2011 IL App (2d) 101148-U
No. 2-10-1148
Order filed October 25, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WAUKEGAN HOUSING AUTHORITY,	)	Appeal from the Circuit Court
	)	of Lake County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 10-LM-1870
	)	
JACQUELINE STINNETTE,	)	Honorable
	)	Michael J. Fusz,
Defendant-Appellee.	)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

Held: The trial court's ruling that plaintiff failed to prove a violation of defendant's lease was not against the manifest weight of the evidence, as it was not clearly apparent that, at the time of his arrest, a man who committed a crime on the premises was defendant's "guest" (staying in defendant's unit) as opposed to defendant's frequent visitor.

¶ 1 Plaintiff, the Waukegan Housing Authority, filed a forcible entry and detainer (FED) action in the circuit court of Lake County against defendant, Jacqueline Stinnette, a tenant at Harry Poe Manor, a public housing development located at 300 Lake Street. Plaintiff alleged that defendant was in violation of her lease because, on July 2, 2010, a "frequent guest," Maurellis Stinnette, had been discovered to be in possession of cannabis and cocaine in the vicinity of the building.

Following a bench trial that took place on October 10, 2010, the trial court entered judgment for defendant. Plaintiff moved for reconsideration and filed a timely notice of appeal after the trial court denied the motion. We affirm the judgment for defendant.

¶ 2 The record, which includes a certified bystander's report of the bench trial, establishes the following facts. Defendant occupied apartment 1007 in Harry Poe Manor. Section 8 of her lease for that unit provides, in pertinent part:

> "**In addition to the other obligations of Tenant under the Lease, Tenant agrees to fully comply with the following obligations, and to accept full responsibility for the members of Tenant's household and any guests, in the fullfillment of the following obligations. It is understood by Tenant that any obligation that specifies illegal or criminal activity as one of its components <u>does not</u> require either a criminal conviction or arrest of the person whose conduct is at issue nor does it require Tenant's knowledge of such illegal or criminal activity by a household member or guest to be a valid basis for eviction.**
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> (v) To refrain from and to cause Tenant's household members and guests to refrain from drug related criminal activity (the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute or use a controlled substance or substances commonly known as, but not limited to cocaine, heroin, marijuana and opium ***) in, on or off public housing premises.
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> * * *

(aa) To refrain from and to cause Tenant's household members and guests to refrain from engaging in criminal activity that threatens the health, safety or right to peaceful enjoyment of the public housing development by other tenants or employees of the Waukegan Housing Authority. For the purposes of this subparagraph criminal activity that is engaged in within one thousand (1,000) feet of any residential property owned, operated and managed by a public housing authority shall be deemed to be a threat to the health, safety or right of peaceful enjoyment of the public housing development by other tenants or employees of the Waukegan Housing Authority."

¶ 3 At 8:10 p.m. on July 2, 2010, Maurellis (who was either defendant's husband or her ex-husband) was arrested near the intersection of Martin Luther King, Jr. Avenue and Lake Street for possession of illegal fireworks, possession of cannabis, and possession of cocaine. The arresting officer testified that he observed Maurellis in possession of a translucent bag containing illegal fireworks. The officer approached Maurellis, who then discarded several plastic baggies. Two of the baggies were recovered. Field testing on substances found in the baggies indicated the presence of cannabis in one of them and cocaine in the other. The arrest occurred within 100 feet of the "entry point" of Harry Poe Manor. The arresting officer testified that Maurellis gave his home address as 300 Lake Street, apartment 1007.

¶ 4 Daily visitor logs for Harry Poe Manor for the period from July 2, 2010, to July 25, 2010, were admitted into evidence. The logs indicate the "time in" and "time out" for each visitor and bear the signature of each visitor's host. The logs for almost every day—including July 2, 2010—indicate that Maurellis signed in on "1/1." On July 2, 2010, the day of his arrest, Maurellis left the building at 7:10 a.m., returned at 12:22 p.m., and left again at 7:18 p.m. The logs further indicate that Maurellis was present at the building as Stinnette's visitor every day during the period

from July 2, 2010, to July 25, 2010, that he would often come and go throughout the day, and that he spent the night 17 or 18 times.

¶ 5 Two employees of a private security firm, Jimmy Escobar and Gerald Butler, testified at trial. Escobar indicated that he saw Maurellis at Harry Poe Manor on a daily basis. Butler testified that Maurellis was "a daily overnight guest." Waukegan police officer Andrew Orozco testified that, at least two out of three times he visited Harry Poe Manor, he saw Maurellis on the premises. All in all, Orozco had seen Maurellis at Harry Poe Manor on perhaps 50 occasions in the 6 months prior to trial.

¶ 6 Stinnette testified that Maurellis left her apartment on July 2, 2010, after they had an argument about fireworks in his possession. She denied knowing that Maurellis was in possession of any drugs and claimed that she did not know that he was engaged in drug-related activities.

¶ 7 Although Stinnette has not filed an appellee's brief, the record and the issue raised on appeal are such that review of the merits is appropriate under *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 133 (1976).

