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IN THE COURT OF APPEALS OF INDIANA

Darleana Johnson,
Appellant-Defendant,

v.

Housing Authority of South Bend,
Appellee-Plaintiff.

February 14, 2023

Court of Appeals Case Nos.
22A-EV-1751

Appeal from the
St. Joseph Superior Court

The Honorable
Matthew R. Raper, Magistrate
The Honorable
Eric J. Tamashasky, Magistrate

Trial Court Cause No.
71D06-2204-EV-622

Opinion by Judge Foley

Judges Robb and Mathias concur.

Foley, Judge.

[1] This appeal stems from an eviction case.[1] Darleana Johnson ("Johnson") and her four children rented a home from the Housing Authority of South Bend ("HASB"). Johnson reported to a property manager the following complaints: that the home was not habitable due to mold; a burnt, sparking outlet; water damage caused by leaks in sinks and pipes; and a backed-up sewage line resulting in sewage in the house. HASB offered Johnson alternative housing, and Johnson declined, asserting that the alternatives were just as uninhabitable. HASB filed an eviction notice, and, after a small claims hearing, Johnson was evicted. After a damages hearing, Johnson was then ordered to pay owed rent. Our review of the record reveals several deficiencies in the hearings afforded Johnson, such that she was deprived of her constitutional right to due process. Accordingly, we reverse and remand.

Facts and Procedural History

[2] On April 7, 2022, HASB filed a "Notice of Claim Filed-Eviction" in the St. Joseph Small Claims Court.[2] Appellant's App. Vol. II p. 2. The small claims court set an eviction hearing for April 26, 2022, where it concluded that an

[1] We note that we actually resolve two appeals arising from this case. Today we also hand down our decision in 22A-EV-2459. Johnson lost her small claims trial with respect to possession, and then, in a subsequent hearing, was ordered to pay damages. Her second appeal arises from that damages order. Since we reverse the trial court's final possession order in this appeal, however, we dismiss the second appeal as moot.

[2] This document is not included in the appendix, though it may have been salient to determining what form a later hearing took. The parties are directed to Indiana Appellate Rule 50(A(2))(f), counseling that appendices should include "pleadings and other documents from the Clerk's Record in chronological order that are necessary for resolution of the issues raised on appeal[.]"

evidentiary hearing would be necessary.[3] The evidentiary hearing commenced on June 24, 2022. Johnson represented herself at the hearing. The small claims court swore in all potential witnesses at the beginning of the hearing, which it described as "sort of a continuation." Tr. Vol. II p. 16. An HASB property manager testified that it called in the City of South Bend to perform inspections after Johnson complained about her home's habitability, but that the inspections turned up no issues other than one with the HVAC system. The property manager testified that Johnson continued to lodge complaints and that, in response, HASB offered Johnson two different alternative dwellings, which Johnson did not accept.

[3] HASB's attorney then explained to the small claims court that HASB has an internal and informal grievance process available, but that attempts to utilize it had broken down, and HASB felt it needed to file in state court in order to obtain a remedy. HASB's counsel further noted that there was a potentially related federal suit, but that it had been dismissed.[4] The small claims court asked Johnson a series of questions designed to determine if there were any related matters pending, but it is not clear from the record whether her

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[3] The trial court specifically distinguished this evidentiary hearing from an "immediate possession hearing[.]" Tr. Vol. II p. 14. Immediate possession, also referred to as prejudgment possession or preliminary possession, must also be distinguished from final possession. Magistrate Keith Doi presided over this initial hearing, but has been omitted from the caption above as he did not issue either of the orders from which these two appeals arise.

