

DISTRICT OF COLUMBIA COURT OF APPEALS

Crockett v. Deutsche Bank National Trust

16 A.3d 949 (D.C. 2011) · No. 09-CV-1180 · Decided March 31, 2011

SUMMARY

The District of Columbia Court of Appeals affirmed a judgment for possession entered as a sanction after a former mortgagor failed to make payments required by a protective order following foreclosure. The court held that Superior Court Landlord and Tenant Rule 12-I(g)(2)(B) did not prohibit the sanction because the parties lacked a contractual landlord-tenant relationship. The court declined to review the initial protective order due to the appellant's failure to preserve the issue and provide an adequate record.

CASE DETAILS

COURT	District of Columbia Court of Appeals
WRITING FOR THE COURT	Kramer, Associate Judge; Reid, Associate Judge; Thompson, Associate Judge
JURISDICTION	District of Columbia
DECIDED	March 31, 2011
DOCKET	09-CV-1180
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the trial court's entry of a non-redeemable judgment for possession and striking of the appellant's pleadings as a sanction for nonpayment of a protective order under Superior Court Landlord and Tenant Rule 12-I(g).
STANDARD OF REVIEW	Legal conclusions are reviewed de novo. The trial court's exercise of discretion in entering and enforcing a protective order is reviewed for abuse of discretion, but the appellate court could not evaluate that issue because it was raised for the first time on appeal and the record was inadequate.
PRECEDENTIAL VALUE	Published opinion; precedential
PARTIES	Andrena Crockett v. Deutsche Bank National Trust

TOPICS

foreclosure

eviction

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PRACTICE AREAS

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QUESTIONS PRESENTED

1. Whether Superior Court Landlord and Tenant Rule 12-I(g)(2)(B) prohibited the trial court from entering a judgment for possession as a sanction because the action did not allege nonpayment of rent.
2. Whether the appellate court could review Crockett's challenge to the initial entry and amount of the protective order when the issue was raised for the first time on appeal and the record lacked the relevant hearing transcript.
3. Whether the landlord-and-tenant proceeding precluded a later wrongful-foreclosure claim.

HOLDINGS

1. Rule 12-I(g)(2)(B) prohibits possession as a sanction in a case involving a contractual landlord-tenant relationship with no allegation of nonpayment of rent; it does not prohibit possession as a sanction when the parties lack a contractual landlord-tenant relationship. A holdover mortgagor after foreclosure is a tenant at will for purposes of summary possession procedures, but is not in a contractual landlord-tenant relationship with the foreclosure purchaser.
2. The court could not review Crockett's challenge to the initial protective order because the issue was raised for the first time on appeal and the record lacked the transcript necessary to evaluate the trial court's exercise of discretion.
3. The landlord-and-tenant possession proceeding did not decide title on the merits and therefore did not preclude Crockett from filing a separate wrongful-foreclosure claim based on an alleged failure to provide an opportunity to cure or other irregularities.

KEY QUOTATIONS

“Rule 12-I(g)(2)(B) prohibits the grant of possession as a sanction for violating a protective order where the parties have a contractual landlord-tenant relationship and there are no allegations of non-payment of rent; it does not prohibit the entry of a judgment for possession as a sanction where the parties do not have a contractual landlord-tenant relationship.” (16 A.3d at 951)

“Thus, we hold that the trial court did not err when granting the Trust's motion for possession.” (16 A.3d at 952)

“Ultimately, we affirm because once the protective order was entered, Rule 12-I(g)(2)(B) did not prohibit the court from exercising its discretion to strike the pleadings and grant possession, see Davis, supra, 456 A.2d at 826, and as presented, we are unable to review the initial entry of the protective order.” (16 A.3d at 953)

FACTUAL BACKGROUND

Deutsche Bank foreclosed on Crockett's house in December 2009 and purchased the property at the foreclosure sale. Crockett remained in possession after receiving thirty days' notice to quit and asserted that she had not received an opportunity to cure the mortgage default and was attempting to repurchase the property. The trial court ordered her to pay \$4,691 per month into the court registry as a protective order; after she made no payments, the court struck her pleadings and entered a non-redeemable judgment for possession.