¶ 8 In an FED action the plaintiff bears the burden of proving the right to possession by a preponderance of the evidence. *Circle Management, LLC v. Olivier*, 378 Ill. App. 3d 601, 609 (2007). Under federal law, leases for public housing units must "provide that any criminal activity that threatens the health, safety, or right to peaceful enjoyment of the premises by other tenants *or any drug-related criminal activity on or off such premises*, engaged in by a public housing tenant, any member of the tenant's household, or any guest or other person under the tenant's control, shall be cause for termination of tenancy." (Emphasis added.) 42 U.S.C. § 1437d(l)(6) (2006). The United States Supreme Court has held that the mandated lease language authorizes "no-fault" evictions for misconduct by household members or guests, *i.e.* evictions without regard to the

tenant's knowledge of the misconduct. *Department of Housing & Urban Development v. Rucker*, 535 U.S. 125, 134 (2002) (quoting 56 Fed. Reg. 51567 (1991)) ("Such 'no-fault' eviction is a common 'incident of tenant responsibility under normal landlord-tenant law and practice.' "). The Court held that the statutory language "unambiguously requires lease terms that vest local public housing authorities with the discretion to evict tenants for the drug-related activity of household members and guests whether or not the tenant knew, or should have known, about the activity." *Id.* at 130.

¶ 9 When the trial court originally entered judgment for defendant, it noted that it "seriously questioned the constitutionality of the WHA lease in that said lease allowed for the eviction of a tenant who had no knowledge of a guest's drug-related activity." In its motion for reconsideration, plaintiff cited *Rucker* in support of the validity of the no-fault eviction provisions. Nonetheless, the trial court denied the motion for two reasons. First, the trial court concluded that those provisions did not apply to a guest's activity that took place outside the tenant's rental unit. We need not consider whether this conclusion was correct, however, because the judgment may be sustained for the second reason offered by the trial court: Maurellis was not defendant's "guest" within the meaning of the lease when he engaged in the misconduct giving rise to the FED action.

¶ 10 For purposes of no-fault eviction clauses in leases for public housing units, the word "guest" has been defined by federal regulation to mean "a person temporarily staying in the unit with the consent of a tenant or other member of the household who has express or implied authority to so consent on behalf of the tenant." 24 C.F.R. § 5.100 (2010). The trial court found that Maurellis "appeared to be more of a frequent 'visitor' rather than a 'guest' temporarily staying in the premises." Whether Maurellis was temporarily staying in defendant's rental unit with her consent when he was found to be in possession of illegal drugs is a question of fact. Because the trial court

is in the best position to weigh the credibility of witnesses, its findings of fact are entitled to great deference on appeal and those findings will be reversed only if they are against the manifest weight of the evidence. *In re Gloria C.*, 401 Ill. App. 3d 271, 282 (2010). "A trial court's finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly evident." *In re Estate of Wilson*, 238 Ill. 2d 519, 570 (2010).

¶ 11 Although Escobar testified that he saw Maurellis on a daily basis and Butler testified that Maurellis was a "daily overnight guest," the record does not establish the time frame to which that testimony pertains. We note that the trial took place more than three months after the misconduct. Moreover, although Orozco's testimony indicated that Maurellis was a regular visitor to Harry Poe Manor during the six months prior to trial, Orozco's testimony did not establish that Maurellis was visiting defendant. The visitor logs also carry little weight, in our view. They show that Maurellis visited defendant on the date of Maurellis's arrest for possession of drugs. However, Maurellis had signed out of Harry Poe Manor about 50 minutes before the arrest. It is true that, during the roughly three-week period that followed Maurellis's July 2, 2010, arrest, Maurellis visited defendant every day and spent almost every night in her apartment. However, what occurred subsequent to July 2, 2010, is not dispositive of whether defendant was temporarily staying with defendant on that date.

¶ 12 Moreover, although Maurellis is generally listed as having signed in to Harry Poe Manor on "1/1," plaintiff inexplicably failed to proffer any visitor logs for days prior to July 2, 2010. Those logs could have more definitively shown whether Maurellis had a continuous, long-term presence in defendant's apartment as of the time of his arrest on July 2, 2010. "Where a party fails to produce evidence in [its] control, the presumption arises that the evidence would be adverse to that party." *Reo Movers, Inc. v. Industrial Comm'n*, 226 Ill. App. 3d 216, 223 (1992).

¶ 13 The only direct evidence that Maurellis was staying with defendant at that time was the testimony of the officer who arrested Maurellis that Maurellis gave defendant's address as his own. The testimony was hearsay, but defendant did not object, so the testimony "is to be considered and given its natural probative effect." *Jackson v. Board of Review of the Department of Labor*, 105 Ill. 2d 501, 508 (1985). Even so, we cannot say that Maurellis's out-of-court statement was entitled to such weight as to carry plaintiff's burden of proof to show that Maurellis was defendant's guest at the relevant point in time, and the trial court's finding that plaintiff failed to carry its burden is not against the manifest weight for the evidence.

¶ 14 For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

¶ 15 Affirmed.