[4] The suit was dismissed for lack of jurisdiction. *Johnson v. South Bend Housing Authority, et al.,* No. 3:22-CV-85 JD, 2022 WL 1746925 (N.D.Ind. May 27, 2022). It appears that the federal suit did not pertain to the eviction, but rather to alleged injuries caused by the mold infestation.

responses were considered testimony. During this exchange, Johnson declared that she could "prove that Housing Authority of South Bend actually violated the lease." *Id*. at 32. The small claims court responded:

> [S]ee, you're citing a federal regulation, okay? That's -- now we're going back to the whole federal thing.
>
> You say they can't evict you. They're here all the time and evict people all the time, okay, under state law, that either they don't renew their Section 8 housing for whatever different reason or whatever, and the lease has expired. And[,] so you got to tell me how this federal law trumps anything to do with the not having a valid lease at this point.

Id. at 33.

[4] Through a further colloquy between Johnson and the small claims court, it became apparent that HASB had offered Johnson two other units, but that Johnson believed both alternatives to be as uninhabitable as her own. HASB explained that it cannot permit a tenant to remain in a unit that has been alleged to be uninhabitable and that Johnson refused to vacate. Therefore, HASB felt that their only option, in order to comply with federal regulations and the lease terms, was to terminate Johnson's lease. When Johnson attempted to assert a defense based upon HASB's failure to provide a habitable residence, the small claims court replied: "Your remedies are in federal court. Basically[,] I have to go by you have a month-to-month lease. Do you understand that? They've already told you numerous times that they weren't going to renew the lease." *Id*. at 42.

[5] In response to Johnson's specific assertions about habitability, and the resulting injuries, the small claims court stated:

> That's all about damages. And I'm trying to explain this as best I can, because I have no authority in federal -- whether or not they did certain things or didn't do certain things or whatever, I can sort of cover that in damages, but in terms of making them do things, I can't make them do anything in terms of recertifying you, okay?

Id. at 44. Johnson asked to call a witness to testify to the housing authority's procedures; a request which the small claims court denied. At several points, Johnson remarked that she had filed a grievance with HASB via "certified mail," "letters" and a "demand" from HASB regarding their grievance process, that she had "papers" supporting her defense, a "mold report," papers sent by certified mail indicating a willingness to relocate to a suitable unit and pertaining to Johnson's grievance process,[5] and an email from Johnson's former attorney indicating that HASB had expressed that it would rectify the issues with the home." Tr. Vol. II pp. 25–26, 32, 37–38, 41, 43. The trial court did not accept any exhibits, and repeatedly dismissed Johnson's mention of those exhibits as pertaining to "remedies . . . in federal court." *See, e.g., id*. at 42.

[6] Finally, relevant for purposes of this appeal, the small claims court expressed the following:

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[5] "I actually did certified mail. I have copies of that." Tr. Vol. II p. 41.

> Okay. You got a lease. Your lease has ended. You're a month-to-month tenant. And according to them, they don't want to renew your lease. I have a lease agreement, I have no authority about what goes on behind the scenes in terms of federal regulations and all that kind of stuff. That is a grievance that you have through the federal process, okay? And you went through that federal process. Well, that's something you can – that's – if you don't feel that you're adequately taken care of in the federal process, then you have to file a motion to reconsider, reconsider the administrative situation, okay? But that's through the federal process. It's not through this court.

Id. at 48. The trial court concluded the evidentiary hearing by ordering "final possession" of the property to HASB effective August 1, 2022. *Id*. This appeal followed.

Discussion and Decision

[7] Johnson claims that the hearing resulting in the final possession order was deficient for two reasons: (1) the small claims court failed to comply with statutory requirements; and (2) the trial court denied Johnson due process by refusing to allow her to assert a defense. In small claims court: "The trial shall be informal, with the sole objective of dispensing speedy justice between the parties according to the rules of substantive law, and shall not be bound by the statutory provisions or rules of practice, procedure, pleadings or evidence . . . ." Ind. Small Claims Rule 8(A). This informality, however, is not limitless. It cannot supplant fundamental rights or constitutional protections. *See, e.g.*, *Morton v. Ivacic*, 898 N.E.2d 1196 (Ind. 2008) (holding that the Due Process Clause of the Fourteenth Amendment to the United States Constitution

