

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE
November 6, 2006 Session

SANDALWOOD PROPERTIES, LLC v. AARON ROBERTS, ET AL.

**Appeal from the Circuit Court for Loudon County
No. 7435 Russell E. Simmons, Jr., Judge**

No. E2006-01163-COA-R3-CV - FILED NOVEMBER 29, 2006

In this case, a landlord sought to collect monies from tenants pursuant to the terms of a residential rental agreement. The landlord filed a warrant in the General Sessions Court of Loudon County and was granted a default judgment after the tenants failed to appear for trial. The tenants appealed their case to the Circuit Court for Loudon County, but again failed to appear at trial, and the landlord was awarded judgment. The tenants' motion for new trial was denied. On appeal, the tenants argue that the Circuit Court erred in denying their motion for new trial because they proved excusable neglect or mistake as the reason for their failure to appear at trial; that venue was improper in Loudon County; that the Circuit Court lacked subject matter jurisdiction; and that they are entitled to attorney's fees based on the landlord's alleged violations of the Tennessee Uniform Residential Landlord and Tenant Act. After careful review, we affirm the judgment of the Circuit Court and deny the tenants' request for attorney's fees.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J., and CHARLES D. SUSANO, JR., J., joined.

Christopher E. Rowe, David B. Hamilton and William P. Price III, Knoxville, Tennessee, for the Appellants, Aaron Roberts and Kelli Dunn aka Kelli Dunn Roberts.

Jack W. Piper, Jr., Knoxville, Tennessee, for the Appellee, Sandalwood Properties LLC.

OPINION

I. Background

In October of 2002, Aaron Roberts and Kelli Dunn (“the Tenants”) entered into a residential lease agreement for rental property located in Knox County, Tennessee. After the Tenants vacated the property, Sandalwood Properties LLC (“the Landlord”), in January of 2005, filed a civil warrant against them in the General Sessions Court for Loudon County seeking judgment for a “BALANCE PAST DUE AND OWING ON LEASE IN THE AMOUNT OF \$1,018.88 HERETO THE COURT SHOWN AS EVIDENCED BY SWORN ACCOUNT + TAX & COST.” Attached to the warrant was a copy of a residential lease entered into between “Sandalwood Properties” as lessor and the Tenants as lessees and signed by “Charles Sanders” and “Kathie Sanders” as lessors and the Tenants as lessees. Also attached to the warrant was a copy of an affidavit signed by Charles Sanders that states as follows:

Personally appeared before the undersigned, a Notary Public in and for said county, duly commissioned and sworn, Charles F. Sanders to me known and made oath in due form of law, that the within account against AARON ROBERTS & KELLI DUNN amounting to \$1,018.88 Dollars, is justly due SANDALWOOD PROPERTIES LLC of which the firm he is Chief, after the allowance of all credits to which the said AARON ROBERTS & KELLI DUNN is entitled as he verily believes.

The case was set for hearing in the Loudon County General Sessions Court on March 17, 2005. Tenant Aaron Roberts and counsel for the Landlord were present on that date; however, the matter was not heard at that time and was rescheduled to April 21, 2005.

The Tenants did not appear at the rescheduled hearing date of April 21, 2005, and a default judgment was entered against them in the amount of \$1,018.88, plus court costs.

In May of 2005, the Tenants appealed the sessions court judgment to the Loudon County Circuit Court, and the case was set for hearing on July 27, 2005. On May 19, 2005, the Landlord filed a motion to dismiss the appeal upon grounds that it had not been timely filed. When the motion came on for hearing, it was withdrawn and dismissed. Because of a scheduling conflict of Landlord’s counsel, the hearing on the appeal was rescheduled to October 31, 2005. Subsequently, upon the Landlord’s additional motion, the case was reset to December 2, 2005, at 9 a.m.

