Opinion

Chief Appellate Judge:
Karl Weber

Appellate Judges:
Richard A. Mastaw
Janine Gable
Donelda Harper
Cheryl Nolan

Filed on November 30, 2006

UNITED STATES OF AMERICA

SAULT STE. MARIE CHIPPEWA TRIBAL COURT

APPELLATE DIVISION

THE PEOPLE OF THE SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS,

Plaintiff-Appellee

Appellate Court Case No. APP-06-01
Tribal Court Case No. LT-05-0146

v

LORI LEE,

Defendant-Appellant

_____/

PER CURIAM.

Appellant appeals as of right the Tribal Court Order that granted Plaintiff-possession of rental unit.

Appellant is a tenant at 2575 Saultuer Drive, Sault Ste. Marie, Michigan, on land held in trust for the Sault Tribe. The lease contains a provision of zero tolerance for possession of illegal drugs. The Housing Authority alleged Appellant violated that clause of the lease and should be evicted. A trial was held on December 20, 2005, and the Court entered judgment in favor of the Sault Tribe Housing Authority for Appellant's breach of the Zero Tolerance Drug Policy. On January 3, 2006, the Court deferred enforcement of the Order pending successful completion by Appellant's son of the drug court program. A Gwaiak Review Order was entered on February 9, 2006, that found Appellant's son failed to complete the Gwaiak Miicon Program (Drug Program).

On February 21, 2006, Appellant filed a Notice of Appeal claiming that since no charges were filed against her, she should not be evicted for the conduct of her son. An Order Granting Stay Pending Appeal was entered by the Tribal Court on March 13, 2006.

We examine the issues in this Appeal in accordance with applicable tribal, federal, and state law.

In McNeil v. U.S. 508 U.S. 106 (1993), Plaintiff, without counsel, brought a Petition against the United States under the Federal Tort Claims Act. The Federal District Court dismissed the suit as premature since Plaintiff failed to exhaust his administrative remedies. The United States Supreme Court affirmed, and stated that:

> "It is no doubt true that there are cases in which a litigant proceeding without counsel may take a fatal procedural error, but the risk that a lawyer will be unable to understand the exhaustion requirement is virtually nonexistent. Our rules of procedure are based on the assumption that litigation is normally conducted by lawyers. ... we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without

> counsel. As we have noted before, in the long run, experience teaches that strict adherence to the procedural requirements specified by the legislature is the best guarantee of evenhanded administration of the law."

In Faretta v. California, 422 U.S. 806 (1975), the United States Supreme Court said:

> "... in order to represent himself, the accused must knowingly and intelligently forego those relinquished benefits. Johnson v. Zerbst, 304 U.S. at 464 ... Although an Appellant need not himself have the skill and experience of a lawyer ... he should be made aware of the dangers and disadvantages of self-representation, so that the record will establish that 'he knows what he is doing and his choice is made with eyes open' Adams v. United States et rel. McCaan, 317 U.S. at 279." (Emphasis added).

In the instant case, the Housing Authority called a witness, Laura Schwiderson, who had no personal knowledge of the events that formed the basis of Appellant's eviction. She testified:

"Q Ms. Schwiderson, if you could state your name and occupation for the record please?

A Laura Schwiderson, Collections Compliance Assistant for Sault Tribe Housing Authority.

Q And in that capacity with the Housing Authority you oversee the rental unit located at 2575 Saultuer Drive, Sault Ste Marie, Michigan?

A Yes.

Q And 2575 Saultuer is land held in trust and leased by the Housing Authority to Lori Lee?

A Yes.

Q And is the tenant compliant with all the lease terms as of today's date?

A No, she is not.

Q And what specific term of the lease has Ms. Lee not complied with?

A She is in violation of the zero tolerance policy.

Q Okay and what is the zero tolerance policy?

A It has to do with drug, zero tolerance is a lease termination regarding illegal drug activity within the unit.

Q Okay and that is a term that is contained within the lease that Ms. Lee signed?

A Yes, section six.

Q And how are you aware of drug use in the unit?

A We had received a police report.

Q Okay, and what sort of drug use was involved?

A Here is that it was concerned with the dog, a dog was involved also, and a marijuana roach was found when they went to (inaudible) 10:16:40).

Q Okay, and on what date was the marijuana roach discovered in the house by law Enforcement?

A It was from, the police report was July 27th.

Q Okay, and what relief are your requesting today?

A We are requesting possession of the unit."

Chapter 83.702 of the Tribal Code, Defenses (7) (To Eviction), states that the Tribal Court should consider "any other material or relevant fact the tenant might present that may explain why his eviction is unjust or unfair." Also, Chapter 81.105 of the Tribal Code requires the Tribal Court to apply Michigan law in the absence of applicable tribal or federal law. We find that Michigan Court Rule 4.201(F)(2) should have been complied with. MCR 4.201 (F)(2) states:

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> "(2) *Right to an attorney.* If either party appears in person without an attorney, the Court must inform that party of the right to retain an attorney. The Court must also inform the party about legal aid assistance when it is available." (Emphasis added).

We cannot assume that the Appellant waived or forfeited a right to which she was not aware of. Had Appellant elected to retain counsel it is almost certain the outcome of the trial would have been different. Federal and state courts in both criminal and certain civil actions, require that the parties be informed of their right to an attorney because of the complexity of the case, and potential harmful outcome. We agree. The Board of Directors recognized the seriousness of eviction proceedings since the Tribal Code requires proof to be by clear and convincing evidence.

Appellant asserts she should not be evicted because her son was in possession of the alleged controlled substance. We disagree with her position on this issue. In Department of Housing and Urban Development, v. Rucker, 535 U.S. 125 (2002), the United States Supreme Court held that public housing tenants can be evicted for drug use by family members even if tenants are unaware of it.

Chapter 82.125 of the Tribal Code grants the Appellate Court authority to raise issues *sua sponte* if a "miscarriage of justice would result". In light of the facts of this case, common law that requires litigants be held to the same standards as attorneys, that parties be informed of right to counsel in criminal and certain civil cases, and MCR 4.201(F)(2), we find that a miscarriage of justice would result unless reviewed by this Court. There are other issues that may also be dispositive of this case such as plain error or due process, however, we do not reach those issues, this Court having decided this appeal on other grounds.

Accordingly, the failure of the Tribal Court to inform the Appellant of her right to an attorney pursuant to MCR 4.201(F)(2) constituted a miscarriage of justice contemplated in the Tribal Code that requires reversal and remand for a new trial.

Judge Karl Weber took no part in the decision.