PROCEDURAL HISTORY

Deutsche Bank foreclosed on Crockett's house, purchased it at the foreclosure sale, served her with thirty days' notice to quit, and filed an action for possession after she failed to vacate. The trial court ordered Crockett to deposit \$4,691 per month into the court registry, and after she made no payments, struck her pleadings and entered a non-redeemable judgment for possession. The court denied reconsideration, and the District of Columbia Court of Appeals affirmed.

DISPOSITION

affirmed

CASES CITED

- Matthews v. District of Columbia, 875 A.2d 650, 654 (D.C. 2005)
- Nicholas v. Howard, 459 A.2d 1039, 1040-1041 (D.C. 1983)
- Taylor v. First Am. Title Co., 509 A.2d 96, 97 (D.C. 1986)
- Trans-Lux Radio City Corp. v. Serv. Parking Corp., 54 A.2d 144, 146 (D.C. Mun. App. 1947)
- Simpson v. Jack Spicer Real Estate, Inc., 396 A.2d 212, 214 (D.C. 1978)
- Lindsey v. Prillman, 921 A.2d 782, 785-786 (D.C. 2007)
- Walker v. Smith, 499 A.2d 446, 450 (D.C. 1985)
- Bell v. Tsintolas Realty Co., 139 U.S. App. D.C. 101, 430 F.2d 474, 485 (D.C. Cir. 1970)
- Taylor v. First Am. Title Co., 477 A.2d 227 (D.C. 1984)
- McQueen v. Lustine Realty Co., 547 A.2d 172, 175, 180 (D.C. 1988)
- Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP, 799 A.2d 381, 388 (D.C. 2002)
- Van Durr v. Kator & Scott, Chartered, 788 A.2d 579, 580-581 (D.C. 2002)
- Williams v. Dudley Trust Found., 675 A.2d 45, 55 (D.C. 1996)
- Cobb v. Standard Drug Co., Inc., 453 A.2d 110, 112 (D.C. 1982)
- Davis v. Rental Assocs., Inc., 456 A.2d 820, 826 (D.C. 1983)
- Turner v. Day, 461 A.2d 697, 699-700 (D.C. 1983)
- Penny v. Penny, 565 A.2d 587, 589 (D.C. 1989)
- Mahoney v. Campbell, 209 A.2d 791, 794 (D.C. 1965)
- Banks v. Eastern Savings Bank, 8 A.3d 1239 (D.C. 2010)

OPINION

Crockett v. Deutsche Bank National Trust 16 A.3d 949

KRAMER, J.

16 A.3d 949 (2011) Andrena CROCKETT, Appellant, v. DEUTSCHE BANK NATIONAL TRUST, Appellee. No. 09-CV-1180. District of Columbia Court of Appeals. Submitted November 12, 2010. Decided March 31, 2011.

*950 Andrena Crockett, pro se.

