STATE OF MICHIGAN

COURT OF APPEALS

STEVEN G. SICKLES, ANNAMARIE F. SICKLES, and SARAH L. SICKLES,

Plaintiffs-Appellants,

and

ANNETTE M. SICKLES,

Plaintiff/Counter Defendant-Appellant,

v

HOMETOWN AMERICA, LLC,

Defendant/Counter Plaintiff-Appellee,

and

STERN CONSTRUCTION & TRANSPORT, LLC,

Defendant-Appellee.

UNPUBLISHED
June 13, 2006

No. 266722
St. Clair Circuit Court
LC No. 04-002442-CZ

Before: Whitbeck, C.J., and Zahra and Donofrio, JJ.

PER CURIAM.

Plaintiffs appeal as of right from a consent judgment entered in favor of defendant Hometown America, LLC (Hometown America) in regard to its counter-complaint against plaintiff Annette Sickles. But plaintiffs' appeal actually challenges earlier decisions granting summary disposition to defendants with respect to plaintiffs' claims against them. We affirm.

I. Basic Facts And Procedural History

In June 2003, Annette Sickles and Hometown America's predecessor entered into a mobile home park lease agreement pursuant to which Annette Sickles rented a mobile home lot. Annette Sickles later fell behind on her rent and, on June 21, 2004, Hometown America entered

into a consent judgment with her in accordance with summary proceedings initiated against her in the district court. On July 7, 2004, Hometown America obtained an eviction order and an accompanying writ of restitution because Annette Sickles failed to pay the amount due under the consent judgment by July 1, 2004. The writ of restitution provided as follows: "To the Court Officer: You are ordered to remove the above named defendants(s) and other occupants from the premises described and to restore peaceful possession to the plaintiff." The named defendants in the order were "Annette Sickles and all other occupants."

On July 27, 2004, Hometown America proceeded to have plaintiffs, their mobile home, and its contents removed from the lot. Hometown America hired defendant Stern Construction & Transport, LLC (Stern Construction) to remove the mobile home and its contents. According to plaintiffs, on the morning of the removal, they were all still residing in the home, but Annamarie and Sarah Sickles were not present that day. Plaintiffs claimed that Annette and Steven Sickles told defendants that they wanted to remove contents within the home before removal proceeded, but defendants refused to allow them to do so and continued with the removal. Plaintiffs stated that Hometown America told plaintiffs that their home and its contents would be transferred to a secure lot and that plaintiffs would have up to 30 days to retrieve the home and its contents from the lot. Annette Sickles nevertheless began boxing up personal items while Steven Sickles left to borrow a truck so that he could remove heavy appliances from the home. Plaintiffs alleged that defendants hooked up a chain to the steps of the home and pulled them off in an effort to make it more difficult to remove items from the home.

According to plaintiffs, defendants began using electrical saws to demolish a sun porch attached to the mobile home and were throwing shrubs, trees, and large pieces of wood from the porch through closed windows of the home, breaking the glass, while Annette Sickles was still inside the home. Plaintiffs asserted that they asked Stern Construction to stop damaging their home and its contents, but Stern Construction refused. Plaintiffs alleged that Hometown America was peeling off aluminum skirting and throwing it on a trailer with the intent of later selling it at a recycling center.

Plaintiffs claimed they again asked defendants to stop so they could retrieve some of their personal belongings, but defendants again refused to stop. According to plaintiffs, they stopped removing items from the home because those items were for all practical purposes destroyed; Annette Sickles then began removing personal belongings from a shed located on the lot. At that point defendants allegedly stopped destroying the home and immediately proceeded to "cut up" the shed, which resulted in its walls collapsing and destroying plaintiffs' personal property in the shed. Plaintiffs asserted that several of defendants' employees were laughing while they worked.

According to plaintiffs, on July 28, 2004, Stern Construction transferred the home and its contents to a dump. In alleged accordance with specific instructions from Hometown America, Stern Construction destroyed the home by bulldozing it into a hole and then covering it with garbage. Plaintiffs stated that everything they owned was destroyed except for a few items they were able to remove.

Plaintiffs filed a complaint, alleging conversion, fraud, breach of contract, and negligence against Hometown America, receipt of converted or stolen property against Stern Construction, and intentional infliction of emotional distress against both defendants. Hometown America

counter-sued against Annette Sickles, alleging breach of the lease and seeking $3,093.98 for unpaid rent, late fees, court costs, and costs of removing her manufactured home.

Hometown America moved for summary disposition under MCR 2.116(C)(7) claiming that because the eviction was performed pursuant to the writ of restitution, it was immune from liability under MCL 600.2918(3). Plaintiffs responded that they were not suing based on a wrongful eviction but were suing because defendants destroyed their property and prevented plaintiffs from recovering their property. The trial court granted Hometown America's motion for summary disposition, concluding that MCL 600.2918(3) provides immunity for landlords from damages based on a wrongful eviction when the landlord is acting pursuant to a court order of eviction. The trial court reasoned that regardless of whether plaintiffs sued for wrongful eviction under MCL 600.2918, a landlord is entitled to protection for any damages arising out of an eviction.

