SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

FILED
IN OPEN COURT
DEC 14 2016
SUPERIOR COURT
OF THE DISTRICT OF COLUMBIA
WASHINGTON, DC

JEROME LINDSAY
Plaintiff

vs

DONNA BLACK
Defendant

2015 LTB 006044
Case No.

ROBERT R RIGSBY
Judge

JUDGMENT

This action came for ☒ Trial ☐ Non-Jury Trial ☐ Ex-Parte Proof Hearing

before the Honorable ROBERT R RIGSBY , Superior Court Judge, presiding and

☐ proof having been duly presented

☒ the jury having rendered its verdict

☐ and the judge having rendered a decision

it is on this date December 14, 2016 ,

ORDERED

That non-redeemable judgment for possession be entered in favor of LINDSAY, JEROME and against BLACK, DONNA

in the amount of $0.00 , with interest. thereon at the statutory rate and their costs of action.

James D. McGinley
Clerk of the Court

Jason Mancini / Courtroom Clerk

Docketed 12-14-16
Copies mailed to parties 12/14/16

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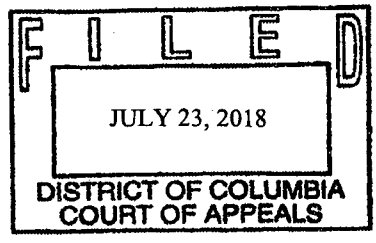
DISTRICT OF COLUMBIA COURT OF APPEALS

Nos. 16-CV-1255 & 17-CV-0324

DONNA A. BLACK, APPELLANT,

V.

JEROME LINDSAY, APPELLEE.



Appeals from the Superior Court
of the District of Columbia
(LTB-6044-15)

(Hon. Robert R. Rigsby, Trial Judge)

(Submitted April 30, 2018 Decided July 23, 2018)

Before THOMPSON and MCLEESE, *Associate Judges*, and PRYOR, *Senior Judge*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: After a five-day trial, a Superior Court jury found that defendant/appellant Donna Black violated her lease and/or obligations of her tenancy by failing to maintain the property in a clean, sanitary, and safe condition; by denying contractors and inspectors access to the real property located at 805 Rittenhouse Street NW (the "property"); and by allowing her pet to threaten, intimidate, and/or harass appellee Jerome Lindsay (the owner and landlord of the property) and/or his contractors. On December 14, 2016, upon the jury verdict, the Superior Court entered a nonredeemable judgment for possession of the property in favor of appellee. Appellant filed her Notice of Appeal on December 19, 2016.

Appellant's *pro se* briefs in this appeal object to her trial attorneys' litigation strategy and contend that the jury's factual findings were "erroneous." We do not reach the merits of these arguments because we agree with appellee that the underlying issue, appellant's claim to continued possession of the property, is moot. Accordingly, we dismiss the appeal as moot.

I.

The trial court record shows that on April 4, 2017, appellee filed a notice of intention to seek a writ of restitution. A hearing on that notice was held on April 12, 2017, and appellant, whose trial attorneys had since withdrawn from the case, was represented by counsel from the Legal Aid Society who had filed in open court a Notice of Limited Appearance. On that day, appellant signed a praecipe stating the following:

> The [c]lerk of said [c]ourt will note that [d]efendant certifies that she [and] her entire family have vacated the property [and] given up their tenancy. Landlord may immediately retake possession, change locks, [and] clean any personal property on the premises to be abandoned. Defendant sought legal counsel in executing this praecipe. Plaintiff's Notice of Intent is hereby withdrawn as moot. This case for possession is now moot. Defendant asserts that she vacated the premises as of March 28, 2017.

Thereafter, appellee withdrew his notice to seek writ of restitution.

Our case law establishes that where a tenant/appellant "voluntarily surrenders possession of the premises during an appeal taken from a judgment of possession for the landlord the case is moot and the appeal is dismissed, since [with the landlord having obtained the possession of the premises he sought] there is no longer any controversy remaining between the parties." *Atkins v. United States*, 283 A.2d 204, 205 (D.C. 1971); *see Goodwin v. Barnes*, 456 A.2d 1246, 1247 (D.C. 1983) ("[W]here the tenant 'voluntarily surrendered possession of the premises, [she] thereby moot[ed] the possessory action.'" (quoting *McNeal v. Habib*, 346 A.2d 508, 510 (D.C. 1975)).

In her reply brief, appellant cites authority that a tenant's involuntarily departure from her property does not render an appeal moot. That authority is not apposite here because nothing in the record supports appellant's claim that her abandoning her tenancy was involuntary: upon filing of the praecipe quoted above, the court did not issue the writ of restitution for which appellee applied on April 4, 2017; appellee withdrew that application for a writ; and appellant, with aid

of counsel, confirmed that she had already vacated the property and that the "case for possession [was] . . . moot."[1] Appellant's argument now that the case is not moot is unavailing, as she may not take on appeal a position contrary to the one she took in the trial court. *Cf. Atkins*, 283 A.2d at 206 ("[O]nce the tenant successfully moves in open court . . . to have the suit for possession dismissed as moot . . . , the tenant is thereafter equitably estopped from later asserting a claim to entitlement to possession.").

Wherefore the judgment of the Superior Court is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Robert R. Rigsby

Director, Civil Division

[1] One paragraph of appellant's brief makes reference to a "pr[a]ecipe that was signed out of distress and frustration." Appellee states that "subsequent statements" in that paragraph appear to indicate that the praecipe to which appellant was referring was one signed in a different case, 2015 CA 1909 H, on April 20, 2015. Having reviewed the April 20, 2015, praecipe, we agree with appellee's observation. And, in any event, "distress and frustration" do not amount to duress that could render an agreement void or voidable. *See* Restatement (Second) of Contracts, Ch. 7, Topic 2, Introductory Note (Am. Law Inst. 1981) (explaining that duress takes two forms, physical compulsion and the making of an improper threat); *see also Fed. Deposit Ins. Corp. v. Meyer*, 755 F. Supp. 10, 13 (D.D.C. 1991) (quoting the Restatement) (citing *Ozerol v. Howard Univ.*, 545 A.2d 638, 643 (D.C. 1988)).

(Nos. 16-CV-1255 & 17-CV-324)

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District of Columbia
Court of Appeals

Nos. 16-CV-1255 & 17-CV-324

DONNA A. BLACK,

Appellant,

v. **LTB6044-15**

JEROME LINDSAY,

Appellee.

BEFORE: Glickman, Fisher, Thompson,* Beckwith, Easterly, and McLeese,* Associate Judges; Pryor,* Senior Judge.

ORDER

On consideration of appellant's petition for rehearing or rehearing *en banc*, it is

ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Chief Judge Blackburne-Rigsby did not participate in these cases.

Copies to:

Honorable Robert R. Rigsby

Director, Civil Division
Quality Review Branch

Nos. 16-CV-1255 & 17-CV-324

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