

SAULT STE. MARIE TRIBE OF CHIPPEWA INDIANS

COURT OF APPEALS

Sault Tribe Housing Authority v. Isrow

APP-15-01

Decided October 16, 2015

ENTERED
10-16-2015 Hs
Sault Ste. Marie
Chippewa Tribal Court of Appeals

WARNER, Appellate Judge, who is joined by judges FINCH, LEHMAN, and NERTOLI, Appellate Judges.

Discussion and Order

As explained below, this Court affirms the decision of the lower court in this matter. Appellant fails to demonstrate that the lower court's factual determinations were clearly erroneous, and, therefore, the appeal fails.

Procedural History

On July 6, 2015, the lower court heard testimony in the present matter. The Appellee sought to evict the Appellant on the basis that the Appellant violated her lease agreement with the Appellee by having a dog that had bitten two people on the premises. Judge Fabry found the testimony credible and held in favor of the Appellee, finding that Appellant had violated the terms of her lease and eviction was warranted. On July 27, 2015, Appellant filed an appeal with this Court. Despite a briefing schedule being entered, neither Appellant nor Appellee filed a brief with this Court. Also, neither party requested oral argument, and, as a result, oral argument was not held in this case.

Jurisdiction and Standard of Review

This Court has exclusive jurisdiction in this matter, as it is reviewing the decision of the tribal court. Tribal Code Section 82.109. The Tribal Code requires the application of the "clearly erroneous" standard when reviewing factual decisions of a judge. Tribal Code Section 82.124(1). "In applying the clearly erroneous standard of review, the Court will determine whether it is left with a 'definite and firm conviction' that the trial court made an error in its findings of fact." *Rex Smith v. Sault Ste. Marie Tribe of Chippewa Indians*, APP-08-02, 3 (August 4, 2008). Because resolution of this matter primarily turns on Judge Fabry's factual decision that Appellant possessed a dog "which is known to be dangerous or has bitten or attacked a person," this Court will only overturn Judge Fabry's decision if it is clearly erroneous.

Discussion

Given Appellant failed to submit a brief or request oral argument in this case, there is nothing presently before this Court to suggest that the lower court's decision was clearly erroneous. Accordingly, the Court reviews the lower court's decision and hearing transcript to ensure any factual determinations were not clearly erroneous.

The transcript from the July 6, 2015 hearing includes testimony from Ms. Patrick and Officer Lubben that the dog in question had bitten two people previously. *Sault Tribe Housing Authority v. Amanda Isrow*, File No. LT-15-43, hearing transcript, pp. 8, 11-12 (July 6, 2015). Ms. Patrick was herself bitten by the dog when on the premises in her official capacity. *Id.* at 8. Appellant did not present any testimony or evidence to negate Ms. Patrick's testimony. Officer Lubben testified that he responded to the dog bite incident involving Ms. Patrick and a prior incident when the dog bit a little girl. *Id.* at 11-12. Judge Fabry found this testimony persuasive, as she concluded that "I do find by clear and convincing evidence that [Appellant] knew the dog has bitten someone and [Appellant] maintained that dog. Not only bit someone, it bit that child, severely." Finding nothing in the record that opposes the lower court's determination, this Court affirms her factual finding that Appellant housed a dog on the property that had bitten two people previously.

Because on this factual finding, eviction is appropriate based on the lease agreement Appellant signed on June 17, 2008. Section VII (Obligations and Responsibilities of the Tenant), subpart B(8) of that lease agreement provides that Appellant, as a tenant, was to refrain from "maintaining a Pit Bull dog or a dog which is known to be dangerous or has bitten or attacked a person." This provision is consistent with Tribal Code Section 71.1702. Further, Tribal Code Section 83.307(6) requires tenants to abide by the rules and regulations of the landlord. Appellant failed to do so when she housed a dangerous dog in violation of the lease agreement. Tribal Code Section 83.501(6) specifies that a tenant may be evicted for failure to comply with the tenant's obligations. Accordingly, for these reasons, eviction is appropriate in this case.

ORDER

For the reasons stated above, the decision of the tribal court is affirmed.

The Court is not unsympathetic to the plight of animals, but, in this case, the dog in question threatens the public's safety. It is therefore necessary to place the needs of the public above an accommodation for this dog.

It is SO ORDERED.