

**COURT OF APPEALS
DECISION
DATED AND FILED**

May 10, 2005

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2004AP2341

Cir. Ct. No. 2004SC289

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

CLOVER BELT FARMS, LLC,

PLAINTIFF-RESPONDENT,

v.

LINDA RADEMACHER,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Chippewa County:
FREDERICK A. HENDERSON, Judge. *Affirmed.*

¶1 PETERSON, J.¹ Linda Rademacher, pro se, appeals a judgment of eviction from land she rented from Clover Belt Farms, LLC. She argues: (1) the court erred by determining she had a month-to-month periodic tenancy and applying a twenty-eight-day notice of eviction rather than ninety days, pursuant to

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2). All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

WIS. STAT. ch. 704; (2) even if twenty-eight days' notice was appropriate, the notice was not effectively given; (3) the court erred by determining that her eviction was not retaliatory; and (4) the court violated her due process rights by the manner in which it conducted the trial. We affirm the judgment.

BACKGROUND

¶2 Rademacher leased a portion of Clover Belt Farms, in northern Chippewa County, to raise horses. On April 1, 2003, Rademacher entered into an agreement with Clover Belt's prior owner, Gerald Bauer, to lease the premises through June 30, 2004. However, only Bauer actually signed the agreement. Rademacher paid Bauer quarterly, at the end of each quarter.

¶3 On September 4, 2003, Bauer sold Clover Belt to James and Judy Haley. At some point, the Haleys decided to burn down a barn located near the land Rademacher occupied. Rademacher notified the Department of Natural Resources (DNR) that the Haleys were planning to burn without a permit and without abating asbestos from the barn. Judy subsequently filled out DNR forms but did not mention that they were going to burn the barn. Rademacher again notified the DNR. A DNR inspector came out and found asbestos in the barn that needed to be removed before it could be burned.

¶4 On January 24, the day the barn was to be burned, Judy gave Rademacher a five-day notice to quit the premises or pay rent. Rademacher paid the rent on January 28. The next day, the Haleys mailed to Rademacher's home in Minnesota a twenty-eight-day notice terminating her tenancy. When Rademacher did not vacate, the Haleys filed an eviction action in small claims court. They claimed they were unable to locate Rademacher so they published the summons

and complaint in papers in both Anoka County, Minnesota and Chippewa County, Wisconsin. However, Rademacher's name was published as Mademacher.

¶5 At trial, Rademacher argued the notice was insufficient and that her eviction was retaliatory because she notified the DNR about the Haleys' plans to burn the barn. The court ruled that Rademacher was a month-to-month periodic tenant so only twenty-eight-days' notice of eviction was required. The court also determined the eviction action was not retaliatory. The court therefore ordered Rademacher evicted.

DISCUSSION

A. Tenancy and Notice

¶6 WISCONSIN STAT. § 704.19(3), states that

At least 28 days' notice must be given [to terminate periodic tenancies and tenancies at will] except in the following cases: If rent is payable on a basis less than monthly, notice at least equal to the rent-paying period is sufficient; all agricultural tenancies from year-to-year require at least 90 days' notice.

Rademacher argues she was entitled to ninety days' notice of eviction because she had a year-to-year periodic agricultural tenancy. The Haleys argue there was no lease and therefore Rademacher was a periodic tenant entitled to only twenty-eight days' notice, which she was given.

¶7 At trial, Rademacher furnished the court with a copy of her rental agreement with Bauer. She argued the lease was for more than one year, April 1, 2003 through June 30, 2004. It was signed only by Bauer. Rademacher argues that under WIS. STAT. § 704.03(2), an imperfect lease for more than one year for agricultural or nonresidential use becomes a year-to-year periodic tenancy. Thus,

under WIS. STAT. § 704.19(3), she argues that because she used the land for agricultural purposes—raising horses—she was entitled to ninety days' notice of eviction rather than twenty-eight.

¶8 The trial court determined that the agreement Rademacher had with Bauer was “nothing.” “It is not certain. It has no certainty as to terms. It is signed by one person. ... Only one person signed it and it doesn’t say what it’s for.” Therefore, the court concluded Rademacher had a month-to-month tenancy that could be terminated by a twenty-eight-day notice.

