domestic violence", "dating violence", and "stalking".

{133.} "The term 'domestic violence' includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim, by a person with whom the victim shares a child in common, by a person who is cohabitating with or has cohabitated with the victim as a spouse, by a person similarly situated to a spouse of the victim under the domestic or family violence laws of the jurisdiction receiving grant monies, or by any other person against an adult or youth victim who is protected from that person's acts under the domestic or family violence laws of the jurisdiction." 42 U.S.C.A. § 13925(a)(6).

{134.} "The term "dating violence" means violence committed by a person—(A) who is or has been in a social relationship of a romantic or intimate nature with the victim; and (B) where the existence of such a relationship shall be determined based on a consideration of the following factors: (i) The length of the relationship. (ii) The type of relationship. (iii) The frequency of interaction between the persons involved in the relationship." 42 U.S.C.A. §13925(a)(8).

{135.} The term "stalking" means—"(A)(i) to follow, pursue, or repeatedly commit acts with the intent to kill, injure, harass, or intimidate another person; or (ii) to place under surveillance with the intent to kill, injure, harass, or intimidate another person; and (B) in the course of, or as a result of, such following, pursuit, surveillance, or repeatedly committed acts, to place a person in reasonable fear of the death of, or serious bodily injury to, or to cause substantial emotional harm to— (i) that person; (ii) a member of the immediate family of that person; or (iii) the spouse or intimate partner of that person[.]" 42 U.S.C.A. § 1437f(f)(10).

{136.} Additionally, the Ohio Domestic Violence Network provides the following definition of domestic violence: "Domestic violence is a pattern of abusive and coercive behaviors, including physical, sexual, and psychological attacks, as well as economic coercion, that adults or adolescents use against their intimate partners." See <http://www.odvn.org>.

Ground for Eviction: Breach of Lease

{137.} It is New Longwood's position that Wells's own acts, in connection with those of Gray – her "guest" – are in violation of the lease. Wells raises as a defense that she is a victim of relationship violence, and that Gray's actions cannot be controlled. To be protected by the provisions of the VAWA, Wells must establish that the violent acts were the result of domestic violence, dating violence or stalking.

1. Is Defendant a Victim of Domestic Violence, Dating Violence, and/ or Stalking?

{138.} As was described in detail by the TD Security officers, Wells and Gray have what could be described as, at best, a volatile relationship. Time and again, calls are received by Security to provide assistance to Wells, who then declines to aid in the prosecution of Gray. Some of those calls were initiated by Wells. The TD Security officers testified about nine separate domestic instances involving Wells and Gray spanning a six month

timeframe. The Court can reasonably infer, based on the testimony supplied, that there were likely additional incidents between Gray and Wells that were not reported to Security.

{¶39.} Considering all of the testimony taken at trial, the magistrate concludes that Wells is the victim of "dating violence." While there was a lack of explicit testimony identifying Wells and Gray as romantic partners, based upon testimony establishing the length of the relationship (at least six months), the type of relationship (implied to be romantic in nature), and the frequency of interaction between the persons involved in the relationship (at least, on average, several times a month, sometimes involving overnight stays), the magistrate concludes that the relationship between the Wells and Gray was "a social relationship of a romantic or intimate nature" as required by the VAWA.

{¶40.} Likewise, the magistrate also concludes that Wells is a victim of stalking, pursuant to the definition provided. Gray has followed, pursued and repeatedly committed acts with the intent to harass and intimidate Wells. Security has been called at least 9 times in the recent past to respond to threats made by Gray, and to assist in resolving disputes between Gray and Wells. Gray has been so bold as to state to Security officials that they will not be able to keep him from Wells's property. Wells stood in front of the magistrate at trial, in tears, and stated that she needed help. Gray has, in the course of these acts, put Wells in reasonable fear of serious bodily injury, and has caused substantial emotional harm to her.

{¶41.} Based on the foregoing, the Court concludes that Wells is a victim of dating violence and stalking, as defined by the VAWA.

2. Breach of Lease

{¶42.} Initially, it may seem apparent that this repetition of violent behavior by a tenant's guest is sufficient to prove New Longwood's case.

{¶43.} A review of the Lease, admitted as Plaintiff's Exhibit A, reveals that the provisions required by VAWA relating to domestic violence, dating violence, and stalking, are not contained within the four corners of the Lease, despite it being entered into on or about September 23, 2008 – over two years after Congress enacted the VAWA. Despite the provisions not actually being enumerated in the terms of the Lease, the Court construes that the provisions of the VAWA are applicable and binding on the parties, since New Longwood is in receipt of the federal funds that it has received to its benefit on behalf of Wells.