Counsel for the Landlord appeared for the rescheduled hearing on December 2, 2005; however, the Tenants were not present. A hearing was held and thereafter, on December 7, 2005, the Circuit Court entered judgment which provided as follows:

This cause came on to be heard on the 2nd day of December, 2005, before the Honorable Russell E. Simmons, Jr., Judge of the Circuit Court for Loudon County, Tennessee, at which time the case was

called and the Plaintiff and his counsel appeared and the Defendants were called and failed to answer, at which time the trial was commenced and the Plaintiff presented its case, from all of which the Court found that the Plaintiff is entitled to Judgment against the Defendants, jointly and severally in the sum of \$1,018.88 and, it is accordingly

ORDERED, ADJUDGED AND DECREED that the Plaintiff, Sandalwood Properties, LLC, shall be awarded Judgment against the Defendants, Aaron and Kelli Dunn a/k/a Kelli Dunn Roberts, jointly and severally, in the sum of \$1,018.88 and that the court costs of this cause are taxed to the Defendants, for which execution may issue, if necessary.

Within 30 days of entry of judgment, Tenants, by and through counsel, filed a motion for a new trial pursuant to Tenn. R. App. P. 59.02 or in the alternative, a motion for a setting aside of a default judgment pursuant to Tenn R. App. P. 55.02.

The Circuit Court denied the Tenants' motion, and this appeal followed.

II. Issues

The Tenants present multiple issues for our review which we restate as follows:

- 1) Did the Circuit Court abuse its discretion in failing to set aside its judgment upon grounds of mistake or excusable neglect?
- 2) Was venue proper in this case?
- 3) Did the courts of Loudon County lack subject matter jurisdiction because the Landlord was without standing to sue the Tenants or because the property to which the rental agreement pertained was not located in Loudon County?
- 4) Did the Landlord violate the Tennessee Uniform Residential Landlord and Tenant Act?
- 5) Pursuant to Tenn. Code Ann. _66-28-501, should the Circuit Court have awarded the Tenants attorney's fees and by the same authority, should the Tenants be awarded attorney's fees incurred in this appeal?

III. Standard of Review

In a non-jury case such as this one, we review the record *de novo* with a presumption of correctness as to the trial court's determination of facts, and we must honor those findings unless there is evidence which preponderates to the contrary. Tenn. R. App. P. 13(d); *Union Carbide*

Corp. v. Huddleston, 854 S.W.2d 87, 91 (Tenn. 1993). The trial court's conclusions of law are accorded no presumption of correctness. *Campbell v. Florida Steel Corp.*, 919 S.W.2d 26, 35 (Tenn. 1996); *Presley v. Bennett*, 860 S.W.2d 857, 859 (Tenn. 1993).

IV. Analysis

A. Excusable Neglect or Mistake

The first issue we address is whether the Circuit Court abused its discretion in failing to set aside the judgment against the Tenants and grant them a new trial upon grounds of excusable neglect or mistake.

At the outset, we are compelled to disagree with the Tenants' designation of the Circuit Court's judgment of December 7, 2005, as a "default judgment." It does not follow from the mere fact that the Tenants were absent from the hearing on December 2, 2005, that the judgment entered against them was a default judgment. In *Ramsey v. Ramsey*, No. E1999-00577-COA-R3-CV, 2000 WL 1273388 (Tenn. Ct. App. E.S. filed Sept. 6, 2000) *perm. app. denied* March 12, 2001, the defendant filed an answer to his wife's divorce complaint, but neither the defendant nor his attorney was present when the case was tried. The trial court heard the wife's evidence and entered judgment in her favor. Thereafter, the trial court denied the husband's motion to have the "default judgment" against him vacated. On appeal, we disagreed with the husband's characterization of the judgment as a "default judgment." We stated "[a] judgment by default results when the defendant has no defense or does not appear to make it." citing 16 Tenn. Juris., *Judgments and Decrees*, _ 79. *Id.* at *3. We noted that the husband had filed an answer to his wife's complaint and that his attorney had made an appearance on his behalf before the trial court. Similarly, in *Harper v. Harper*, No. E-2002-01259-COA-R3-CV, 12003 WL 192151 (Tenn. Ct. App. E.S., filed Jan. 29, 2003), we rejected a defendant wife's assertion that the judgment of divorce entered against her after a trial conducted in her absence was a default judgment under Tenn. R. Civ. P. 55. We noted that Tenn. R. Civ. P. 55.01 provides that a default judgment may be entered "when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend as provided by these rules and that fact is made to appear by affidavit or otherwise." We observed that the defendant did plead and defend and that her "absence at trial [did] not magically convert the final judgment into a default judgment." *Id.* at *4.