¶9 The purported rental agreement between Rademacher and Bauer states:

This agreement dated April 1, 2003, between Cloverbelt [sic] Farms, LLC, Gerald Bauer (Lessor) and Linda Rademacher [sic] (Lessee) is for pasture and the barns agreed upon by owner. The amount of the lease is \$300.00 per month. This lease is to apply until June 30, 2004.

We conclude this lease is so unspecific as to not be a lease at all. In fact, the definition of “lease” in WIS. STAT. § 704.01(1) states that it must have a fixed commencement date. This agreement does not. The agreement is dated April 1, 2003, but does not specify whether the agreement actually begins on that date or some other date.

¶10 Furthermore, WIS. STAT. § 704.03(2) does not operate to create a year-to-year tenancy in this case. WISCONSIN STAT. § 704.03(1) states:

A lease for more than a year, or a contract to make such a lease, is not enforceable unless it meets the requirements of s. 706.02 and in addition sets forth the amount of rent or other consideration, the time of commencement and expiration of the lease and a reasonably definite description of the premises, or unless a writing signed by the landlord and the tenant sets forth the amount of rent or other

consideration, the duration of the lease and a reasonably definite description of the premises and the commencement date is established by entry of the tenant into possession under the writing. Sections 704.05 and 704.07 govern as to matters within the scope of such sections and not provided for in such written lease or contract.

Section 704.03(2) then provides that a lease that does not conform to § 704.03(1) creates a year-to-year periodic tenancy if the use is agricultural. Rademacher argues the only way in which the agreement does not conform is that she did not sign it, so therefore contends she has a year-to-year tenancy under § 704.03(2).

¶11 We conclude Rademacher's agreement with Bauer fails on several points. WISCONSIN STAT. § 704.03(1) directs us to the requirements listed in WIS. STAT. § 706.02. Section 706.02(1)(e) states that an agreement must be signed by or on behalf of all the parties. Here, the agreement was signed only by Bauer, not Rademacher. Furthermore, § 706.02(1)(b) mandates the agreement must identify the land. Section 704.03(1) further mandates there must be a "reasonably definite description" of the property. Here, the agreement merely states it is for land "agreed upon by the owner." This is not a reasonably definite description, but rather a particularly indefinite one. Finally, the agreement must set forth the amount of rent. The agreement states that rent is \$300 per month. Rademacher argues several times that she paid rent quarterly at the end of each quarter, although this arrangement is not mentioned in the agreement. Based on these deficiencies, we conclude the agreement is not merely a nonconforming lease. As the circuit court noted, the agreement is "nothing." We therefore do not apply § 704.03(2) to create a year-to-year tenancy.

¶12 Because there was no lease, Rademacher became a periodic tenant. WISCONSIN STAT. § 704.01(2) defines a periodic tenant as:

a tenant who holds possession without a valid lease and pays rent on a periodic basis. It includes a tenant from day-to-day, week-to-week, month-to-month, year-to-year or other recurring interval of time, the period being determined by the intent of the parties under the circumstances, with the interval between rent-paying dates normally evidencing that intent.

Judy Haley testified that she told Rademacher there was no lease and as long as she was on the property she would have to pay rent in advance on the first of each month. Based on this testimony, the court found that Rademacher was a month-to-month tenant. We will not set aside this factual finding by the trial court because it is not clearly erroneous. *See WIS. STAT. § 805.17(2).* It is for the circuit court, as finder of fact, to assess the weight and credibility of witness testimony. *See id.* Under WIS. STAT. § 704.19(3), a month-to-month periodic tenancy requires at least twenty-eight days' notice for termination. Thus, the court appropriately applied a twenty-eight-day notice to Rademacher's tenancy.

B. Effectiveness of the Notice

¶13 Rademacher argues that even if twenty-eight days' notice was sufficient, the notice was not effectively given. First, she argues the Haleys filed their summons and complaint on January 29, 2004, and terminated her tenancy that same day. Thus, she argues there was actually zero days' notice. However, the notice states Rademacher was to remove herself from the premises on or before February 29, 2004. Thus, she was given twenty-eight days' notice.