supersedes the informality format of a small claims case); *Harris v. Lafayette LIHTC, LP*, 85 N.E.3d 871, 878 (Ind. Ct. App. 2017) (tenant in rent dispute denied due process by small claims judge who failed to remain impartial); *Herren v. Dishman*, 1 N.E.3d 697, 705 (Ind. Ct. App. 2013); *Lowry v. Lanning,* 712 N.E.2d 1000, 1001 (Ind. Ct. App. 1999) (reversing small claims court that denied litigant the fundamental right to cross-examine witnesses). It remains true that: "despite the informality of the proceedings, the parties in a small claims court bear the same burdens of proof as they would in a regular civil action on the same issues." *Martin v. Ramos*, 120 N.E.3d 244, 249 (Ind. Ct. App. 2019) (citing *LTL Truck Serv., LLC v. Safeguard, Inc.*, 817 N.E.2d 664, 668 (Ind. Ct. App. 2004).

[8] Moreover, "[s]mall claims judgments are 'subject to review as prescribed by relevant Indiana rules and statutes.'" *Martin*, 120 N.E.3d at 248 (quoting Ind. Small Claims Rule 11(A)). We review for clear error. *Lowery v. Hous. Auth. of City of Terre Haute*, 826 N.E.2d 685, 688 (Ind. Ct. App. 2005) (citing *Flint v. Hopkins*, 720 N.E.2d 1230, 1232 (Ind. Ct. App. 1999)); Ind. Trial Rule 52(A). When reviewing a question of law, however, our standard is de novo. *Morton*, 898 N.E.2d at 1199 (citing *Harrison v. Thomas*, 761 N.E.2d 816, 818 (Ind. 2002)). In other words, matters of substantive rules of law are not within the ambit of small claims informality, and small claims court decisions on such matters receive no deference from us. *See, e.g.*, *Herren*, 1 N.E.3d at 702.

[9] Given the confusion below, we take a moment here to set forth the nature of the various claims and applicable laws in the instant matter. First, as a public

housing authority, HASB is a creature of state law. In order to receive federal funding, however, HASB must comply with federal regulations, as set forth by the federal Department of Housing and Urban Development ("HUD") in the Code of Federal Regulations. For example, housing authorities have an obligation to "maintain the dwelling unit and the project in decent, safe, and sanitary condition[,]" 24 C.F.R. § 966.4(e)(1), and to "maintain in good and safe working order and condition electrical, plumbing, sanitary, heating, ventilating, and other facilities and appliances . . . ." 24 C.F.R. § 966.4(e)(5).

[10] In addition, housing authority tenants subject to eviction and facing legal action in a local court must be ensured of a hearing that meets the requirements of due process, defined as follows:

> Elements of due process shall mean an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required:
>
> > (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction;
> >
> > (2) Right of the tenant to be represented by counsel;
> >
> > (3) Opportunity for the tenant to refute the evidence presented by the PHA[6] including the right to confront and

[6] This stands for public housing authority.

> cross-examine witnesses *and to present any affirmative legal or equitable defense which the tenant may have*;
>
> (4) A decision on the merits.

24 C.F.R. § 966.53(c) (emphasis added). In other words, HASB is bound to either provide or seek only those processes that comply with the requirements of basic due process. Finally, 42 U.S.C. § 1437d(l) sets forth requirements for public housing agency leases, including that the agency will "maintain the project in a decent, safe, and sanitary condition . . . ." The above regulations are also incorporated into the lease agreement between HASB and Johnson.[7]

[11] Next, we note that HASB has internal administrative grievance processes. Johnson claims she complied with those processes and submitted the grievance properly but did not receive a response from HASB. HASB claims that it worked with Johnson's former attorney but that there was a breakdown in communication, and, in the meantime, a crucial deadline passed. We do not revisit this aspect of the case here,[8] for we resolve this appeal on different grounds.

