COURT OF APPEALS
DECISION
DATED AND FILED

March 14, 2017

Diane M. Fremgen
Clerk of Court of Appeals

Appeal No. 2016AP4 **Cir. Ct. No. 2014CV9012**

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT I

MARTIN JONES,

PLAINTIFF-APPELLANT,

V.

MICHAEL HALLER,

DEFENDANT-RESPONDENT.

APPEAL from an order of the circuit court for Milwaukee County: DENNIS P. MORONEY, Judge. *Affirmed*.

Before Brennan, P.J., Kessler and Brash, JJ.

¶1 PER CURIAM. Martin Jones appeals an order granting Michael Haller's motion for summary judgment and dismissing Jones's claim with prejudice. On appeal, Jones argues that he entered into a landlord-tenant relationship with Haller and that the residence he moved into—located at

2209 East Vollmer Avenue in Bay View, Milwaukee—is comprised of two dwelling units and is therefore subject to WIS. STAT. § 106.50(2)(f) (2015-16)[1], the Wisconsin Open Housing Law. Jones further argues that the circuit court erred when it ruled that 2209 East Vollmer was a single dwelling unit and that his claim, as a result, was excluded from the Wisconsin Open Housing Law. We disagree and affirm.

BACKGROUND

¶2 In February 2013, Jones and Haller entered into an agreement whereby Jones would rent one bedroom of Haller's home, located at 2209 East Vollmer, for $400 per month. Jones is African American; Haller is Caucasian. At the time Jones moved in, Haller was separated from his wife. Haller's wife, however, came to 2209 East Vollmer occasionally during Jones's tenancy to do laundry. Some time during the week of February 25, 2013, she met Haller.

¶3 According to the complaint, on March 2, 2013, Haller's wife was at 2209 East Vollmer and got into an argument with Haller. Following the argument, Haller informed Jones that Jones would have to move out because his wife had issues with an African American living in the house. Haller informed Jones that he had to take his wife's wishes into account because her name was also on the title to 2209 East Vollmer. On March 13, 2013, Haller gave Jones a notice to

[1] All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted. All referenced statutes remain unchanged from the 2013-14 version, however, and are contained within WIS. STAT. ch. 106, Apprentice, Employment and Equal Rights Programs, and WIS. STAT. ch. 101, Regulation of Industry, Buildings and Safety, specifically in subchapter III, the Modular Home Code.

vacate no later than April 30, 2013. Jones moved out in late March or early April 2013.

¶4 On October 17, 2014, Jones commenced the underlying action asserting that Haller discriminated against him on the basis of race, contrary to the Wisconsin Open Housing Law, when Haller evicted him. On August 31, 2015, Haller filed a motion for judgment on the pleadings and for summary judgment along with a supporting brief and an affidavit of counsel. On September 25, 2015, Jones filed a brief in opposition to Haller's motions along with an affidavit. The motions were argued before the circuit court on October 23, 2015, at which time the circuit court delivered an oral decision dismissing the case with prejudice. On November 2, 2015, the circuit court issued a written order of dismissal with prejudice. This appeal follows.

ANALYSIS

¶5 As a preliminary matter, we recognize that Haller filed a motion for both judgment on the pleadings and summary judgment. From the record, however, it appears that the circuit court based its decision to dismiss Jones's claim with prejudice utilizing the summary judgment methodology.

¶6 Summary judgment is appropriate when the pleadings, depositions, affidavits, and discovery responses show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. WIS. STAT. § 802.08. "A factual issue is 'genuine' if the evidence is such that a reasonable jury could return a verdict in favor of the nonmoving party." ***Schmidt v. Northern States Power Co.***, 2007 WI 136, ¶24, 305 Wis. 2d 538, 742 N.W.2d 294 (citation omitted). A fact is material if it is "'of consequence to the merits of the litigation.'" ***Id.*** (citation omitted).

¶7 Summary judgment methodology requires us to first "discern whether the pleadings set forth a claim for relief as well as a material issue of fact." *See* ***Swatek v. County of Dane***, 192 Wis. 2d 47, 62, 531 N.W.2d 45 (1995). If so, the "inquiry shifts to the moving party's affidavits or other proof to determine whether a *prima facie* case for summary judgment has been presented." ***Id.*** If the moving party has made a *prima facie* case, we evaluate the affidavits and other submissions by the opposing party to determine "whether there 'exist disputed material facts, or undisputed material facts from which reasonable alternative inferences may be drawn, sufficient to entitle the opposing party to a trial.'" *See* ***id.*** (citation omitted).

¶8 On a motion for summary judgment, "all reasonable inferences must be drawn in favor of the non-moving party." ***Williamson v. Steco Sales, Inc.***, 191 Wis. 2d 608, 624, 530 N.W.2d 412 (Ct. App. 1995). Where "'only one reasonable inference may be drawn from the undisputed facts,'" however, we draw that conclusion as a matter of law. *See* ***Zielinski v. A.P. Green Indus., Inc.***, 2003 WI App 85, ¶7, 263 Wis. 2d 294, 661 N.W.2d 491 (citation omitted). Speculation or conjecture is not enough to create a genuine issue of material fact. *See* ***id.***, ¶16. Whether summary judgment was properly granted by the circuit court is a question of law that we review *de novo*. *See* ***Schmidt***, 305 Wis. 2d 538, ¶24.