¶14 Second, Rademacher argues the notice was insufficient because it was published in the newspaper with her name misspelled. The Haleys published the notice in newspapers in both Anoka County, Minnesota and in Chippewa County, Wisconsin. However, Rademacher's name was incorrectly spelled as Mademacher. We conclude that, at most, this was harmless error.

¶15 An error is harmless if it does not affect the substantial rights of the defendant. *State v. Harris*, 229 Wis. 2d 832, 840, 601 N.W.2d 682 (Ct. App. 1999). Furthermore, WIS. STAT. § 805.18(1) states, “The court shall, in every stage of an action, disregard any error or defect in the pleadings or proceedings which shall not affect the substantial rights of the adverse party.”

¶16 Rademacher does not argue that she did not receive notice or that she was unaware that the Haleys sought to terminate her tenancy. There is no indication that she did not realize the reference to Mademacher referred to her. She appeared in court at the initial hearing, filed an answer to the complaint and actively participated in the trial. Thus, Rademacher’s rights have not been prejudicially affected by the misspelling of her name in the published notice.

¶17 Finally, Rademacher argues the notice was waived and the lease reinstated when the Haleys accepted rent payments from Rademacher after January 29, 2004. However, Rademacher cites no authority for the proposition that payment of rent reinstates a lease or waives notice of termination of a tenancy. We decline to address issues inadequately supported by legal authority. *State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992).²

² In the paragraph where Rademacher argues payment of rent waived notice and reinstated the lease, she notes a case entitled “A&J Inc. v. Ackel Real Estate, LLC. 2002.” While she does not give a citation for this case, we were able to locate it and found it to be a Louisiana Court of Appeals case. *See A&J Inc. v. Ackel Real Est., LLC*, 831 So.2d 311 (La. App. 5th Cir. 2002). Rademacher’s reference to out-of-state authority is not persuasive. *See Larson v. DILHR*, 76 Wis. 2d 595, 622, 252 N.W.2d 33 (1977). Rademacher does not cite any Wisconsin law in support of her proposition.

C. Retaliatory Eviction

¶18 Rademacher argues her eviction was retaliatory because the Haleys were angry with her for informing the DNR of the plans to burn the barn without a permit and without first abating asbestos. This is a dispute of fact and we must therefore apply the clearly erroneous standard of review. *See State v. Turner*, 136 Wis. 2d 333, 343-44, 401 N.W.2d 827 (1987).

¶19 While a landlord may terminate a month-to-month tenancy for any legitimate reason, or for no reason at all, the landlord may not terminate a tenancy for an illegal purpose, such as for retaliation. *Dickhut v. Norton*, 45 Wis. 2d 389, 399, 173 N.W.2d 297 (1970). To be successful in a retaliatory eviction defense, however, the defendant “must prove by evidence that is clear and convincing that a condition existed which in fact did violate the housing code, that the plaintiff-landlord knew the tenant reported the condition to the enforcement authorities, and that the landlord, for the sole purpose of retaliation, sought to terminate the tenancy.” *Id.*

¶20 Judy Haley testified that Rademacher’s eviction was not retaliatory because Rademacher was not the only tenant they evicted from the property. After they purchased the property they evicted some tenants, and others left voluntarily. Furthermore, Judy testified regarding problems that existed between the Haleys and Rademacher regarding the terms of her tenancy. Judy stated they decided to evict her after they were unable to come to any agreement on the terms.

¶21 The court believed Judy’s testimony and concluded Rademacher failed to prove the eviction was retaliatory. We do not overturn the circuit court’s findings of fact unless they are clearly erroneous. WIS. STAT. § 805.17(2). It is

for the circuit court, as finder of fact, to assess the weight and credibility of witness testimony. *Id.* Thus, the court's determination was not clearly erroneous.

D. Due Process

¶22 Rademacher argues the court violated her due process rights by the manner in which it conducted the trial. This presents a question of law we review independently. *See State v. Allen M.*, 214 Wis. 2d 302, 313, 571 N.W.2d 872 (Ct. App. 1997).

