

STATE OF MINNESOTA
IN COURT OF APPEALS

A23-1317



Zachiea Properties,

Respondent,

vs.

Donald Chounard,

Appellant.

ORDER OPINION

Becker County District Court
File No. 03-CV-23-1159

Considered and decided by Larkin, Presiding Judge; Bratvold, Judge; and Frisch, Judge.

BASED ON THE FILE, RECORD, AND PROCEEDINGS, AND BECAUSE:

1. In July 2023, respondent-landlord Zachiea Properties filed an eviction action alleging that appellant Donald Chounard failed to pay rent and materially violated the lease by conducting unauthorized yard work.

2. On August 11, following an evidentiary hearing, the district court granted judgment for the landlord for recovery of the premises but stayed the judgment until August 18. The district court based its decision on Chounard's failure to pay rent and it declined to rule on whether any yard work constituted a material violation of the lease. The district court reasoned that Chounard provided no documents showing that he paid rent and therefore failed to meet his burden to establish a rebuttable presumption that rent had been paid. And the district court reasoned that Chounard failed to exercise his right to redeem

the tenancy, ruling that “[i]f [landlord] rejected the money from Chounard to pay back-rent (as he claims), then his remedy would have been to bring the money to Court and exercise his redemption at the hearing. Because he did not do so, eviction is proper.”

3. Chounard received the decision of the district court by mail a few days later. He then moved the district court for a stay of the writ pending appeal. On August 18, the district court granted the motion on the condition that Chounard post a bond totaling \$1,212 by noon the same day, pursuant to Minn. Stat. § 504B.371, subd. 3 (2022). Later that day, Chounard notified the district court that he was unable to obtain money to timely post the bond. Chounard also asserted that his right to redeem his tenancy “was revoked from me I expect due the inability to pay rent before . . . and the judgment was held over to the day after court so I didn’t know what I owed the day of court.”

4. On August 21, the district court issued the writ of recovery. The same day, Chounard submitted to the district court a request to file a motion to reconsider, noting that the district court “was under the impression that [he] could pay by way of money order” but that he could not do so under the lease. Chounard asserted that he brought money to court to pay back rent and asserted that he tried to directly pay landlord following the hearing. We note that the record does not reflect a ruling from the district court on Chounard’s request to file a motion to reconsider.

5. Chounard now appeals. He argues that this court should reverse the district court’s eviction judgment because (1) the district court erroneously excluded video evidence and witness testimony offered by Chounard, (2) landlord falsely represented that a permit was required for the yard work at issue, and (3) Chounard was wrongfully denied

an opportunity to redeem his lease. Landlord did not file a responsive brief. We address each issue in turn.

6. We discern no prejudice to Chounard as a result of the district court's evidentiary rulings. Evidentiary rulings are within the discretion of the district court, and we will not reverse such rulings unless the district court abused its discretion, and that abuse of discretion prejudiced the complaining party. *Cloverdale Foods of Minn., Inc. v. Pioneer Snacks*, 580 N.W.2d 46, 51 (Minn. App. 1998). At the evidentiary hearing, Chounard sought to admit certain video evidence and testimony related to whether he materially violated the lease. Because the district court's judgment from which Chounard appeals is not based on a material violation of the lease, the district court's evidentiary rulings did not prejudice Chounard.

7. Chounard also seeks reversal of the eviction judgment because he alleges that landlord's allegation that a permit was required to complete the yard work that Chounard undertook was false. "An appealing party bears the burden of demonstrating both error and prejudice." *Palladium Holdings, LLC v. Zuni Mortg. Loan Tr. 2006-OA1*, 775 N.W.2d 168, 178 (Minn. App. 2009), *rev. denied* (Minn. Jan. 27, 2010). Because the district court did not base its decision on the allegedly false statement, Chounard failed to meet his burden to establish prejudice.

8. Chounard contends that the district court erroneously denied him an opportunity to redeem his tenancy. In an eviction action based on nonpayment of rent, a tenant may redeem their tenancy by "paying to the landlord or bringing to court the amount of the rent that is in arrears, with interest, costs of the action, and an attorney's fee not to

exceed \$5, and by performing any other covenants of the lease” “at any time before possession has been delivered.” Minn. Stat. § 504B.291, subd. 1(a) (2022). Possession is delivered within the meaning of the statute when the writ of recovery of the premises issues. *Paul McCusker & Assocs., Inc. v. Omodt*, 359 N.W.2d 747, 748-49 (Minn. App. 1985) (citing *614 Co. v. D.H. Overmyer Co.*, 211 N.W.2d 891, 894 (Minn. 1973)), *rev. denied* (Minn. Mar. 29, 1985). The district court may grant additional time to pay interest, costs, and attorney fees. Minn. Stat. § 504B.291, subd. 1(b) (2022). We “review the district court’s legal conclusions de novo.” *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018).

9. In its memorandum, the district court wrote that Chounard could have exercised his right to redeem by bringing money to the evidentiary hearing and, because he did not do so, he failed to exercise his right to redeem the tenancy. This is a misstatement of the law. A tenant may redeem their tenancy at any time before the writ of recovery of the premises issues. Minn. Stat. § 504B.291, subd. 1 (2022); *McCusker*, 359 N.W.2d at 748-49. The writ of recovery did not issue until several days after the eviction judgment.

10. The record shows that this misstatement of the law prejudiced Chounard. Chounard’s post-judgment filings on August 18 and August 21 indicate that he was confused about whether he could still exercise his right to redeem his tenancy following the eviction judgment. At the time of his August 18 filing, Chounard still had the right to redeem. But the district court in its order for judgment and accompanying memorandum misstated that Chounard had failed to exercise that right, suggesting that his right to redeem had expired. Nothing in the record indicates that the district court corrected its

misstatement after Chounard expressed confusion about his ability to exercise the right to redeem. And Chounard consistently asserted that he had the money necessary to redeem the tenancy. Because the record indicates that Chounard may have redeemed the tenancy before the writ issued if he had been aware of his ability to do so, and the reason he was unaware of his right to redeem may have resulted from the district court's misstatement of the law, we conclude that Chounard met his burden to establish that he was prejudiced by the district court's error.

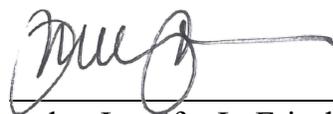
IT IS HEREBY ORDERED:

1. The district court's eviction judgment is reversed and remanded for further proceedings not inconsistent with this opinion. The district court may in its discretion reopen the record on remand. We express no opinion as to whether Chounard is entitled to possession of the premises.

2. Pursuant to Minn. R. Civ. App. P. 136.01, subd. 1(c), this order opinion is nonprecedential, except as law of the case, res judicata, or collateral estoppel.

Dated: 5/1/24

BY THE COURT



Judge Jennifer L. Frisch