

## COURT OF APPEALS

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LORI ELM,

Appellant,

Case No.: 21-AC-010

v.

Date: April 8, 2022

ONEIDA COMPREHENSIVE  
HOUSING DIVISION,

Respondent.

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### FINAL DECISION

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This matter has come before Appellate Judges Chad Hendricks, Diane House, and Leland Wigg-Ninham.

#### JURISDICTION

The Court of Appeals has jurisdiction over this matter pursuant to Sec. 801.8-2(a)(1) of the Oneida Judiciary Law which gives this Court exclusive jurisdiction to review appeals of final orders, sentences and judgments of the Trial Court.

#### BACKGROUND

On March 23, 2021 the Oneida Comprehensive Housing Division (hereinafter "CHD") terminated Lori Elm's (hereinafter "Elm") lease and served her with a five (5) day notice to vacate the premises. CHD terminated Elm's lease after it was notified by the Oneida Police Department (hereinafter "OPD") that it responded to Elm's residence on March 11, 2021 and found Elm's daughter along with twenty (20) marijuana plants, drug paraphernalia and a marijuana growing lab in the basement. OPD also notified CHD that it responded to Elm's residence on March 14, 2021 after Elm's daughter was found to be in possession of heroin after she failed to stop for police.

Elm immediately contested her eviction in Oneida's Trial Court (hereinafter "TC") on March 23, 2021. A stay was issued on the eviction pending the TC's decision. After a trial, on April 9, 2021, the TC issued an order which upheld the lease termination and lifted the stay effective immediately. Elm appealed the TC's order on May 7, 2021, but on May 27, 2021 she withdrew her appeal.

CHD submitted a Motion to Enforce Lease Termination and Eviction on July 15, 2021. Elm filed an objection and requested a hearing based on her belief that CHD's costs were inflated in the settlement payment provided by CHD to Elm. The TC ordered Elm to provide supplemental information proving the costs were inflated and the alleged inaccuracies regarding the mortgage payoff. CHD was given an opportunity to respond to Elm's supplemental information. On August 31, 2021, the TC ruled that the supplemental information provided by Elm did not prove the costs were inflated or that there were inaccuracies in the mortgage payoff. Thus, the TC accepted and approved the wrap-up costs by CHD. Elm did not appeal the TC's Order dated August 31, 2021.

On September 2, 2021 the TC issued its Final Order granting the CHD's Motion for a Judgment to Enforce Lease Termination and Eviction. Elm filed a timely Notice of Appeal with this Court on October 1, 2021. We accepted this case for review on November 1, 2021.

### ISSUES

1. Whether to Limit the Scope of Appellate Review to the TC's September 2, 2021 Order.
2. Whether the decision of the TC to grant CHD's Motion to Enforce Lease Termination and Eviction was clearly erroneous.

### ANALYSIS

#### Respondent's Motion to Limit the Scope of Appellate Review

On December 7, 2021, CHD filed a Motion to Limit the Scope of Appellate review to whether the TC's Order dated September 2, 2021, was clearly erroneous. According to the Rules of Appellate Procedure §805.5-2 – *Notice of Appeal*, a party must file with the Clerk a Notice of Appeal from a judgment or order within thirty (30) days after the day such judgment or order was rendered.

Elm clearly stated in her Notice of Appeal that she was appealing the TC's Final Order of September 2, 2021. The only issue Elm could appeal from the September 2, 2021 Order is the TC's granting CHD's Motion to Enforce Lease Termination and Eviction. In other words, this was purely an administrative order by the TC to close the case since the whole case was essentially settled. However, in her appeal Elm requests that ownership of her home be restored and asks for damages to compensate for lost time in property and harm caused by the eviction. The TC's Order dated April 9, 2021 upheld the eviction. Elm also seeks a judgment of \$14,123.39 alleging CHD miscalculated its final compensation amount. The TC's Order dated August 31, 2021 accepted and approved CHD's final compensation amount. CHD argues that the relief Elm seeks is time barred pursuant to §805.5-2 of the Rules of Appellant Procedure. We agree.