Although in the instant matter the Tenants were absent from the hearing on December 2, 2005, the judgment against them was not a default judgment because their appeal to the Circuit Court constituted an appearance in the case. "An appeal, or its substitute, a petition for certiorari from a judgment of a Justice of the Peace to the Circuit Court is a general entry of appearance..." *Scholze v. Anderson*, 12 Tenn. App. 637 (Tenn. Ct. App. 1930). See also 6 C.J.S. *Appearances* _ 34 (2004) ("An appeal or writ of error, unless for the sole purpose of reviewing a jurisdictional objection, constitutes, when made to an intermediate court which tries the case de novo, a general appearance in that court.") While the Tenants were not present in the courtroom at the hearing on December 2, 2005, they did appear in the case and, accordingly, the judgment entered against them on December 7, 2005, was not a default judgment. In light of this fact, it follows that the Tenants' post-trial motion was inappropriate to the extent that it was based upon

Rule 55, as that rule pertains only to default judgments. Having clarified this matter, we now address the actual issue, that being whether the Circuit Court should have granted the Tenants a new trial under Tenn. R. Civ. P. 59.

The standard of review of a trial court's denial of a motion for new trial is abuse of discretion. "A trial court is given wide latitude in granting a motion for new trial, and a reviewing court will not overturn such a decision unless there has been an abuse of discretion." *Loeffler v. Kjellgren*, 884 S.W.2d 463, 468 (Tenn. Ct. App. 1994). In *Eldridge v. Eldridge*, 42 S.W.3d 82, 85 (Tenn. 2001), the Tennessee Supreme Court stated as follows regarding the abuse of discretion standard:

Under the abuse of discretion standard, a trial court's ruling "will be upheld so long as reasonable minds can disagree as to propriety of the decision made." *State v. Scott*, 33 S.W.3d 746, 752 (Tenn. 2000); *State v. Gilliland*, 22 S.W.3d 266, 273 (Tenn. 2000). A trial court abuses its discretion only when it "applie[s] an incorrect legal standard, or reache[s] a decision which is against logic or reasoning that cause[s] an injustice to the party complaining." *State v. Shirley*, 6 S.W.3d 243, 247 (Tenn. 1999). The abuse of discretion standard does not permit the appellate court to substitute its judgment for that of the trial court. *Myint v. Allstate Ins. Co.*, 970 S.W.2d 920, 927 (Tenn. 1998).

An abuse of discretion occurs when the lower court's decision is without a basis in law or fact and is, therefore, arbitrary, illogical, or unconscionable. *State v. Brown & Williamson Tobacco Corp.*, 18 S.W.3d 186, 191 (Tenn. 2000).

The Tenants argue that the trial court abused its discretion in denying their motion for a new trial because they were not present at the hearing on December 2, 2005, due to their "mistake or excusable neglect." In support of this argument, the Tenants reference their own affidavits that were attached to their motion for new trial. In these affidavits, both of the Tenants attest that they were *pro se* litigants at the time of the December 2, 2005, hearing and that they were "unfamiliar with the court system and the location of the circuit court of Loudon County." The affidavit of Aaron Roberts further states as follows:

I mistakenly went to the General Sessions Court building on December 2, 2005.

I quickly discovered my mistake and immediately had the clerk contact the circuit court to inform them that I was on my way to the circuit courtroom.

I arrived at the circuit courtroom at approximately 9:20 a.m. but after the case had been ruled upon.