Carol S. Blumenthal and Edward J. Cordone, for appellee. Before REID, KRAMER, and THOMPSON, Associate Judges. KRAMER, Associate Judge: Andrena Crockett appeals the trial court's entry of a non-redeemable judgment for possession and the striking of her pleadings as a sanction for non-payment of a protective order under Superior Court Landlord and Tenant Rule 12-I(g). We find no error and affirm. Deutsche Bank National Trust (the Trust) foreclosed on Crockett's house in December of 2009. At the foreclosure sale, the Trust itself purchased the home. Subsequently, the Trust provided Crockett with thirty-days notice to quit, and after Crockett did not vacate the premises, filed suit for possession in the Landlord and Tenant Court. Crockett's answer alleged that she had not been provided a right to cure her mortgage default,[1] and that she was attempting to re-purchase the home.[2] The court entered a protective order requiring Crockett to pay \$4,691 per month into the court registry, an amount which corresponded to her monthly mortgage payment. Crockett did not make any payments into the court registry, and as a sanction, the trial court entered a judgment for non-redeemable possession to the Trust. The trial court declined to modify its ruling after reconsideration. Crockett appeals, arguing that because the suit for possession was not a case involving non-payment of rent, Superior Court Landlord and Tenant Rule 12-I(g)(2)(B) prohibits the granting of possession as a sanction. For the reasons stated herein, we disagree, and affirm the order of the trial court. We review the trial court's legal conclusions de novo. *Matthews v. District of Columbia*, 875 A.2d 650, 654 (D.C.2005). Superior Court Landlord and Tenant Rule 12-I(g) allows for the issuance of sanctions, including a grant of possession, where a party violates a protective order. However, Rule 12-I(g)(2)(B) provides: Cases without allegations of nonpayment of rent. The Court shall not enter a judgment for possession as a sanction for the defendant's failure to comply with a protective order in a case in *951 which the plaintiff seeks the entry of a judgment for possession that is not subject to the defendant's right to redeem the tenancy and avoid eviction. Thus, Crockett argues that because her case was without an allegation of nonpayment of rent, the trial court was not able to enter a judgment for possession as a sanction. The Trust argues, and the trial court held, that Rule 12-I(g)(2)(B) is inapposite because the Trust and Crockett never had a landlord-tenant relationship, and Rule 12-I(g)(2)(B) only applies to leasehold situations. The parties and the trial court agreed that Crockett and the Trust never had a landlord-tenant relationship. "A landlord-tenant relationship does not arise by mere occupancy of the premises; absent an express or implied contractual agreement, with both privity of estate and privity of contract, the occupier is in adverse possession as a `squatter.'" *Nicholas v. Howard*, 459 A.2d 1039, 1040 (D.C.1983) (citation omitted). Our law defines a

"squatter" who is a mortgagor remaining in possession after a foreclosure sale as a "tenant at will." D.C.Code § 42-522. While the term "tenant" is used to define such status, that term itself does not create a contractual landlord-tenant relationship; it is used to allow property owners to avail themselves of the summary procedures of the Landlord and Tenant Branch. Nicholas, *supra*, 459 A.2d at 1040; see also *Taylor v. First Am. Title Co.*, 509 A.2d 96, 97 (D.C.1986) ("Assuming appellants were tenants at will after foreclosure, they were not in a contractual relationship with appellee, which purchased the property at foreclosure."). We agree with the trial court's interpretation of Rule 12-I(g)(2)(B). Rule 12-I(g)(2)(B) prohibits the grant of possession as a sanction for violating a protective order where the parties have a contractual landlord-tenant relationship and there are no allegations of non-payment of rent; it does not prohibit the entry of a judgment for possession as a sanction where the parties do not have a contractual landlord-tenant relationship. The rule applies to proceedings where the tenancy is non-redeemable, which means that a tenant cannot redeem her lease by paying the rent due. By referencing redemption, the rule presupposes that the person in possession is in a contractual landlord-tenant relationship. See *Trans-Lux Radio City Corp. v. Serv. Parking Corp.*, 54 A.2d 144, 146 (D.C.Mun.App.1947) ("[A] court of law or equity may relieve a tenant from forfeiture of his lease for nonpayment of rent by permitting him ... to pay the rent due.") (emphasis supplied). Properly understood, the rule applies to situations where a tenant is in violation of her lease for reasons other than non-payment of rent, for example, violating a no-pets clause or other covenant, and thus is unable to redeem her tenancy by paying the back rent. Thus, the rule cannot apply to a tenant at will who is a holdover mortgagor, because there is no lease at issue whatsoever, and no rent due from such a tenant at will.[3] See Nicholas, *supra*, 459 A.2d at 1041. Moreover, other sections of the rule explicitly apply to a relationship where rent is paid. Super. Ct. L. & T.R. 12-I(a) ("If entered, the protective order shall require the defendant to deposit money into the *952 court registry instead of paying rent directly to the plaintiff."). We reached a similar conclusion when considering whether or not the protections of the Rental Accommodations Act applied to tenants at will who are holdover mortgagors. Holding that they did not, we wrote that [t]he primary fallacy in appellant's position is his contention that the statutes are in *pari materia* and that the term 'tenant' is defined consistently throughout the D.C.Code. The distinction here is between a tenant at common law one who holds or possesses lands by any kind of right or title and a tenant under the renters' statute one who stands in a contractual relationship with his landlord. *Simpson v. Jack Spicer Real Estate, Inc.*, 396 A.2d 212, 214 (D.C.1978) (citation omitted). The "tenancy" envisioned by Rule 12-I encompasses the latter, not the former, and Rule 12-I(g)(2)(B) does not prohibit the grant of possession as a sanction where the protective order was entered in a case lacking a contractual landlord-tenant relationship. Thus, we hold that the trial court did not err when granting the Trust's motion for possession.[4] Of course, this begs the question why a protective order was entered in the first instance.[5] Protective orders, by their very nature, are designed to govern a contractual landlord-tenant relationship, and their utility is questionable when the litigants lack such a relationship. See

