COURT OF APPEALS
DECISION
DATED AND FILED

June 8, 2000

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. *See* WIS. STAT. § 808.10 and RULE 809.62.

No. 99-2509

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

MEYER REALTY AND MANAGEMENT, INC.,

PLAINTIFF-RESPONDENT,

V.

ROGER PHILBRICK,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County: RICHARD J. CALLAWAY, Judge. *Affirmed.*

¶1 EICH, J.[1] Roger Philbrick, appearing without counsel, appeals from a small claims judgment directing him to pay back rent to his landlord, Meyer

[1] This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(a) (1997-98).

Realty, that accrued after he vacated his apartment several months before the end of the lease.

¶2 He argues that the judgment should not have been entered because he had moved out of the apartment due to "cockroach and rodent infestation." Specifically, he claims that, in entering judgment against him, the court: (a) erroneously accepted the landlord's testimony that there was never a cockroach problem in the apartment until Philbrick moved in, rather than his own contrary testimony; (b) erroneously declined to hear evidence from "a city official" as to the existence of cockroaches in the apartment; and (c) that the trial judge was "biased" because he did not "submit, as evidence, the official records of the City of Madison Official" and at one point "cited defendant as being strange."[2]

I. Background

¶3 Philbrick, who had leased the apartment for one year, beginning in August 1997, moved out in January 1998. Meyer brought the action seeking rent for part of January and the months of February, March, April and May 1998.[3] Philbrick answered the complaint, indicating that he was "disputing" the rent claims and stating that he felt he was "the victim of abuse and neglect by the Land Lady and Meyer Realty." No mention was made of a cockroach problem. The

[2] Philbrick also asserts that Irene Schutte, the building's owner, perjured herself when, after testifying that Philbrick first complained about cockroaches after February 1, 1998, she later acknowledged that his complaint could have been in January. If courts were to consider every slight testimonial inconsistency to be perjurious, the jails would be much fuller than they are. Schutte's correction, or equivocation, or whatever one might wish to call it, is not perjurious, nor does it constitute any reason to reverse the judgment.

[3] The complaint initially asked for other damages, but those claims were dropped by Meyer in order to simplify the trial.

court commissioner ruled in Philbrick's favor and Meyer sought a trial *de novo* in circuit court.

¶4 At trial, Philbrick testified that when he moved into the apartment in August 1997, there was a "rodent under the rug" and cockroaches were "crawling all over [the place]." He said that Irene Schutte, who owned the building at that time, knew about the problem and would give him cans of insect spray every two to three weeks. He said that, by October, the problem had worsened—that the cockroaches were "climbing the walls" and it was so bad that he "filed a report" with the City of Madison, which resulted in an order to Schutte to correct the problem. He said that, when he moved out in January 1998, he told Schutte at the time that he was doing so because of the cockroach problem. He acknowledged that he never mentioned any cockroach problem in his answer to the complaint or in several letters he wrote to Schutte immediately before he moved out—including one letter outlining his "complaints" about the apartment. Philbrick's daughter also testified that she saw cockroaches a few days after they moved in and that they remained throughout their stay in the apartment.

¶5 Irene Schutte testified that there were no rodents in the apartment, or any "health" or other problems prior to the time Philbrick moved in. She said she helped Philbrick and his daughter clean the apartment when they moved in and that she saw no cockroaches or rodents at that time. She testified that she hadn't received any complaints about cockroaches from Philbrick prior to February 1, 1998, although she later said he might have told her in January. She said that when she learned of the cockroaches, she brought Philbrick some insect spray and immediately contacted a pest control company.

