

JACKSON & ASSOCIATES, LTD., Plaintiff-Appellee,

vs.

ANGELA D. CHRISTI, Defendant-Appellant

No. 01A01-9103-CV-00081

COURT OF APPEALS OF TENNESSEE, WESTERN SECTION, AT NASHVILLE

1991 Tenn. App. LEXIS 638

August 16, 1991, Filed

From: the Circuit Court at Pickett County; Honorable John J. Maddux, Jr., Judge.

COUNSEL

Onnie L. Winebarger of Byrdstown, For Appellee.

William Bush, Rural Legal Services of Tennessee, Inc., of Cookeville, For Appellant.

JUDGES

CRAWFORD, J. Tomlin, P.J., W.S., Farmer, J. concur.

AUTHOR: CRAWFORD

OPINION

This case involves the termination of a lease. Defendant, Angela D. Christl, entered into a lease with plaintiff, Jackson & Associates, Ltd., for a two bedroom apartment at the Circle View Apartments, Byrdstown, Tennessee, which provided for a tenancy from November 1, 1989, through October 30, 1990. The apartment complex owned by Jackson & Associates, Ltd., receives subsidies under a rental housing program from Farmers Home Administration. The apartment complex had certain operating rules and regulations which were incorporated by reference into the lease. Rule 7 of the operating rules and regulations provides:

7. Apartment Occupancy: The maximum number of people for a one bedroom apartment is two persons and the maximum for two bedrooms is four persons. **Violation of this rule will result in eviction.** (Emphasis in original).

Because of an alleged violation of the above rule, Jackson & Associates filed a detainer warrant in General Sessions Court for Pickett County to evict Christl, and Christl filed a counter claim alleging damages for retaliatory eviction, breach of privacy and unfair and deceptive practices under the Tennessee Consumer Protection Act. After an adverse judgment in General Sessions Court, Jackson & Associates appealed to the Circuit Court where a trial **de novo** was held in Circuit Court September 7, 1990. At the conclusion of the non-jury trial, the Circuit Court entered judgment granting Jackson & Associates possession of the apartment and dismissing Christl's counter claim. Christl has appealed to this court and the only issue presented for review is whether the trial court erred in dismissing Christl's counter claim alleging violation of the Tennessee Consumer Protection Act, retaliatory eviction, and breach of her right of privacy.

Christl contends that Jackson violated the consumer protection act by representations made in its letter of April 19, 1990, terminating her tenancy and also by representations in a letter dated September 28, 1990, terminating her rental subsidies and utility allowance.¹ The alleged misrepresentations in the letter, which Christl contends violate the act, are set out in Christl's brief as follows:

A. The landlord misrepresented that Angela Christl breached her lease by allowing over-occupancy of her apartment.

B. The landlord misrepresented that Angela Christl breached her lease by failure to notify management of new occupants and to obtain management's consent.

C. The landlord misrepresented that Angela Christl breached her lease by providing accommodation to boarders or lodgers.

D. The landlord misrepresented its right to terminate the tenancy of Angela Christl based upon alleged over-occupancy in her apartment.

E. The landlord misrepresented its ability to terminate Angela Christl's tenancy without complying with procedural requirements under the lease agreement and FmHA regulations.

The Tennessee Consumer Protection Act of 1977, codified in T.C.A. § 47-18-101 through T.C.A. § 47-18-117 (1980 and Supp. 1990) declares unlawful, "Unfair or deceptive acts or practices affecting the conduct of any trade or commerce. . . ." T.C.A. § 47-18-104 (Supp. 1990). T.C.A. § 47-18-103 (9) (1980) provides:

* * *

(9) "Trade," "commerce," or "consumer transaction" means the advertising, offering for sale, lease or rental, or distribution of any goods, services, or property, tangible or intangible, real, personal, or mixed, and other articles, commodities, or things of value wherever situated.

Christl argues that the representations in Jackson's April 1990 letter violated § 47-18-104 (b)(12) (Supp. 1990) which provides:

* * *

(12) Representing that a consumer transaction confers or involves rights, remedies or obligations that it does not have or involve or which are prohibited by law;

* * *

The alleged violations of the act all deal with statements made by Jackson & Associates advising Christl that her lease contract is terminated. The letter relates Jackson & Associates' conception of the alleged lease violations and specifically advises Christl that she may present a defense to an action for eviction. The letter sets out the alleged violations of the lease pursuant to the requirements of the lease itself. The letter terminating the lease is not a "consumer transaction" as defined in T.C.A. § 47-18-103 (9).

Moreover, we note that T.C.A. § 47-18-109 (a)(1) (Supp. 1990) provides:

(a)(1) Any person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair or deceptive act or practice declared to be unlawful by this part, may bring an action individually, but not in a representative capacity, to recover actual damages.

* * *

We have reviewed this record and there is a total absence of any proof concerning any actual damages as contemplated by the act. There simply was no proof in the record to warrant recovery for violation of the Tennessee Consumer Protection Act.

Christl next asserts that she was evicted in retaliation for associating with her sister. The record does not support this contention. Three witnesses testified in this case. Harold Jackson, the principal partner in Jackson & Associates, Ltd., and Theresa Upchurch, the apartment manager, testified on behalf of Jackson & Associates. Angela Christl testified in her own behalf. Jackson and Upchurch outlined the reasons for terminating Christl's tenancy, none of which involved Christl's association with her sister. Christl, on the other hand, in her testimony insisted that she was evicted because Jackson did not like her sister. The trial court specifically noted that Jackson and Upchurch were credible witnesses and that Christl's credibility was at the very least suspect. Findings of fact by the trial court involving in the credibility of witnesses are entitled to great weight on appeal. **Town of Alamo v. Forcum-James Co.**, 640 S.W.2d 844 (Tenn. App. 1982). Since this case was tried by the court sitting without a jury, we review the case *de novo* upon the record with a presumption of correctness of the findings of fact by the trial court. Unless the evidence preponderates against the findings, we must affirm, absent error of law. T.R.A.P. 13(d). The evidence does not preponderate against the trial court's findings.

Christl next asserts that her right of privacy was breached because the apartment manager told other tenants that she was going to be evicted before she received any notification of the termination of her lease.

One who gives publicity to a matter concerning the private life of another is subject to liability to the other for invasion of his privacy if the matter publicized is of the kind that (a) would be highly offensive to a reasonable person and (b) is not of legitimate concern to the public. **Beard v. Akzona, Inc.**, 517 F. Supp. 128, 132 (E.D. Tenn. 1981) (quoting **Restatement (Second) of Torts** Sec. 652 (D)). Essential to sustaining this cause of action is a showing of a **public** disclosure of private facts. Communication to a single individual or to a small group of people, absent breach of contract, trust or other confidential relationship will not give rise to liability. **Beard v. Akzona, Inc.**, 517 F. Supp. at 132. **Prosser**, Torts (4th ed. 1971) Sec. 117, p. 810. See **Restatement (Second) of Torts**, Sec. (D) Comment A.

In the case at bar, Upchurch testified that in response to concern shown by other tenants, she may have possibly told two of them that Christl would be evicted. This is not a publication as contemplated to sustain this cause of action.

The evidence does not preponderate against the finding of the trial court that Christl failed to carry her burden of proof on her counter claim and we concur in the trial court's judgment. Accordingly, the judgment of the trial court is affirmed, and this case is remanded to the trial court for such further proceedings as may be necessary. Costs of appeal are assessed against appellant.

DISPOSITION

AFFIRMED AND REMANDED.

OPINION FOOTNOTES

1 The letter of September 28, 1990 is not a part of the record in this case and cannot be considered.