Lindsey, supra note 5, 921 A.2d at 786 ("[T]he judge determined that a protective order was not warranted because appellant had not demonstrated that this was a suit for possession based on nonpayment of rent. We believe that this ruling should stand."); Walker v. Smith, 499 A.2d 446, 450 (D.C. 1985) ("Moreover, in the absence of the traditional landlord-tenant relationship, with privity of contract, the validity of [a] protective order is open to serious question."); see generally Bell v. Tsintolas Realty Co., 139 U.S.App. D.C. 101, 430 F.2d 474, (1970) (describing the particular applicability of protective orders in the landlord-tenant context). That said, we have left open the possibility that protective orders may be appropriate in some circumstances outside of the landlord-tenant context, and have occasionally *953 implicitly endorsed them. Lindsey, supra note 5, 921 A.2d at 785 ("[W]e decline to say that a periodic-payment protective order can never be contemplated for use outside the typical landlord-tenant context."); Taylor v. First Am. Title Co., 477 A.2d 227 (D.C.1984) (upholding the striking of a plea where the tenants at will after foreclosure failed to make payments on either an undertaking or a protective order), overruled on other grounds by McQueen v. Lustine Realty Co., 547 A.2d 172, 175 (D.C.1988). Crockett, for the first time on appeal, assigns error to the initial entry of the protective order, but has not provided a record sufficient to evaluate the exercise of the trial court's discretion.[6] Crockett did not provide transcripts from the hearing where the order was entered;[7] her appeal only notes the order granting possession to the Trust, and at the sanctions hearings (transcripts of which Crockett did provide) she did not object to the entry of the order, only to the subsequent grant of possession. Even mindful that Crockett is proceeding pro se, we are unable to assess the initial entry of the protective order both because the point is raised for the first time on appeal, and because we have no record by which to evaluate the trial court's exercise of discretion.[8] See Wallace v. Skadden, Arps, Slate, Meagher & Flom LLP, 799 A.2d 381, 388 (D.C.2002) (arguments not raised below are normally spurned on appeal); Van Durr v. Kator & Scott, Chartered, 788 A.2d 579, 580-81 (D.C.2002) (holding that this court was unable to reach alleged errors where pro se appellant did not provide an adequate record); Williams v. Dudley Trust Found., 675 A.2d 45, 55 (D.C.1996) (finding that the court was unable to disturb the setting of an undertaking where the appellant failed to provide an adequate record); Cobb v. Standard Drug Co., Inc., 453 A.2d 110, 112 (D.C.1982) ("Appellate review is limited to matters appearing in the record before us.") (citation omitted). Ultimately, we affirm because once the protective order was entered, Rule 12-I(g)(2)(B) did not prohibit the court from exercising its discretion to strike the pleadings and grant possession, see Davis, supra, 456 A.2d at 826, and as presented, we are unable to review the initial entry of the protective order. Further, we note that because the landlord-tenant proceeding did not decide title on the merits, see D.C.Code § 16-1505; Turner v. Day, 461 A.2d 697, 699-700 (D.C.1983), Crockett is not precluded from filing a claim for wrongful foreclosure stemming from the alleged failure to provide an opportunity to cure or other irregularities. Affirmed.

