

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Jorie Truitt v. Sault Tribe Housing Authority

APP-11-01

Decided and Released July 19, 2011

BEFORE: HARPER, KRONK, JUMP, JUSTIN, and NERTOLI Appellate Judges.

OPINION AND ORDER OF REMAND

Justin, Appellate Judge, who is joined by Chief Judge Kronk and Appellate Judges Harper, Jump, and Nertoli. This Court held oral argument in this matter on July 7, 2011. This Court hereby remands this matter to tribal trial court consistent with the issues described herein.

Factual and Procedure Background

Appellant, Jorie Truitt, is the owner of a black lab dog, Tonka, who weighs approximately 80 pounds. Tonka has lived with Appellant in housing owned and managed by Appellee, Sault Tribe Housing Authority, for over 5 years. Apparently in the summer of 2010, Appellee's agents had several negative experiences with Tonka. Based on the trial transcript from December 17, 2010, it appears that Tonka barked at several of Appellee's agents and was aggressive toward some of Appellee's agents as well. Trial Transcript, Case No. LT-10-145/148 (Dec. 17, 2010). However, based on the same transcript, it also appears that Tonka was restrained at all times and never made physical contact with Appellee's agents. *Id.* Furthermore, based on the same transcript and as agreed upon during oral argument before this Court on July 7, 2011, Appellant has always had control over Tonka when Appellant is present.

Based on the foregoing, Appellee sought to have Tonka removed from the premises or Appellant evicted for violating Sections VII (B) (7, 8)¹ and XIII (5) of the lease agreement between

¹ The lease signed by Appellant provides the following at Section VII (B)(7): "Having more than one pet (ex. cat, dog) Tenant agrees to have the pet leashed at all times. If Landlord receives two complaints regarding a pet, the Tenant will be issued a Notice to Remove the Pet within seven (7) days. If the Tenant does not comply, a Notice to Quit will be issued." Section VII(B)(8) provides: "Maintaining a Pit Bull dog or a dog which is known to be dangerous or has bitten or attacked a person. (In accordance with Tribal Code 71.1702 Offense Concerning Dogs.)" Notably, Section VII(B)(8) of Appellee's lease with Appellant references Tribal Code Section 71.1702. However, the lease provision differs from Tribal Code Section 71.1702, which states in relevant part "(1) Offense. A person commits an offense concerning dogs, if that person: (a) fails to restrain his dog at all times within a fenced area on a leash not less than twenty (20) feet in length; or (b) maintains a pit bull; or (c) maintains a dog which is known to be dangerous or has bitten or attacked a person." Notably, the lease at issue in this matter was not included in

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Appellant and Appellee.² Based on the record presented to this Court, however, there is no evidence of Appellee presenting Appellant with any complaints against Tonka prior to the Complaint filed in the Tribal Court on November 18, 2010. Although earlier complaints were apparently sent to Raymond Bonneau prior to this date, it appears Appellant was not named on any prior notices.³ A trial in this matter was held on December 17, 2010. On the same date, Judge Fabry released her decision ordering Appellant to comply with the lease provisions by removing Tonka or moving out of the premises by January 17, 2011. On both January 12, 2011 and February 4, 2011, Appellant submitted Notices of Appeal to this Court. This Court held oral argument in the matter on July 7, 2011.

Jurisdiction and Standard of Review

This Court has exclusive jurisdiction to review the decisions of the tribal trial court. Tribal Code Section 82.109. Accordingly, this Court has jurisdiction over the present matter given it is an appeal from the tribal trial court.

Under Tribal Code Section 82.124, this Court shall apply the standard of review applicable to both factual decisions and legal decisions made by the tribal trial court in rendering its decision. In reviewing factual decisions made by the tribal trial court, this Court shall sustain the tribal trial court, unless its decisions are “clearly erroneous”. Tribal Code Section 82.124(1). Alternatively, in reviewing a conclusion of law, this Court is not required to give deference to the tribal trial court. Tribal Code Section 82.124(5). As explained below, the tribal trial court’s findings of fact in this matter were clearly erroneous given the record was incomplete. As a result, this Court remands back to the tribal trial court the present matter to more fully develop its findings of fact and conclusions of law based on a complete record.

the record provided to this Court. As explained more fully below, this is an example of the incompleteness of the record in this appeal as the lease terms applicable here form the foundation of the disagreement between Appellant and Appellee. At the Court’s request, counsel for Appellee provided this Court copies of the lease at issue after oral argument on July 7, 2011. Normally, Tribal Code Section 82.125 precludes this Court from considering facts not contained in the record presented to this Court. Again, as explained more fully below, this matter cannot be decided by this Court because of the incomplete record presented to this Court. Additionally, this Court may consider facts not contained in the record when to do otherwise would result in a “miscarriage of justice”. Tribal Code Section 82.125(1). Given the importance of the lease to this dispute, failure to consider its terms would result in a miscarriage of justice.

² The lease at issue at Section XIII(B)(5) provides: “Failure to prevent a threat to the health or safety of other Tenant or Landlord employees by the Tenant, Landlord will give written notice of Lease termination.”

³ As explained below, this is another example of how the record in this matter is incomplete. Other than the November 18, 2010 complaint, there appear to be no other complaints that were sent to Appellant specifically. Also, testimony contained in the tribal trial transcript from December 17, 2010 mentions notices of complaints at pages 41 to 44, but no dates or hard copies of these complaints are included in the record.

Discussion

An appellate proceeding is a review of the lower court record consisting of a trial transcript, pleadings, and exhibits. From this, an appellate court reviews the lower court findings with regards to issues of fact and conclusions of law.

The record, as it now exists, is incomplete. Nowhere in the record was there an executed lease between the parties, required notices given to Appellant, proof of complaints or the pet policy referenced in the lease between the parties. Moreover, this is an administrative appeal, given the Housing Board first heard appeal in this matter. However, the record sent to this Court contains nothing related to the administrative proceedings. Accordingly, the record must also be developed to include all documents considered in the administrative hearing as well as the decision in that administrative proceeding.

Landlord tenant matters are matters of contractual procedure. Upon reflection, this Court is not comfortable rendering a decision where these crucial documents are missing from the record presented to this Court on appeal. This Court is sympathetic with Appellee's need to provide a safe environment for its employees and agents, as well as the other tenants of the Sault Tribe Housing Authority. However, this Court must balance the public interest with Appellant's right to due process and the need for a complete record in an administrative appeal.

This Court hereby remands the matter to the tribal trial court for the inclusion of the above described documents, and/or testimony with regards to the lease executed by the parties, notices issued to the appellant, pet policy, and all documents considered during the administrative proceedings in this matter, as well as any administrative decisions. Furthermore, the tribal trial court is ordered to make a factual finding on whether Appellant, specifically Jorie Truitt and not Raymond Bonneau, received adequate notice of the complaints in question to allow the Appellee to proceed as it intended.

The dog at issue, Tonka, is to remain excluded from housing managed and owned by Sault Tribe Housing Authority pending resolution of this matter on remand.

It is SO ORDERED.