{¶44.} The issue before the magistrate is whether the series of incidents testified about at trial are rooted in dating violence or stalking; if so, New Longwood cannot prevail on its claim for eviction. As outlined in the VAWA, incidents of dating violence or stalking will not be construed as a serious or repeated violation of the lease by the victim and shall not be good cause for terminating the tenancy. Further, any criminal activity directly relating to dating violence or stalking, engaged in by a member of a tenant's

household or any guest or other person under the tenant's control shall not be cause for termination of tenancy.

{¶45.} As the testimony indicated at trial, each of the incidents plaintiff alleges is a breach of Lease involves Mercedes Gray and either security or CPD, or both, being called to a domestic dispute. These incidents involve allegations of criminal damaging, child endangering, and criminal trespassing. In reviewing the series of incidents, the magistrate can only conclude that they each stem from episodes of dating violence or stalking as defined in the VAWA.

{¶46.} With regard to the Notices' reference to the child endangerment allegation, it appears that it is directed to Wells (as opposed to Gray). However, it did not appear from the testimony or exhibits admitted at trial that Wells was charged with a criminal offense relating to this incident. It is important to note that Wells is – and was, at the time of the alleged child endangerment – in the midst of a chronically abusive relationship. As a victim of abuse, Wells's actions may not be the same as what an average, ordinary person may be under the same set of circumstances. That Wells left immediately after a domestic incident is not surprising; while she may have arranged for more appropriate childcare, the magistrate concludes that the defendant's alleged behavior – even if it was exactly as testified by Leasher – does not amount to the level that would constitute a breach of the lease.

{¶47.} The magistrate therefore concludes that New Longwood has failed to prove that Wells has breached her lease.

Conclusion

{¶48.} While New Longwood intended to prove that the repeated incidents between Wells and Gray substantiated a case for termination, it proved to the Court instead that Ms. Wells indeed is a victim who fits the definition provided by the Ohio Domestic Violence Network – she is involved in a *pattern* of abusive and coercive behaviors. As a result, the incidents upon which New Longwood relies cannot serve as a basis for the termination of her tenancy, and New Longwood's eviction claim must be denied.

{¶49.} While the Court accepts the VAWA defense for the purposes of the instant case, Ms. Wells is cautioned that at some point the facts may become such that it becomes her duty to seek assistance in ending this abusive relationship, or run the risk of losing her housing subsidy. Perhaps more importantly, addressing her relationship with Gray likely is needed to protect the health and safety of herself and her children. Ms. Wells is urged to seek legal and counseling services in that endeavor.

{¶50.} Nor should this decision be interpreted as providing New Longwood with no remedy for any conduct by Ms. Wells; New Longwood is not barred by this decision from seeking an eviction action based on other, allowable grounds, for example, acts not related to the domestic / dating violence, or acts that put other tenants or management staff at risk.

{¶51.} To assist Ms. Wells, the services of Housing Specialist Dora Flores shall be made available to provide information about referrals to appropriate agencies. Housing Specialist Flores is available at the Justice Center, 13th Floor, Monday through Friday 8:30 to 3:30 p.m.; she may be reached by telephone at (216) 664-4906.

Recommendation:

{¶52.} Judgment for the defendant on plaintiff's first cause of action.


MAGISTRATE HEATHER A. VELJKOVIC
HOUSING DIVISION

ATTENTION: A PARTY MAY NOT ASSIGN AS ERROR ON APPEAL ANY MAGISTRATE'S FINDING OF FACT OR CONCLUSION OF LAW UNLESS THE PARTY TIMELY AND SPECIFICALLY OBJECTS TO THAT FINDING OR CONCLUSION AS REQUIRED BY CIV. R. 53(E)(3). ALL OBJECTIONS TO THE MAGISTRATE'S DECISION MUST BE FILED IN WRITING WITHIN FOURTEEN DAYS OF THE JOURNALIZATION OF THIS DECISION. OBJECTIONS MUST BE FILED EVEN IF THE TRIAL COURT HAS PROVISIONALLY ADOPTED THE MAGISTRATE'S DECISION BEFORE THE FOURTEEN DAYS FOR FILING OBJECTIONS HAS PASSED. OBJECTIONS MUST COMPLY WITH THE OHIO RULES OF CIVIL PROCEDURE, AND THE LOCAL RULES OF THIS COURT. FOR FURTHER INFORMATION, CONSULT THE ABOVE RULES OR SEEK LEGAL COUNSEL.

SERVICE

A copy of this Magistrate's Decision was sent by regular U.S. mail to the parties on

09/16/09

JMW