¶23 Rademacher points to WIS. STAT. § 799.209, which states:

- (1) The court or circuit court commissioner shall conduct the proceeding informally, allowing each party to present arguments and proofs and to examine witnesses to the extent reasonably required for full and true disclosure of the facts.
- (2) The proceedings shall not be governed by the common law or statutory rules of evidence except those relating to privileges under ch. 905 or to admissibility under s. 901.05. The court or circuit court commissioner shall admit all other evidence having reasonable probative value, but may exclude irrelevant or repetitious evidence or arguments. An essential finding of fact may not be based solely on a declarant's oral hearsay statement unless it would be admissible under the rules of evidence.
- (3) The court or circuit court commissioner may conduct questioning of the witnesses and shall endeavor to ensure that the claims or defenses of all parties are fairly presented to the court or circuit court commissioner.

Rademacher contends she was not able to present her evidence because both Clover Belt's attorney and the court continually interrupted her. Thus, she maintains there was no full and true disclosure of the facts, nor were all her defenses fairly presented to the court. We disagree.

¶24 WISCONSIN STAT. § 799.209(2) states that the court “may exclude irrelevant or repetitious evidence or arguments.” Evidence is “relevant” if it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” WIS. STAT. § 904.01. Admission or exclusion of evidence rests in the trial court’s discretion, and we will not reverse unless the trial court’s ruling reflects an erroneous exercise of that discretion. *State v. Pharr*, 115 Wis. 2d 334, 342, 340 N.W.2d 498 (1983).

¶25 The Haleys sought to evict Rademacher from its premises. A very limited number of issues are permissible in an eviction action. *Scalzo v. Anderson*, 87 Wis. 2d 834, 847, 275 N.W.2d 894 (1979). These are: (a) whether the relation of landlord and tenant exists between the parties; (b) whether the tenant is holding over; (c) whether proper notice was given; (d) whether the landlord has proper title to the premises; and (e) whether the landlord is attempting retaliatory eviction. *Id.* at 848. This rule insures that the ultimate issue in any eviction is simply who has the right to possession of the premises. *Id.* Here, the evidence that Rademacher claims she was unable to present was irrelevant to these eviction issues.

¶26 Rademacher argues the circuit court prevented her from presenting evidence regarding the method in which she paid Bauer rent, that the Haleys knew how she paid Bauer rent, and that she was not behind in rent payments. However, the court found there was no lease between Rademacher and Bauer. Thus, she was a month-to-month periodic tenant. Consequently, the court concluded evidence regarding rent practices was irrelevant to the eviction action. We have concluded that the court’s determination that Rademacher was a month-to-month tenant was

correct. Therefore, the court's further determination that the rent issue was irrelevant was not erroneous.

¶27 Rademacher also argues the court prevented her from presenting evidence regarding the circumstances she believed led to retaliatory eviction. She wanted to argue that the Haleys did not have a permit to burn the barn, while Judy Haley testified they did now have a permit. Furthermore, while Judy testified the barn had not yet been destroyed, Rademacher wanted to argue that the barn had in fact been destroyed. Because the court concluded the eviction was not retaliatory, the court determined that evidence regarding the present state of the barn and DNR permits was not relevant to the eviction action. We have concluded that the court's determination regarding retaliatory eviction was not erroneous. Therefore, the court's conclusion that evidence regarding the barn was not relevant was also not erroneous.

¶28 Finally, Rademacher argues that, because she represented herself and the case was in small claims court, she should not have been "hamstrung" by formal procedural and evidentiary rules. However, as WIS. STAT. § 799.202(2) indicates, the circuit court has the discretion to disallow irrelevant evidence in small claims cases. Furthermore, "[w]hile some leniency may be allowed, neither a trial court nor a reviewing court has a duty to walk pro se litigants through the procedural requirements or to point them to the proper substantive law." *Waushara County v. Graf*, 166 Wis. 2d 442, 452, 480 N.W.2d 16 (1992). Because the evidence the court prevented Rademacher from presenting was irrelevant to the issue of eviction, its exercise of discretion was not erroneous.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)4.