¶9 On appeal, Jones argues that: (1) he entered into a landlord-tenant relationship with Haller; and (2) that Haller divided 2209 East Vollmer into two dwelling units pursuant to a written lease. As such, Jones argues that, because 2209 East Vollmer was divided into two dwelling units, the circuit court erred when it ruled that his claim is excluded from the Wisconsin Open Housing Law. We first address the issue of whether 2209 East Vollmer is comprised of two dwelling units.

¶10 WISCONSIN STAT. § 106.50(2)(f) states that it is unlawful for a person to discriminate "[b]y refusing to renew a lease, causing the eviction of a tenant from rental housing or engaging in the harassment of a tenant." ***Id.*** "'Discriminate' means to segregate, separate, exclude, or treat a person or class of persons unequally in a manner described in sub. (2), (2m), or (2r) because of … race." Sec. 106.50(1m)(h). Section 106.50(5m), however, enumerates several exemptions and exclusions to the aforementioned prohibitions on discrimination. Specifically, the statutory prohibitions against discrimination do not apply "to a decision by an individual as to the person with whom he or she will, or continues to, share a dwelling unit, as defined in s. 101.71(2)."[2] *See* § 106.50(5m)(em)1. WISCONSIN STAT. § 101.71(2) defines a dwelling unit as "a structure or that part of a structure which is used or intended to be used as a home, residence or sleeping place by one person or by 2 or more persons maintaining a common household, to the exclusion of all others." ***Id.***

¶11 It is undisputed that the reason Haller made Jones vacate 2209 East Vollmer was based, at least partially, on the fact that Haller is African American, contrary to the prohibitions in WIS. STAT. § 106.50(2)(f). It is further undisputed that 2209 East Vollmer is a two-story, three bedroom house. Jones asserts that 2209 East Vollmer was divided into two dwelling units by Haller pursuant to the terms of a written agreement. The agreement, or portion thereof, included in the record, however, makes no reference to dwelling units. It states as follows:

> I, Michael Haller, received a check for $800 from Martin Jones. $400 is for advance rent of one bedroom in my domicile at 2209 E. Vollmer Ave. Bay View, WI 53207-

[2] We note that there is a definition for "dwelling unit" set forth at WIS. STAT. § 106.50(1m)(i), which is verbatim to that definition set forth at WIS. STAT. § 101.71(2).

> 3146 and the other $400 is for [a] security deposit to be returned to Martin upon him leaving the premises in the same condition as it was presented to him assuming I am given one month's notice to him moving out.
>
> To reiterate: The rent for one bedroom in my 3 bedroom house is $400/month paid in advance and further rent checks are expected on the first of the month thereafter. March 2013 rent will only be $200 since Martin moved into the residence in the middle of the month of February and had paid a full month's rent in good faith. Thereafter all monthly rental payments will be $400 and due on the first of the month prior to residing.
>
> The security deposit will be returned if I am given one month prior notice to Martin vacating the premises and upon satisfaction of the living space left in the same condition as when he moved in.

¶12 This language, on its own, is insufficient to show that the residence was divided into two dwelling units as defined by WIS. STAT. § 101.71(2). In fact, Jones concedes that, in addition to his bedroom, he had access to the kitchen, living room, bathroom, and laundry room. Moreover, our independent review of the record reveals no evidence that 2209 East Vollmer was ever divided into multiple dwelling units. Without some evidence from which one could reasonably infer that the residence was divided into two dwelling units, Jones's argument is nothing more than speculation and conjecture, and thus insufficient to create a genuine issue of material fact. *See* ***Zielinski***, 263 Wis. 2d 294, ¶16. Accordingly, we conclude that 2209 East Vollmer constitutes a single dwelling unit.

¶13 Jones further argues that "the wording of [Wis. Stat.] § 106.50(5m)(em) … refers to roommate situations in which one person is deciding whether or not to share a dwelling unit with another person." Jones, however, cites no authority to support this assertion, and we are aware of none. We therefore refuse to address this argument further. *See* ***State v. Pettit***, 171 Wis.

2d 627, 647, 492 N.W.2d 633 (Ct. App. 1992) (we will not address issues on appeal that are inadequately briefed).

¶14 Haller agreed to rent to Jones a portion of 2209 East Vollmer. Jones was to occupy one bedroom in 2209 East Vollmer and have access to other portions of the house. Haller continued to reside at 2209 East Vollmer throughout the duration of Jones's stay. At all times, 2209 East Vollmer constituted a single dwelling unit as defined by WIS. STAT. § 101.71(2). When Haller informed Jones that he would have to move out, therefore, it constituted a decision by Haller as to the person with whom he wished to share his home. Such an act is not subject to the Wisconsin Open Housing Law. *See* WIS. STAT. § 106.50(5m)(em). Accordingly, we conclude that the rental relationship between Jones and Haller is not subject to the statute's nondiscriminatory provisions.

¶15 Haller also argues that he is entitled to summary judgment because the circuit court found that Haller and Jones were roommates, not landlord and tenant, and the Wisconsin Open Housing Law is not applicable to roommate relationships. However, our conclusion that 2209 East Vollmer constitutes a single dwelling unit is dispositive of this appeal. As such, we decline to address this argument. *See* ***Miesen v. DOT***, 226 Wis. 2d 298, 309, 594 N.W.2d 821 (Ct. App. 1999) (we decide cases on the narrowest grounds possible).

¶16 For the foregoing reasons, we affirm.

By the Court.—Order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.