IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

ENRIQUE DOMINGUEZ AND THELMA RODRIGUEZ,	)	No. 62262-5-I
Respondents,	)	DIVISION ONE
v.	)	UNPUBLISHED OPINION
MONICA AND MICHAEL JOPLIN,	)	
Appellants.	)	FILED: June 8, 2009

GROSSE, J.—Monica and Michael Joplin appeal from an order for a writ of restitution and judgment in a residential unlawful detainer proceeding. The trial court had jurisdiction because the landlord properly served the notice of default. The writ was properly ordered because the Joplins acknowledged failing to make current rent payments. But the court improperly required the Joplins to pay current rent to preserve their right to a trial on a disputed issue of credit for past payments. We accordingly affirm the order for the writ, but vacate the judgment and remand.

FACTS

The Joplins leased a residence from Enrique Dominguez.[1] On June 17, 2008, Dominguez served the Joplins with a three-day notice to pay rent or quit by posting one copy on the premises and mailing them another copy. On June 25, Dominguez served the Joplins with a complaint alleging that they had failed to pay $1,300 rent for the month of June in advance as required by their lease. Dominguez sought issuance of a writ of restitution and a judgment for unpaid rent, costs and attorney fees.

The Joplins filed a pro se answer. They alleged that the Department of Social

[1] The respondents, Enrique Dominguez and Thelma Rodriguez, are husband and wife. They refer to themselves collectively in their briefing as Dominguez. We do as well.

and Health Services (DSHS) had tendered $1,500 to Dominguez on their behalf to prevent eviction, for which Dominguez did not give them credit.

A show cause hearing was scheduled for July 23, 2008. The Joplins appeared with counsel, who noted that a copy of the summons was not attached to the declaration of service. The court set the matter over to July 29 to allow Dominguez to file an amended return of service.[2]

On July 29, counsel for Dominguez filed the amended return. He also informed the court that the Joplins were still in possession, that they had not paid July's rent, and that he had received no further pleadings after their pro se answer. He sought immediate entry of a writ of restitution and offered that, in light of the dispute about the June payment, the issue of back rent could be dealt with later.

Counsel for the Joplins argued that proof of service of the three-day notice was lacking and that Dominguez should be required to provide the court a copy of the lease. The court rejected counsel's argument regarding service and found producing the lease unnecessary since its material terms as alleged in the complaint were not disputed.[3]

---

[2] In his response brief, Dominguez's counsel contends the Joplins have failed to provide a complete copy of the verbatim record of this hearing and perhaps other hearings. Joplins' counsel disputes this claim and has filed a motion to strike portions of Dominguez's response brief. Dominguez's counsel has also moved to strike portions of the Joplins' reply brief. We deny both motions to strike, but reject Dominguez's contention that the Joplins' counsel has omitted any portion of the record material to the issues in this appeal.

[3] Counsel for the Joplins also requested that the trial court orally examine the parties under oath, in accordance with RCW 59.18.380. The court declined, which this court has recently held is error. See Leda v. Whisnand, No. 61639-1-I (May 11, 2009). The Joplins, however, affirmatively decline to claim any error in this regard; so granting relief on this basis is not appropriate. Moreover, unlike in Leda, it appears the Joplins

The court found, however, that the Joplins had presented a legitimate issue for trial as to the June rent. Counsel for the Joplins conceded that in light of the court's view of the other issues, an order allowing issuance of a writ of restitution if July's rent was not paid by the end of the day would be appropriate, as long as the Joplins' right to a trial on the issue of the June payment was preserved even if they did not pay July's rent. The court issued an oral ruling to that effect, stating "[i]f rent is not paid on a timely basis, then the Court will enter a writ of restitution on the property, but will allow the issue of damages pertaining particularly to June rent to continue to trial."[4] Both counsel briefly left the courtroom to prepare a written order.

When proceedings resumed, Dominguez's counsel stated that the Joplins' counsel objected to the order he prepared. The court indicated it would hear no further argument. The order the court then signed differed from its oral ruling by requiring the Joplins to deposit the July rent by the end of the day to preserve the right to a trial on the issue of the June payment.