Stern Construction then moved for summary disposition under MCR 2.116(C)(7) similarly claiming that because the eviction was performed pursuant to the writ of restitution, as an agent of Hometown America, it was immune from liability under MCL 600.2918(3). Plaintiffs replied that Stern Construction did not act within the scope of its agency and that immunity did not arise for conduct that occurred after summary proceedings. Plaintiffs also argued that the immunity statute could not apply to anyone other than Annette Sickles because the immunity statute only applies to a "tenant."

The trial court initially concluded that there was a factual issue involving the specific instructions Hometown America gave to Stern Construction and stated that those instructions "might relate to the alleged personal property damage that was claimed in the pleadings of this case." However, the trial court ultimately granted Stern Construction's motion for summary disposition in relation to plaintiffs' claim alleging receipt of converted or stolen property. The trial court also later granted Stern Construction's motion for summary disposition under MCR 2.116(C)(8) with respect to plaintiffs' claim of intentional infliction of emotional distress. On November 2, 2005, the trial court entered a consent judgment for Hometown America in regard to its counter-complaint against Annette Sickles.

II. Summary Disposition

A. Standard Of Review

Plaintiffs argue that the trial court erred in granting summary disposition in favor of defendants under MCR 2.116(C)(7). MCR 2.116(C)(7) provides that a motion for summary disposition may be raised on the ground that a claim is barred because of immunity granted by law. The court must consider all the documentary evidence submitted by the parties and accept as true the allegations of the complaint unless they are specifically contradicted by affidavits or documents.[1] We review de novo a trial court's decision on a motion for summary disposition

[1] *Bryant v Oakpointe Villa Nursing Centre, Inc*, 471 Mich 411, 419; 684 NW2d 864 (2004).

under MCR 2.116(C)(7).[2] We also review de novo questions of statutory interpretation.[3] The primary goal of statutory interpretation is to ascertain and give effect to the intent of the Legislature, and the Legislature is presumed to have intended the meaning it plainly expressed.[4]

B. Hometown America's Immunity

MCL 600.2918 applies generally to wrongful eviction claims,[5] and provides in relevant part as follows:

> (1) Any person who is ejected or put out of any lands or tenements in a forcible and unlawful manner, or being out is afterwards held and kept out, by force, if he prevails, is entitled to recover 3 times the amount of his actual damages or $200.00, whichever is greater, in addition to recovering possession.
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> (2) Any tenant in possession of premises whose possessory interest has been unlawfully interfered with by the owner, lessor, licensor, or their agents shall be entitled to recover the amount of his actual damages or $200.00, whichever is greater, for each occurrence and, where possession has been lost, to recover possession. Unlawful interference with a possessory interest shall include:
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> (a) The use of force or threat of force.
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> (b) The removal, retention, or destruction of personal property of the possessor.
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> (c) A change, alteration, or addition to the locks or other security devices on the property without forthwith providing keys or other unlocking devices to the person in possession.
>
> (d) The boarding of the premises which prevents or deters entry.
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> (e) The removal of doors, windows, or locks.
>
> (f) Causing, by action or omission, the termination or interruption of a service procured by the tenant or which the landlord is under an existing duty to furnish, which service is so essential that its termination or interruption would constitute constructive eviction, including heat, running water, hot water, electric, or gas service.

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[2] *Id*.

[3] *Griffith v State Farm Mut Automobile Ins Co*, 472 Mich 521, 525-526; 697 NW2d 895 (2005).

[4] *Linsell v Applied Handling, Inc*, 266 Mich App 1, 15; 697 NW2d 913 (2005).

[5] *Belle Isle Grill Corp v Detroit*, 256 Mich App 463, 474; 666 NW2d 271 (2003).

(g) Introduction of noise, odor or other nuisance.

(3) The provisions of subsection (2) shall not apply where the owner, lessor, licensor, or their agents can establish that he:

(a) Acted pursuant to court order . . . .

Plaintiffs argue that Hometown America is not immune from suit under MCL 600.2918(3) because plaintiffs did not file an action alleging wrongful eviction. Plaintiffs argue that their claims relate not the legality of the eviction but to the wrongful destruction of their property. However, plaintiffs' allegations unquestionably directly arose as a result of the eviction performed by Hometown America and its agent. Stated differently, plaintiffs' claimed damages arose out of Hometown America's efforts to regain its possessory interest over the lot. And despite plaintiffs' attempt to evade application of the statute, we conclude that even if a plaintiff's complaint is not pleaded under MCL 600.2918, the defendant landlord is entitled to the protection of the statute for damages arising from the eviction proceeding.[6]