These attestations do not persuade us that the Circuit Court abused its discretion in denying the Tenants' motion for new trial. The Tenants filed their appeal to the Circuit Court in

April of 2005, and the hearing on their appeal did not take place until December of that year. During the intervening months, the Tenants were mailed a variety of written communications indicating that matters related to their appeal would be heard in the Loudon County Circuit Court. One of these, an order of continuance mailed to the Tenants on June 30, 2005, specifically sets forth the address of the Circuit Court as 601 Grove Street, Loudon, Tennessee. The Circuit Court could have reasonably concluded from this evidence that the appellants were adequately apprised of the location of the Circuit Court and had sufficient time and opportunity to dispel any misunderstanding in that regard as a result of their unfamiliarity with the Loudon County court system. Upon that basis and the fact that the appellants had previously failed to appear at their hearing in General Sessions Court on April 21, 2005, we cannot agree that the denial of the motion for a new trial was “arbitrary, illogical or unconscionable” and therefore, we find no abuse of discretion.

B. Venue

The next issue we address is whether the trial court erred in failing to set aside its judgment and grant the Tenants a new trial because venue was improper in this case.

The appellants argue that venue in Loudon County was improper in this case because the rental property was located in Knox County, and the appellants resided in Davidson County when the Landlord filed suit against them.

Venue is a matter related to the privilege and convenience of the parties, and “it is generally not a condition precedent to the court’s power, but relates instead to the appropriateness of the location of the action.” *Meighan v. U.S. Sprint Communications Co*, 924 S.W.2d 632, 639 (Tenn. 1996). If a party makes a general appearance and does not take issue with venue, objection to venue may be found to have been waived. *Dixie Savings Stores, Inc. v. Turner*, 767 S.W.2d 408, 410 (Tenn. Ct. App. 1988).

As we have stated above, the appellants made a general appearance in this case when they filed their appeal to the Circuit Court. They neglected to file any objection to venue in this matter until after judgment was entered against them. Accordingly, we deem such objection to have been waived.

C. Subject Matter Jurisdiction

The third issue we address is whether the Circuit Court lacked subject matter jurisdiction. The Tenants contend that the Circuit Court lacked subject matter jurisdiction for several reasons. First, they rely on *Osborne v. Marr*, wherein the Tennessee Supreme Court said, “[w]hen a statute creates a cause of action and designates who may bring an action, the issue of standing is interwoven with that of subject matter jurisdiction and becomes a jurisdictional prerequisite.” *Osborne*, 127 S.W.3d 737, 740 (Tenn. 2004). The Tenants argue that the cause of action in this case was created by the Tennessee Uniform Residential Landlord and Tenant Act (“the Act”) which governs residential leases in Knox County. Tenn. Code Ann. _ 66-28-101, *et seq.* The Act provides that “if the rental agreement is terminated, the *landlord* may have a claim for possession

and for rent and a separate claim for actual damages for breach of the rental agreement and for reasonable attorney's fees." Tenn. Code Ann. _ 66-28-510 (emphasis added). "Landlord" is defined by the Act as "the owner, lessor, ... of the dwelling unit" Tenn. Code Ann. _ 66-28-104(5). The Tenants contend that there is nothing in the record showing that "Sandalwood Properties LLC" was the landlord in this matter because the lease attached to the warrant filed against them in General Sessions court identifies "Sandalwood Properties" as the lessor rather than "Sandalwood Properties LLC." The Tenants further assert that there is no evidence that "Sandalwood Properties" is a properly registered assumed name under which "Sandalwood Properties LLC" may conduct business in Tennessee. The Tenants also point out that the rental agreement was signed by Charlie and Kathie Sanders as lessors and that the Sanders did not sign in representative capacity on behalf of "Sandalwood Properties LLC" or any other entity. The Tenants contend that in light of the absence of proof that Sandalwood Properties LLC was the landlord, Sandalwood Properties LLC was without standing to file suit under the Act. Citing *Osborne, id.*, the Tenants argue that "[b]ecause the cause of action here is governed by a statute, [the Tennessee Uniform Landlord and Tenant Act], the issue of standing is inseparable from subject matter jurisdiction and cannot be waived." They maintain that, given the absence of standing, the Circuit Court abused its discretion when it failed to consider *sua sponte* the issue of subject matter jurisdiction and denied the motion for new trial.