The Joplins did not deposit the July rent and Dominguez obtained an order for a writ of restitution. To obtain a final, appealable decision, Joplins' counsel then noted the matter for entry of judgment reflecting the court's ruling that no trial on the issue of the June rent would be allowed. Dominguez agreed that judgment should be entered, but sought attorney fees under RCW 59.18.410. The court granted the fees request over the Joplins' objection.

---

were not prejudiced by the error here because the court provided the Joplins an unfettered opportunity to make an offer of proof on the issue of the June payment and correctly determined that there was an issue of fact. Compare Leda, slip op., at 14.

[4] Record of Proceedings (July 29, 2008) at 25.

The Joplins appeal.

ANALYSIS

To the extent the parties' arguments are based on the written materials only, we stand in the same position as the trial court and review the record de novo.[5] We likewise review questions of law de novo.[6] Challenged findings of fact are reviewed for substantial evidence.[7]

The Joplins first contend the trial court lacked subject matter jurisdiction because Dominguez did not prove proper service of the three-day notice. We disagree.

Proper notice of a default in payment of rent as required by RCW 59.12.030 is a "'jurisdictional condition precedent'" to an unlawful detainer action.[8] Without competent proof of compliance with the necessary notice requirements, a writ of restitution is improperly entered.[9] Case law distinguishes between "time and manner" requirements for service of the notice and the "form and content" of the notice.[10] With respect to the former, strict compliance is necessary.[11]

Dominguez filed a declaration reciting that after no one was found on the premises, the three-day notice was posted conspicuously and mailed to the Joplins.

---

[5] Housing Auth. of City of Pasco and Franklin County v. Pleasant, 126 Wn. App. 382, 387, 109 P.3d 422 (2005).
[6] Mountain Park Homeowners Ass'n, Inc. v. Tydings, 125 Wn.2d 337, 341, 883 P.2d 1383 (1994).
[7] Dickson v. Kates, 132 Wn. App. 724, 730, 133 P.3d 498 (2006).
[8] Housing Auth. of City of Everett v. Terry, 114 Wn.2d 558, 789 P.2d 745 (1990) (quoting Sowers v. Lewis, 49 Wn.2d 891, 894, 307 P.2d 1064 (1957)).
[9] Pleasant, 126 Wn. App. at 392.
[10] Marsh-McLennan Bldg., Inc. v. Clapp, 96 Wn. App. 636, 640 n.1, 980 P.2d 311 (1999) (internal quotation marks and citations omitted).
[11] Community Invs., Ltd. v. Safeway Stores, Inc., 36 Wn. App. 34, 37-38, 671 P.2d 289 (1983).

This procedure satisfies one of the approved methods of service set forth in RCW 59.12.040:

> [I]f a person of suitable age and discretion there cannot be found then by affixing a copy of the notice in a conspicuous place on the premises unlawfully held, and also delivering a copy to a person there residing, if such a person can be found, and also sending a copy through the mail addressed to the tenant, or unlawful occupant, at the place where the premises unlawfully held are situated.

The Joplins nonetheless contend that Dominguez's proof of service was deficient because there was no recitation that they mailed the notice from a location in the same county as the subject property. But the language from RCW 59.12.040 they rely on does not establish a requirement for valid service; it only sets forth a means of proving service to establish a date by which service will be "deemed complete." Timeliness of the service was not at issue here. The Joplins' claim regarding service of the three-day notice fails.

The Joplins also argue that Dominguez should have been required to produce the lease as a prerequisite to obtaining relief. But there is no statutory requirement that a lease be produced in every case, which is logical because not every tenancy involves a written lease. The Joplins cite Housing Authority of City of Pasco and Franklin County v. Pleasant,[12] but in that case the tenant challenged the landlord's allegations that she violated lease provisions governing the tenant's conduct on the premises. The precise language of the lease was therefore material to the disputed issues. Here, the complaint alleged there was a lease requiring monthly rent payments of $1,300 in advance and providing for a $25 late fee. The Joplins did not deny these claims in

[12] 126 Wn. App. 382, 392, 109 P.3d 422 (2005).

their answer and never disputed them during the show cause proceedings. Although they speculate that the lease might contain alternative notice provisions, they made no such actual claim in the trial court. The mere absence of the lease from the record here does not entitle the Joplins to relief.[13]

The Joplins next contend that the trial court erred by denying them a right to a trial on the question of whether they should receive a credit for the alleged payment to Dominguez by DSHS. We agree that this was error and that vacation of the judgment is required for this reason.