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[7] The lease was not entered into evidence during the final possession hearing. It was admitted during the damages hearing, however, and "Rule 201(b)(5) now permits courts to take judicial notice of "records of a court of this state . . . ." *Horton v. State*, 51 N.E.3d 1154, 1160 (Ind. 2016).

[8] Moreover, the record is unclear with regard to the grievance process. The parties appear to disagree, the small claims court did not accept exhibits pertaining to the matter, and the question of exhaustion of administrative remedies is not properly before us. To the extent that exhaustion of remedies is an issue in the case, it can be more fully argued and resolved on remand.

[12] Then, there are the claims available to both parties. HASB filed what appears to be an action seeking ejectment—based on state code—on the grounds that Johnson was allegedly in violation of the lease. Johnson's defense to the breach of contract claim is that HASB breached the lease first, by failing to comply with its obligations under the lease. This defense—mutual breach—does not sound in federal law, though the question of whether HASB breached in this particular case is at least somewhat informed by its obligations under federal law. To the extent Johnson may have raised claims in federal court for monetary damages for the expenses and injuries resulting from the alleged unsafe living conditions or other relief, those claims are not before this court and not a part of the eviction case.

I. Ejectment Statute

[13] We briefly address Johnson's first argument. Johnson claims that the small claims court erred by not requiring HASB to comply with the bonding requirement and affidavit "requirement" of the ejectment statutes,[9] thereby contravening our Supreme Court's holding in *Morton v. Ivacic*, 898 N.E.2d 1196 (Ind. 2008). HASB contends that such procedural requirements are inapplicable to small claims courts. With respect to the affidavit requirement, Indiana Code Section 32-30-3-1(b) provides that "[a]t the time of the filing of a complaint or at any time before judgment, a plaintiff *may* file an affidavit . . .

[9] Ind. Code §§ 32-30-3-2 and 32-30-2-6.

[,]" (emphasis added) stating, *inter alia*, that the plaintiff is entitled to possession of the property and that the defendant has unlawfully retained possession of the property. If such an affidavit is filed, the trial court must order a hearing in order to give the defendant an opportunity to controvert the affidavit. I.C. § 32-30-3-2. This is a codification of a procedure securing a guaranteed substantive right.[10] The record, however, does not reflect that any affidavit was ever filed. Absent the trigger for a required hearing, these statutes do not apply to the proceedings in the case at bar, and Johnson's arguments on this point fail.

[14] With respect to the bonding requirement, Indiana Code Section 32-30-3-6 provides that a trial court may not order preliminary possession absent the filing of a "written undertaking in an amount fixed by the court and executed by a surety . . . ." This statute ensures that if the trial court erroneously awards temporary possession to a plaintiff and then discovers the error prior to the award of final possession, a bond is in place to ensure that the defendant is compensated for the error. Here, however, HASB was never awarded temporary possession. We disagree with Johnson that the small claims court granted HASB "what was, in effect, immediate possession." Appellant's Br. p. 11. At the conclusion of the hearing, the small claims court corrected itself to make clear that this was an order for final possession: "So I'm going to make immediate possession – *or final possession* effective on August the 1st, okay?" Tr.

[10] This renders Appellee's argument on this score moot. Even if a small claims court is not subject to these statutes, the Due Process Clause would still require that it afford the defendant a right to be heard. No doubt that opportunity would come in the form of a hearing.

