STATE OF MINNESOTA
IN COURT OF APPEALS
A21-0466

Gloria Fritz,
Respondent,

vs.

Daphne Elaine Brown,
Appellant.

Filed November 22, 2021
Affirmed; motion denied
Ross, Judge

Ramsey County District Court
File No. 62-HG-CV-21-68

Gloria Fritz, St. Paul, Minnesota (pro se respondent)

Daphne Brown, St. Paul, Minnesota (pro se appellant)

Considered and decided by Ross, Presiding Judge; Larkin, Judge; and Klaphake, Judge.*

NONPRECEDENTIAL OPINION

ROSS, Judge

Residential landlord Gloria Fritz sued to evict tenant Daphne Brown from Fritz's four-unit house, alleging that she needed Brown out to make room for Fritz's medically ailing daughter. The district court believed Fritz's testimony over Brown's contention that

* Retired judge of the Minnesota Court of Appeals, serving by appointment under Minn. Const. art. VI, § 10.

Fritz fabricated the medical reason as a pretext to circumvent the governor's rent nonpayment eviction moratorium. Brown asks us to reverse the resulting eviction, arguing that the district court improperly refused to allow discovery and erroneously found facts. Because the district court acted within its discretion by denying Brown's tardy discovery request and based its findings on ample evidence in the record, we affirm.

FACTS

This dispute concerns the occupancy of one of the units in a St. Paul multifamily house that Gloria Fritz owns. The house has four units: a lower-level unit, a first-floor unit (where Fritz lives), and two second-floor units. Fritz rented one of the upper-level units to Daphne Brown in October 2020. Brown paid part of the first month's rent, and no more.

Fritz sought to evict Brown for nonpayment until an assistant attorney general warned her that the governor's eviction moratorium prevented evictions for rent nonpayment. *See* Emergency Exec. Order No. 20-79, *Modifying the Suspension of Evictions and Writs of Recovery During the COVID-19 Peacetime Emergency* ¶¶ 2–3 (July 14, 2020) (EEO 20-79). Fritz tried to reach a rent-payment agreement with Brown, to no avail. She eventually told Brown that she needed the unit so that her son could move in. Brown refused to leave, and she continued paying nothing.

Fritz filed an eviction complaint to oust Brown. Fritz testified during the eviction trial that her daughter had suffered a stroke and needed to move into the house, requiring Brown's departure. Fritz's son corroborated this testimony in an affidavit. Brown tried to contradict this evidence with hearsay testimony, saying that Fritz's daughter's half-brother told her that Fritz's daughter did not have a stroke. Brown also asked the district court to

set a discovery schedule during which she could seek evidence about the alleged stroke. The district court refused, concluding that Brown's discovery request was untimely.

The district court found Fritz's testimony more credible than Brown's and found that Fritz needed Brown to vacate to make room for Fritz's family members. It therefore ordered Brown to vacate. Brown appeals.

DECISION

Brown challenges the district court's judgment of eviction. Before reaching the merits of Brown's appeal, we observe that the appeal is not moot despite the governor's moratorium having been replaced by a legislative moratorium with different terms and exceptions. *See* Laws of Minnesota 2021, 1st Spec. Sess. ch. 8, art. 5. ("Notwithstanding [the Minnesota Emergency Management Act of 1996 authorizing emergency executive orders], or any other law to the contrary, Executive Orders 20-14, 20-73, and 20-79 are null and void" effective June 30, 2021.) Because in another opinion also released today we hold that the new law does not apply retroactively, *Fairmont Hous. and Redevelopment Auth. v. Winter*, No. A21-0244 (Minn. App. Nov. 22, 2021), the new law does not moot the appeal, and we turn to the merits.

Brown first raises a procedural challenge, arguing that the district court improperly denied her midtrial motion seeking discovery. We review discovery orders for an abuse of discretion. *Sehlstrom v. Sehlstrom*, 925 N.W.2d 233, 238 (Minn. 2019). We see no abuse of discretion here. Parties to an eviction action, which is a summary housing proceeding if administered in housing court, must cooperate in informal discovery. Minn. R. Gen. Prac. 612. If any party requests it, the district court "may" order expedited discovery. *Id.* The

word "may" is permissive and does not obligate the district court to halt proceedings and open discovery. Minn. Stat. § 645.44, subd. 15 (2020). To the contrary, the rule presumes a summary, efficient, expedited proceeding. In that framework, the district court acted well within its discretion by denying Brown's discovery request, made more than halfway through the eviction trial.

Brown next challenges the district court's eviction decision in substance. An eviction is a summary proceeding to determine which party has rights to possess real property. *Nationwide Hous. Corp. v. Skoglund*, 906 N.W.2d 900, 907 (Minn. App. 2018), *rev. denied* (Minn. Mar. 28, 2018). We review the district court's findings of fact for clear error and its conclusions of law de novo. *Id.* Brown specifically argues that the district court improperly concluded that Fritz's true reason for the eviction falls within the moratorium's family-move-in exception because, she contends, the decision improperly relies on Fritz's testimony over her own and the evidence does not support the judgment. Neither argument prevails.

We address first Brown's challenge to the district court's credibility findings. We defer to the fact-finder's credibility determinations and factual findings unless the record shows that they are clearly erroneous. *See Sefkow v. Sefkow*, 427 N.W.2d 203, 210 (Minn. 1988). Brown argues that Fritz's testimony that her daughter suffered a stroke is merely a pretext to hide her true reason to evict, rent nonpayment—a circumstance precluded by the moratorium. *See* EEO 20-79 ¶¶ 2–4 (prohibiting evictions for rent nonpayment unless, among other exceptions, the owner needs the property to house a family member). Brown points out that Fritz had previously tried to evict her for nonpayment, and she emphasizes

her own testimony that she had heard that Fritz's daughter never suffered a stroke. We might reverse based on this argument only if we were to reweigh the evidence presented to the district court and remake credibility determinations made by the district court. These we will not do under our deferential standard of appellate review on matters of fact. The district court chose to believe Fritz's testimony despite the competing evidence, and Fritz's testimony supports the factual finding that Fritz's daughter in fact had suffered a stroke.

We address second Brown's legal argument that the finding does not satisfy the family-move-in exception to the eviction moratorium. We review legal determinations de novo. *Rasmussen v. Two Harbors Fish Co.*, 832 N.W.2d 790, 805 (Minn. 2013). The family-move-in exception applies "to residential landlords who . . . need to move the property owner or property owner's family member(s) into the property." EEO 20-79 ¶ 4. Brown argues that the evidence did not establish that Fritz "need[ed]" to move her family into Brown's unit because there are two other vacant units in the house. But we do not address arguments raised first on appeal, *Thiele v. Stich*, 425 N.W.2d 580, 582 (Minn. 1988), and Brown did not raise the argument at trial. We add that even if she had raised the argument, the district court did not find, and the record does not include evidence showing, that the other units in the building were in fact vacant.

Soon after this appeal was submitted to our panel for decision, Fritz served and filed a motion to expedite the decision, asserting hardship because Brown has remained in the unit under a stay pending this appeal. Brown filed no response. Having now resolved this appeal, we deny the motion as moot.

Affirmed; motion denied.