RCW 59.18.380 allows the trial court at a show cause hearing to grant a writ of restitution if the right to possession is clear and to grant other requested relief if there are no substantial issues of material fact. But as with any suit, a trial is required to resolve issues for which there is a substantial factual dispute.[14]

The Joplins concede that they did not pay the July rent before or after the show cause hearing. They accordingly do not challenge the court's oral ruling, which required them to post rent to avoid issuance of a writ of restitution, but which preserved their right to a trial on the issue of the June rent regardless of whether they paid the July rent.[15] The court's written order, however, required that

> in order for this matter to proceed to trial on the issue of whether the DSHS payment was received or properly credited, the defendant shall pay $1,325 in cash or certified funds to the office of [plaintiff's counsel] or

[13] We recognize that when a tenancy is based on a lease, many practitioners attach a copy to their initial pleadings, which is a helpful practice because it can foreclose issues that may arise during the show cause hearing.

[14] RCW 59.12.130; Meadow Park Garden Assocs. v. Canley, 54 Wn. App. 371, 372, 773 P.2d 875 (1989).

[15] We note that the clerk's minute entry is entirely consistent with the court's oral ruling in this regard.

deposit w/the clerk of the court by 4:30 p.m. on July 29, 2008.[16]

This was error because the Joplins' right to a trial on the issue of credit for back rent did not depend on their right to possession at the time of the hearing.[17]

Dominguez does not address this problem in his briefing. Instead, he disregards the actual language of the July 29 written order, treats the court's oral ruling as if it was the ruling the Joplins challenge,[18] and then claims that the Joplins ultimately invited any error in the final judgment by voluntarily waiving their right to a trial on rent or damages when they requested entry of judgment.

The governing principle of law, however, is not that the oral ruling controls the written order, but that the written order controls the oral ruling.[19] And the Joplins did not invite the error in the written order. Rather, the record shows that their counsel specifically objected to the July 29 written order on precisely the grounds that it improperly conditioned trial on their payment of further rent.[20]

When the Joplins requested entry of judgment, they did no more than appropriately seek a final determination under CR 54, which was proper because they could not appeal the July 29 order as of right.[21] And they specifically objected to the

---

[16] Clerk's Papers at 58.

[17] RCW 59.18.380; RCW 59.12.120.

[18] See Brief of Respondent at 14 ("The court granted the Joplins their wish and set the matter for trial on the issue of whether DSHS paid June rent to Mr. Dominguez on behalf of the Joplins.").

[19] Shellenbarger v. Brigman, 101 Wn. App. 339, 346, 3 P.3d 211 (2000).

[20] Although the court declined to allow the Joplins' counsel to verbalize the reasons for his objection to the written order proposed by Dominguez's counsel, it did allow him to file a written objection. See Clerk's Papers at 64 ("trial not conditioned on payment of rent").

[21] Carlstrom v. Hanline, 98 Wn. App. 780, 788, 990 P.2d 986 (2000) ("A show cause hearing is not the final determination of the rights of the parties in an unlawful detainer

trial court's award of fees to Dominguez under RCW 59.18.410, which allows fees to landlords when there is a final resolution on the merits.[22] Because the Joplins were improperly deprived of their right to trial on a disputed question of fact, and did not waive the error, we reverse the portion of the July 29 order conditioning trial on the issue of the June rent on their payment of the July rent, vacate the judgment, including the award of attorney fees, and remand for further proceedings.[23]

Because we vacate the judgment, we reject Dominguez's request for fees on appeal under RCW 59.18.410. The Joplins ask us to direct the trial court to order fees for this appeal on remand, but their request is premised on their failed argument that the court lacked jurisdiction. We decline to issue any order regarding fees on appeal.

We affirm in part, reverse in part, and remand for further proceedings.

Grosse, J.

WE CONCUR:

Becker, J.

Appelwick, J.

---

action.").

[22] See Pleasant, 126 Wn. App. at 394.

[23] Because the right to possession is no longer at issue, either party may ask the trial court to exercise its discretion under Munden v. Hazelrigg,105 Wn.2d 39, 45-46, 711 P.2d 295 (1985) to convert this case to a general civil case for adjudication of the unresolved claims regarding rent payments.