It is true that the rental agreement attached to the warrant against the Tenants does not show the name "Sandalwood Properties LLC" or designate "Sandalwood Properties LLC" as the landlord under that agreement. However, the sworn account in this case was signed by Charles F. Sanders as chief of Sandalwood Properties LLC and attested that "Sandalwood Properties LLC" was due \$1,018.88 from the Tenants. This sworn account constituted evidence that Sandalwood Properties LLC had standing to pursue its cause of action despite any alleged deficiencies in the rental agreement. We further note that the Tenants' own motion for new trial recognized that Sandalwood Properties LLC was the landlord, stating in paragraph 11 that "The rental property being located in Knox County, Plaintiff *as Landlord* was required to follow the procedures of the Tennessee Uniform Residential Landlord and Tenant Act as enacted in Tennessee Code Annotated 66-28-101 *et seq.* when seeking to collect for repairs to the rental premises." (Emphasis added) We conclude that the Tenants' argument that Sandalwood Properties LLC lacked standing is without merit.

The Tenants also assert that under Tenn. Code Ann. _ 16-15-503, "[t]he jurisdiction of general sessions courts, when not otherwise provided, is geographically coextensive with the limits of their respective counties." The Tenants cite Tenn. Code Ann. _ 20-4-103 for the proposition that the cause of action in this case is properly characterized as an *in rem* action because it is "related to real property" and argue that "[b]ecause the land subject to the rental agreement in this case is located entirely within Knox County, and because the Rental Agreement is subject to the [Tennessee Uniform Residential Landlord and Tenant Act], which applies in Knox County but not Loudon County, the General Sessions Court of Loudon County should be held to have lacked subject matter jurisdiction."

A circuit court hearing a case *de novo* on appeal from a General Sessions court can only exercise such jurisdiction as the General Sessions court possessed; the circuit court's jurisdiction is appellate, not original. *Riden v. Snider*, 832 S.W.2d 341, 342 (Tenn. Ct. App. 1991). Thus, if

the General Sessions Court of Loudon County did not have subject matter jurisdiction, neither did the Circuit Court. However, we reject the Tenants' argument that the General Sessions Court was without subject matter jurisdiction in this case.

First, the Tenants' citation of Tenn. Code Ann. _ 20-4-103 is inapposite because that statute pertains to venue which, as previously discussed, was waived in this case. Second, the cause of action filed in the General Sessions Court indicates that it seeks to recover monies due and owing under a lease as evidenced by sworn account. We construe this to be an action to collect monies owed after breach of contract. The Tenants raise no question as to the statutory authority of the general sessions court to entertain a suit of this nature, nor do they contend that the amount sought exceeds the jurisdictional limits of the general sessions court. Therefore, it has not been shown that there is any inadequacy as to jurisdiction of the subject matter in this case.

D. Intentional Violation of the Act

The next issue presented by the Tenants is whether the Landlord intentionally violated the Tennessee Uniform Residential Landlord and Tenant Act. The record shows that this issue was raised for the first time in the Tenants' motion for new trial. It is well settled under Tennessee law that a party is not allowed to raise an issue on motion for new trial that was not presented to the court at the trial of the case. *Serv-U Mart, Inc. v. Sullivan County*, 527 S.W.2d 121, 124 (Tenn. 1975). Accordingly, we deem this issue to have been waived.

E. Attorney's Fees

Finally, the Tenants argue that the Circuit Court erred in failing to award them attorney's fees below and that we should also award them attorney's fees for this appeal. As supporting authority for this argument, they cite Tenn. Code Ann. _ 66-28-501 which allows attorney's fees when noncompliance with the Tennessee Uniform Residential Landlord and Tenant Act has been shown. As stated above, the Tenants waived the issue as to the whether the Landlord was in compliance with the Act, and accordingly, any issues as to the Tenants' entitlement to attorney's fees based upon noncompliance with the Act are also waived. Further, we decline to award the attorney's fees to the Tenants since they were not successful in this appeal.

V. Conclusion

For the foregoing reasons, the judgment of the Circuit Court is affirmed. Costs of appeal are assessed to the appellants, Aaron Roberts and Kelli Dunn aka Kelli Dunn Roberts.

SHARON G. LEE, JUDGE