Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.

FILED
May 18 2010, 9:31 am
CLERK
of the supreme court, court of appeals and tax court

APPELLANT PRO SE:

ANDREA D. FOX
Indianapolis, Indiana

IN THE
COURT OF APPEALS OF INDIANA

ANDREA D. FOX,	)	
	)	
Appellant,	)	
	)	
vs.	)	No. 49A05-0910-CV-569
	)	
NANCY FOSTER,	)	
	)	
Appellee.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Robyn L. Moberly, Judge
Cause No. 49D05-0902-PL-6187

May 18, 2010

MEMORANDUM DECISION - NOT FOR PUBLICATION

FRIEDLANDER, Judge

Andrea D. Fox appeals from the trial court's judgment against her and in favor of Nancy Foster on Foster's counterclaim for unpaid rent. Fox presents the following issue for review: Was there sufficient evidence to support the trial court's judgment?

We affirm.

Although Fox had initiated this action by filing a complaint seeking title to property owned by Foster, her aunt, and a money judgment against Foster, that claim was dismissed because Fox could not produce a written document entered into between the two transferring title to the property to Fox. Foster filed a counterclaim against Fox for unpaid rent, which including late fees, amounted to $3,690.00.

The facts most favorable to the trial court's judgment on Foster's counterclaim reveal that Foster owned a residential property in Indianapolis, Indiana and entered into a lease agreement regarding that property with Fox. The agreement provided that Fox would pay rent in the amount of $400.00 per month to Foster, with a late fee of $10.00 after a brief grace period. The last rent payment made by Fox to Foster was in November of 2008. At the time of the trial, Fox was nine months in arrears on her rent payments.

Foster introduced in evidence a copy of the lease agreement signed by her and Fox, which provided for the payment of $400.00 per month in rent. Fox acknowledged that the document bore her signature. Even though her claim against Foster had been dismissed, Fox attempted to litigate that issue at trial as well. At the conclusion of the evidence, the trial court found that Foster was entitled to a money judgment against Fox for unpaid rent and ordered Fox to vacate the property by September 24, 2009. Fox now appeals.

Because neither party requested special findings, and the trial court made no findings sua sponte, Fox appeals from a general judgment. A general judgment will be affirmed if it can be sustained upon any legal theory consistent with the evidence. *Conseco Fin. Servicing Corp. v. Friendly Village of Indian Oaks*, 774 N.E.2d 87 (Ind. Ct. App. 2002). We do not reweigh the evidence or reassess the credibility of the witnesses. *Id*. Instead, we consider only the evidence most favorable to the judgment along with all reasonable inferences to be drawn therefrom. *Id*. We presume the trial court correctly followed the law, and will affirm the trial court unless the uncontradicted evidence leads to a conclusion opposite that reached by the trial court. *Id*.

Foster has failed to file an appellee's brief. In such situations, we need not undertake the burden of developing an argument on the party's behalf. *Aiken v. Stanley*, 816 N.E.2d 427 (Ind. Ct. App. 2004). We will reverse the trial court's judgment if the appellant's brief presents a case of prima facie error. *Id*. Prima facie error is defined as at first sight, on first appearance, or on the face of it. *Id*. Where an appellant is unable to meet this burden, we will affirm. *Id*.

We have held that a landlord may bring actions for rent as it becomes due. *Roberts v. Watson*, 172 Ind. App. 108, 359 N.E.2d 615 (1977). Foster filed a counterclaim against Fox for unpaid rent, introduced the lease agreement signed by both parties, testified as to the period of unpaid rent, the monthly rent rate, and the late fee. We find that there is sufficient evidence to support the trial court's order.

Fox presented two additional issues that we briefly address here. The evidence Fox complains was erroneously excluded by the trial court pertained to Fox's original claim

against Foster, a claim that was dismissed. The trial court explained to Fox on several occasions during the trial that the issue at trial was unpaid rent. As a consequence, we find that the trial court appropriately guided Fox, who appeared *pro se*, in keeping the testimony and questions focused on the issue of unpaid rent. We do not address the issue Fox designates in her brief as "3" because it relates to her original complaint against Foster and it was not tried below.

Judgment affirmed.

KIRSCH, J., and ROBB, J., concur.