IN THE SECOND DISTRICT COURT OF APPEAL
STATE OF FLORIDA

CASE NO.: 2D24-1732
LOWER TRIBUNAL NO.: 24-000568-CO

NHC-FL 142, LLC,

Appellee,

vs.

MARK STEWART FULLER and SUSAN ELISE FULLER,
Appellants.

APPELLANT'S REPLY BRIEF

APPEAL OF COURT'S ORDER GRANTING FINAL JUDGMENT AND DENYING MOTION FOR NEW TRIAL

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ARGUMENT

I. The Record is sufficient to find that judgment was not supported by competent substantial evidence.

In its Answer Brief, the Appellee argues that the record is insufficient to find that the judgment was not supported by competent and substantial evidence. Specifically, the Appellee's argument is based upon the lack of transcript of record of the testimony of witnesses or of evidentiary rulings.

The absence of a transcript does not preclude reversal in this appeal. An appellate court may reverse an order or judgment without a transcript or stipulated statement of facts where the order or judgment is fundamentally erroneous on its face. *See Calderon v. Calderon*, 730 So. 2d 400, 401 (Fla. 5th DCA 1999); *Holmes v. Holmes*, 578 So. 2d 323, 324 (Fla. 4th DCA 1991).

"When evaluating whether competent, substantial evidence supports a trial court's ruling, '[l]egal sufficiency ... as opposed to evidentiary weight, is the appropriate concern of an appellate tribunal.' " *Stone v. Stone* , 128 So. 3d 239, 240 (Fla. 4th DCA 2013) (alterations in original) (quoting *Brilhart v. Brilhart ex rel. S.L.B.* , 116 So. 3d 617, 619 (Fla. 2d DCA 2013)).

Here, the evidence submitted at trial was legally insufficient to grant Judgment in favor of the Appellee. A review of Appellant's motion for new trial would demonstrate the various inconsistencies with the testimony of the witnesses against their testimony in depositions.

Additionally, as the evidence portrayed, and as been confirmed through the statements included in the motion for new trial, the Final Judgment was based on actions that allegedly happened against employees and not against neighbors or residents of the Community. The intent of both the statute and Rule are to maintain the peace and tranquility of neighbors, not of employees.

As such, even without a transcript of the proceedings, the record is sufficient to find that the judgment was not supported by competent and substantial evidence.

II. Evidence of prior written notice of violations is not sufficient grounds for Judgment.

In its Answer Brief, the Appellee argues that it presented evidence that written notice of violations were sent to Appellants. Appellant's have not claimed or argued that written notice of violations were not sent or not provided. What the Appellant argued

is that the Rule stated by the Appellee in it's written notice of violations, as the basis of the eviction, only references neighbors and not employees. The Rule is clear and unambiguous. Therefore, the Court should not have considered evidence regarding conduct towards employees and not against neighbors as it had no bearing on whether or not the Appellants breached the Rules of the Community.

III. Insufficient evidence of breach of the peace.

Appellee's next argument is that breaches of peace in a mobile home park may be grounds for eviction. Appellee cites § 723.061(1)(c)2., Fla. Stat. to state that a mobile homeowner's second violation of the same statute or mobile home park rule within 12 months of written notice of the first violation is grounds for eviction from the park.

The basis of Appellee's argument is that Appellant's Initial Brief only argued that the Appellants did not violate the mobile home park's rules which prohibit the breaches of peace, as opposed to the statutory breach of peace.

Appellee's notice to vacate is based on Section 723.023(3), Fla. Stat., which says that "[a] mobile home owner shall at all times

[c]omply with properly promulgated park rules and regulations." The notice then goes on that cite Section 1.14 of the Community's Rules and Regulations (the "Rules"), which provides "be considerate of --- your neighbors. Conduct which disturbs the peace of tranquility of others… is not permitted in the Community…"

As such, Appellee's only claim is that Appellant's were breaching the peace in regard to Section 1.14, which only references neighbors and not employees. Therefore, Appellee's argument now that the rule applies beyond neighbors and to employees is entirely without merit.

IV. Appellee's reliance on Florida's Mobile Home Act (Ch. 723) is misplaced.

Appellee's next argument in its Answer Brief is that Florida's Mobile Home Act protects mobile home park employees from resident conduct. Specifically, Appellee argues that Appellants are asking this Court to set a precedent which would create a moral hazard permitting the harassment of individuals at their workplace.

Appellants disagree with this argument as Appellant's have not asked this Court to set any sort of precedent. In fact, the Appellee is mis-characterizing the Appellant's arguments to fit their narrative.

Appellant's argument is that the evidence presented at the Final Evidentiary Hearing was related to such actions that allegedly happened against employees and not against neighbors as the pre-suit notices only addressed actions towards neighbors. The intent of both the statute and Rule are to maintain the peace and tranquility of neighbors, not of employees. Appellants argue that applying the specific rule that Appellee cites in the pre-suit notice to employees is an over breach of the legislative mandate.

Appellants are not asking this Court to set a precedent, they are simply arguing that the Appellee failed to present sufficient evidence, pursuant to the pre-suit notices, to grant Final Judgment of Eviction. Appellee's pre-suit notice of violations references conduct toward neighbors. At the Final Evidentiary hearing, the Appellee presented evidence of behavior towards employees. As such, the Appellee failed to present sufficient evidence to substantiate its own claims.

V. This Appeal is fundamentally different from the ruling in *Ottone v. Williamson Invs.*

The Appellee's next argument focuses on the case of *Ottone v. Williamson Invs.* Appellee argues that this appeal bears much in

common with *Ottone*. However, Appellant contends that the ruling in *Ottone* is not applicable to the ruling in this matter.

In *Ottone* the Court noted that there was no evidence concerning what park rule or regulation was violated. As such, the trial court was forced to premise its ruling on § 723.061(1). In this case, the notice of violations sent to Appellant clearly indicate that Rule 1.14 was the rule that was allegedly being violated. That Rule involved community neighbors and not employees. At the Final Hearing, the Appellee only put on witness testimony regarding conduct toward employees and not neighbors. Therefore, this matter is factually different from the *Ottone* case and it should not be relied upon.

CONCLUSION

Based on the foregoing, the Order granting the Judgment at the Final Evidentiary Hearing and the Order denying Appellant's Motion for New Trial were entered in error as the Appellant was able to demonstrate significant inconsistencies in Appellees evidence. The final judgment should not have been granted and should be set aside and the case remanded back to the trial court for a new evidentiary hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY a true and correct copy of the foregoing was furnished via eDCA/eServe/email and/or U.S. Mail this 14th day of November, 2024 to the attached service list.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing comports with the font and spacing requirements of Fla. R. App. P. 9.045.

/s/ Justin R. Clark
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