Plaintiffs contend that nothing in the law provides immunity against the willful, wanton, or negligent destruction of the tenant's property. However, under the plain language of MCL 600.2918(2)(b) and (3)(a), a lessor and its agents are protected from claims alleging the unlawful "removal, retention, or *destruction*" of the possessor's personal property if the lessor and its agents acted pursuant to a court order.[7] Although the alleged conduct in this case is disturbing and the disposition harsh, we emphasize that even under the process pursued in this case (as opposed to the arguably more proper mobile home proceedings), plaintiffs had notice and opportunity to avoid the misfortune that ensued. In addition to failing to pay the amount due under the consent judgment, Annette Sickles failed to challenge the consent judgment or the order of eviction, thus precluding a later action challenging the execution of the eviction.[8] During oral argument below, plaintiffs' attorney contended that the damage could have been avoided if Hometown America would have just been "reasonable" and waited until the next day or even later that evening to enforce the eviction order. However, plaintiffs had 20 days from entry of the order of eviction to the date of execution of the order to remove their property from the lot. We also note that there is no indication in the record that Annette Sickles ever attempted

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[6] See *Alaniz v Nan-Tay Apartments of Sunbury*, unpublished per curiam opinion of the Court of Appeals, issued March 16, 2004 (Docket No. 245205) (where this Court specifically deemed without merit the plaintiff's claim that she could maintain an action arising out the allegedly wrongful eviction so long as she did not plead MCL 600.2918 as the basis for her claim).

[7] *Oden v Chambers Apartments*, unpublished per curiam opinion of the Court of Appeals, issued April 23, 2002 (Docket No. 229118) ("The trial court correctly concluded that defendants could not be held liable for damages caused by the removal of Plaintiff's property pursuant to the writ of restitution under MCL 600.2918(3).").

[8] See *Sewell v Clean Cut Management, Inc*, 463 Mich 569, 571, 576-577; 621 NW2d 222 (2001).

to exercise her contractual right to arrange for the sale of her mobile home following notice of termination of her tenancy.[9]

We therefore conclude that Hometown America is protected under MCL 600.2918(3) against Annette Sickles' claims stemming from the execution of her eviction. Accordingly, the trial court properly granted summary disposition in Hometown America's favor.

C. Stern Construction's Immunity

MCL 600.2918(3) states that "[t]he provisions of subsection (2) shall not apply where the owner, lessor, licensor, *or their agents* can establish that he: (a) Acted pursuant to court order . . . ." Here, there is no reasonable dispute that at the time of execution of plaintiffs' eviction Stern Construction was acting as Hometown America's agent. Indeed, plaintiffs admitted as much in their complaint, in which they alleged that Stern Construction was hired by and acted pursuant to the direction of Hometown America. Accordingly, we conclude that, like Hometown America, Stern Construction is entitled to immunity under MCL 600.2918(3).

D. Other Plaintiffs' Rights

Plaintiffs argue that even if defendants are protected under § 2918(3) against Annette Sickles' claims because she is a "tenant" under MCL 600.2918(2), they are not protected against the claims made by Steven Sickles, Annamarie Sickles, and Sarah Sickles because they are not tenants under the lease. We find this argument without merit.

In support of their argument, plaintiffs rely on *Longshore v Pan American Growth Properties*,[10] to argue that unless a person is actually named in an order of eviction, the landlord gains no immunity under MCL 600.2918(3). However, in that case, this Court explicitly stated that while "[a] judgment to evict and its accompanying writ apply only to the adult individual[11] named because proper service of process is required to confer personal jurisdiction over a party[,] . . . [a]ny other *lessee* of whom the lessor has knowledge or should have knowledge is not included if that *lessee* is not named in the document."[12] Thus, the *Longshore* ruling only operates to protect unnamed *lessees* of the subject property, not unauthorized *occupants*. Here, Annette Sickles was the only tenant named in the lease. The remaining plaintiffs had no formal right to occupancy of the premises, especially in light of the express terms of the lease stating the

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[9] In the section entitled, "Eviction of Resident," the lease agreement states that "[i]f the Resident elects to sell the home on site following termination of the tenancy such court costs must be paid with the rent payment next due."

[10] *Longshore v Pan American Growth Properties*, unpublished opinion per curiam of the Court of Appeals, issued July 14, 1998 (Docket No. 193994).

[11] The ages of the other plaintiffs is not clear from the record, but to the extent that the other plaintiffs were minor children at the time of the eviction, they still had no right to recovery under MCL 600.2918. See *Nelson v Grays*, 209 Mich App 661; 531 NW2d 826 (1995).

[12] *Longshore*, *supra* at slip op p 1 (emphasis added.)

"site shall not be occupied by any person other than those listed on this Lease." Additional occupants were subject to management approval. Because the remaining plaintiffs were not "tenants" or authorized occupants, neither Hometown America nor its agent, Stern Construction, owed any duty to them or their property.

Affirmed.

/s/ William C. Whitbeck
/s/ Brian K. Zahra
/s/ Pat M. Donofrio