Vol. II p. 48 (emphasis added). A trial court that orders possession of a property to a plaintiff on August 1st at a hearing that occurs on June 24th is not ordering immediate possession. Thus, this statute does not apply to the instant matter either, and we reject Johnson's argument that the small claims court erred by "not requiring HASB to comply with the affidavit and bonding requirements of the Indiana ejectment statute . . . ." Appellant's Br. p. 11.[11]

II. Due Process

[15] We turn, next, to Johnson's primary argument. The Fourteenth Amendment prohibits any state from depriving any person of "life, liberty, or property, without due process of the law." U.S. Const. amend. XIV, § 1. "Generally stated, due process requires notice, an opportunity to be heard, and an opportunity to confront witnesses." *Ind. State Bd. of Educ. v. Brownsburg Cmty. Sch. Corp.*, 842 N.E.2d 885, 889 (Ind. Ct. App. 2006). The "opportunity to be heard" is a fundamental requirement of due process. *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950). The United States Supreme Court has held that this principle includes "an opportunity to present every available defense." *Lindsey v. Normet*, 405 U.S. 56, 66 (1972).

[16] We first note that we are concerned with the small claims court's apparent reticence to allow Johnson to call witnesses or to consider her documentary

[11] We therefore do not address Appellee's argument that the informality of small claims proceedings absolves the small claims court from observing the bonding requirement.

evidence. Furthermore, despite the small claims court's recognition that Johnson was entitled to cross-examine HASB's witness, *see* Tr. Vol. II p. 22, it does not appear that Johnson was ever actually given that opportunity. Towards the end of the hearing, the following colloquy occurred:

> MS. JOHNSON: Can I call my witness before [ ] we proceed, please?
>
> THE COURT: It's going to be the same thing. Without any sort of jurisdiction . . .
>
> MS. JOHNSON: I know. But I have a witness that works for Housing Authority that knows the procedures and the way they are supposed to do things.
>
> THE COURT: [ ] [A]nd that's not really going to matter because that's a federal situation.

Id. at 44. Johnson was not permitted to call the witness.

[17] It is true that pro se litigants are generally held to no different a standard than represented parties. *See, e.g.*, *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). But parties, represented or not, must not be expected to insist on being given the protections to which they are guaranteed and should automatically receive. And, as we have recently recognized, our courts play an important role in facilitating pro se litigants: "We also note that the Indiana Code of Judicial Conduct gives guidance to trial courts and provides: '[a] judge may make reasonable efforts, consistent with the law and court rules, to facilitate the

ability of all litigants, *including self-represented litigants*, to be fairly heard.'" *Atkins v. Crawford Cnty. Clerks Off.*, 171 N.E.3d 131, 136 (Ind. Ct. App. 2021) (quoting Ind. Judicial Conduct Rule 2.2) (emphasis added).

[18] The core of Johnson's due process argument, however, is that the small claims court refused to hear her defense(s). Although it is not entirely clear, it appears that Johnson raised or sought to raise the following defenses: (1) that HASB violated federal laws and/or regulations and was, therefore, not entitled to take possession of the property; (2) that the fact that HASB violated federal laws and/or regulations means that it also violated the lease, and thus was not entitled to take possession of the property as a matter of state contract law; or (3) both. The small claims court repeatedly stated its belief that Johnson's defenses could only be raised in a federal court. To the contrary, "'where there is not exclusive federal jurisdiction the state and federal courts have concurrent jurisdiction.'" *In re Beck's Superior Hybrids, Inc.*, 940 N.E.2d 352, 365 (Ind. Ct. App. 2011) (quoting *Jaskolski v. Daniels*, 905 N.E.2d 1, 12 (Ind. Ct. App. 2009) (cleaned up), *trans. denied, cert. denied*). Johnson was entitled to raise both her federal law defense and her contracts defense in a state court.

[19] We are not insensitive to the realities of small claims courtroom adjudications. Dockets are crowded and litigants are frequently unrepresented by counsel. Nonetheless, we find that the small claims court did not provide Johnson with sufficient due process when it refused to hear her defense(s). If proven, her defense(s) may establish that she was not in breach of the lease, that HASB was in breach of the lease, and Johnson did not unlawfully retain possession of the

property. The consequence of such a finding would be that HASB would fail to shoulder its burden of proof. We reverse the small claims court's order on final possession and remand for further proceedings consistent with this opinion.

[20] Reversed and remanded.

Robb, J., and Mathias, J., concur.