¶6 Several exhibits were received at trial, including the following: (1) a "Complaint Inspection" report from the City of Madison dated January 6, 1998, requiring elimination of cockroaches from the building by March 8, 1998; (2) a city "Code Enforcement Worksheet" indicating that an inspection of the apartment on March 6, 1998, showed that Schutte was "in compliance" with the earlier order; (3) a letter from Philbrick to Schutte dated January 20, 1998, apparently in explanation of late rents, which contains no reference to cockroaches or any other problem in the apartment; and (4) a letter from Philbrick to Schutte dated January 16, 1998, complaining at length about "apartment problems"—a bathroom leak, a broken light fixture, and a refrigerator that wasn't "cold enough."[4]

¶7 After hearing arguments from Philbrick and Meyer's attorney, the trial court issued its decision from the bench. It stressed that Philbrick's letters to Schutte contained no mention of cockroaches, and stated: "it seems to me it is strange that you would apparently endure, for six months, a cockroach problem, without any complaint. I don't know why you didn't call the building inspector in August if you had a problem." The court also noted that the city inspection report showed that Schutte had "responded quite quickly" to the problem and corrected it. The court entered judgment for Meyer for the claimed back rent.

II. Discussion

¶8 Philbrick seems to be arguing that the trial court could not decide in Meyer's favor because his testimony conflicted with Schutte's. The supreme court, in ***State v. Owens***, 148 Wis. 2d 922, 929-30, 436 N.W.2d 869 (1989), ruled

[4] This letter, like the other, contains no mention of cockroaches. It concludes: "If you cannot fix, please let me move."

quite clearly that conflicts in the testimony are to be resolved by the trial court, and that the appellate court must defer to the trial court's decision in that regard.

¶9 It is, of course, the trial court's task, where testimony conflicts, to make its own determination of which version of the facts to accept. It is for the trial court, not this court, to resolve inconsistencies, conflicts and contradictions in the testimony—whether they appear in the testimony of a single witness, or are created by the interplay of several witnesses' statements. One of the trial judge's great responsibilities is to assess the credibility of the witnesses and the weight to be accorded their testimony. We accord substantial deference to such assessments because they are based on the judge's presence in the courtroom, and the attendant opportunity not only to hear the testimony, in all its inflections, but to observe the demeanor and "body language" of the witnesses as they are testifying. It is this "superior view of the total circumstances of the witnesses' testimony" that warrants accepting the trial court's findings based on those assessments unless they are clearly erroneous. ***Id.***

¶10 Philbrick has offered nothing—other than the testimonial inconsistencies themselves—in support of his argument. This is a case, like thousands of others that come before us each year, where the trial court gave less credence to one party's testimony than it did to another's. And it explained its reasons for doing so (expressing doubt, for example, that a person with huge and persistent cockroach and rodent problems in his apartment would wait several months before contacting city authorities). Philbrick has not established that the trial court's resolution of those consistencies is clearly erroneous.

¶11 As to Philbrick's claim that the court erroneously declined to hear evidence from "a city official," the record indicates that after Philbrick and his

daughter testified, and after Philbrick had successfully moved the admission of several exhibits, the court asked whether he had any other witnesses, to which he replied: "No, Your Honor." We see no grounds for his complaint in this regard.[5]

¶12 Finally, Philbrick's argument that the trial judge was biased is essentially based on the fact that the court decided the case against him—that he didn't get the result he wanted. He sets forth no assertions of bias other than to claim that the court said he was "strange," and that it "did not honor or admit testimony of not only the City official or the Defendant [sic]." As to the "strange" comment, we noted above that the court, at one point in its decision remarked: "[I]t seems to me it is strange that [Philbrick] would apparently endure, for six months, a cockroach problem without any complaint [to the city building inspector]." We see nothing in that brief statement suggesting bias in any degree. The court was simply explaining why it was giving less weight to Philbrick's testimony than to Schutte's. Finally, as to the "city witness," we have noted above that, after he and his daughter testified, Philbrick told the court he had no further witnesses. We also note that every exhibit Philbrick offered was admitted into evidence. In short, nothing in Philbrick's brief suggests that the trial judge was in any way biased against him.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23 (1997-98).

[5] We note also that if, as Philbrick suggests, the "city official" would have testified to the presence of cockroaches in the apartment, there doesn't seem to be any dispute that there were—at least in January—for the city reports were admitted into evidence. And while they do show the existence of a problem in January, they also show that the problem was corrected by Schutte well within the time limit the city had established.