NOTES

[1] The record suggests that Crockett's answer was referring to a previous foreclosure sale,

instituted by Fremont Investment and Loan, the originator of the mortgage, who later assigned the mortgage to the Trust. The Fremont sale was aborted when Crockett filed for bankruptcy. Crockett indicates, however, that she did receive a right to cure notice more than thirty-days prior to the foreclosure sale where the Trust purchased the home.

[2] Though Crockett now argues that her answer should have been construed as a plea of title, the trial court did not construe it as such, her answer did not meet the procedural requirements of Superior Court Landlord and Tenant Rule 5, and we do not understand her argument to be that she actually owns the property. If Crockett had interposed a plea of title, the court would have ordered an undertaking which, if not paid by Crockett, would have led to the striking of her pleadings. See Super. Ct. L. & T.R. 5(c).

[3] However, as Nicholas itself indicates, such a tenant at will is liable for the "use and occupancy value" of his possession after foreclosure. Nicholas, *supra*, 459 A.2d at 1040-41. Also, the situation of a mortgagor who holds over after foreclosure should be distinguished from that of a tenant of the mortgagor who holds over after foreclosure, as the latter may be entitled to a number of statutory protections under the Rental Housing Act. See *Banks v. Eastern Savings Bank*, 8 A.3d 1239 (D.C.2010).

[4] Crockett's other contentions lack merit. Crockett did not move for a reconsideration of the protective order, and the trial court properly conducted the required inquiry before issuing the judgment for possession as a sanction. Super. Ct. L. & T.R. 12-I(g); see also *Davis v. Rental Associates, Inc.*, 456 A.2d 820 (D.C.1983) (describing the requisite considerations before striking a pleading and granting judgment for possession as a sanction).

[5] Below, both the Trust and the trial court indicated that if the payments ordered by the court were not a protective order, they could be viewed as an undertaking under Rule 5(c). However, as the Trust concedes, Crockett did not ever make a plea of title, which would have required an undertaking. Absent a proper plea of title, we do not see how the trial court could have ordered an undertaking. *Penny v. Penny*, 565 A.2d 587, 589 (D.C. 1989) ("[A] ... protective order is an equitable device of the court whereas a 'Rule 5(c)' undertaking order is statutorily authorized."). Moreover, to the extent the Trust or the trial court assumed there was no legal defense to an action for post-foreclosure possession that would not rise to a plea of title, they were mistaken. See *Lindsey v. Prillman*, 921 A.2d 782, 786 (D.C.2007) (finding that the trial court did not abuse its discretion by declining to order either a protective order or an undertaking where the person in possession merely alleged a contractual opportunity to purchase); *Mahoney v. Campbell*, 209 A.2d 791, 794 (D.C. 1965) (holding that a plea of title was not interposed where the person in possession answered that the party suing for possession was not the established owner of the premises).

[6] Crockett does not argue that the trial court was prohibited, as a matter of law, from entering a protective order.

[7] The Trust's brief indicates that when the protective order was entered, Crockett disputed the

amount of the protective order. We also note that Crockett did not immediately appeal the protective order, as she was entitled to do. See *McQueen*, supra, 547 A.2d at 180 (finding protective orders immediately appealable).

[8] Crockett argues that the trial court abused its discretion because the \$4,691 per month protective order did not accurately reflect the value of the home, because her subprime mortgage interest rate was extremely high. If true, Crockett's argument would have merit, given that the only conceivable reason to enter a protective order in this instance would be to protect the Trust's interest in the value of the use and occupation of the home during the pendency of litigation. See generally *Bell*, supra, 139 U.S.App. D.C. at 112, 430 F.2d at 485.