The TC's Order on April 9, 2021 upheld Elm's eviction. Although Elm filed a timely appeal to this order, she withdrew her appeal on May 27, 2021. Therefore, Elm lost the right to appeal her lease termination and eviction. After CHD ordered a final mortgage payoff amount, home appraisal, and home inspection on the premises, it filed a Motion to Enforce Lease Termination and Eviction on July 15, 2021. CHD included nine (9) exhibits explaining how it calculated the final payment of \$90,242.86 to Elm on July 13, 2021. After Elm objected to the CHD's final accounting, the TC ordered Elm to provide a supplemental report addressing the discrepancies.

The supplemental report submitted by Elm did not cite any laws, did not provide any exhibits nor any evidence at all to prove CHD miscalculated the final payment. Elm argued that the cost of the mortgage payoff was increased due to the Nation not immediately paying it off on the date the TC ordered the eviction on April 9, 2021. However, on May 7, 2021, when Elm appealed the TC's April 9, 2021 eviction order, foreclosure on the house was stayed until the case could be settled. Only when Elm decided to withdraw her appeal on May 27, 2021, could the CHD resume their final accounting on the premises.

The average time it takes to close on a home is roughly 49 days. Melissa Rudy, *How Long Does it Take to Close on a House From Start to Finish*, HOMELIGHT (Jan. 12, 2022), <https://www.homelight.com/blog/how-long-does-closing-take/>. From the exhibits CHD provided

to the TC, the home inspection was completed on June 10, 2021, the home appraisal was completed on June 23, 2021, and the final payoff of the mortgage was received from Bay Bank on July 7, 2021. The next day on July 8, 2021 CHD ordered a check in the amount of \$90,242.86 payable to Elm. Despite the fact that home sales in Wisconsin were at a record high in 2021, it took CHD only 42 days to complete its final accounting after Elm dropped her appeal. (Logan Reigstad, *Wisconsin Set Record for Home Sales in 2021 Despite Median Price Rising More than 9%*, CHANNEL3000 (Jan. 17, 2022), <https://www.channel3000.com/wisconsin-set-record-for-home-sales-in-2021-despite-median-price-rising-more-than-9-report-says/>).

Elm also argued that the entire \$10,400 cost of repair should be excluded from the final accounting. Elm contends that the only deductions permitted are ones necessary to bring the home to a minimum health code standard. In addition, Elm argued in her reply brief that a “damaged soffit in the garage . . . does not affect the health of any person in the home.” Nothing could be further from the truth.

The purpose of §603 of Oneida’s Building Code is:

*[T]o regulate and govern the conditions and maintenance of all property, buildings and structures; by providing the standards for supplied utilities and facilities and other physical things and conditions essential to ensure that structures are safe, sanitary and fit for occupation and use . . . .*

Section 603.4-1 *Building Code: Standards – Incorporation of Provisions by Reference*, states that “this Code incorporates by reference the standards as set forth in . . . Wisconsin Administrative Codes: . . . Comm 20 through 25 . . . .” A quick look at Wisconsin Administrative Code §21.08(1)(a) *Construction Standards: Fire Separation and Living Unit Separation – Attached Garages*, tells us that “[t]he walls and ceiling between an attached garage and any portion of the dwelling, including attic or soffit areas, shall be hour fire-resistive construction . . . .” If a soffit is damaged, it cannot provide fire separation between the garage and living unit. When the typical garage is full of highly combustible materials such as gas cans, oil cans, engines, etc., a fire barrier is needed to protect the health and safety of the occupants inside the living unit. A damaged soffit does not provide the type of fire protection required by law.

It was Elm's duty to prove by a preponderance of evidence to the TC that she should not have been evicted, and the final accounting provided by CHD was incorrect. §610.5-3(c)(3) *Oneida Eviction and Termination Law*. Under the preponderance standard, the burden of proof is met when the party with the burden convinces the fact finder that there is a greater than 50% chance that the claim is true. In its Motion to Enforce Lease Termination and Eviction, the CHD included nine (9) exhibits containing hundreds of pages of documents proving they efficiently and accurately calculated the final payoff amount. Elm's objection and statement of specificity provided nothing other than statements that disagreed with the CHD's deductions. Thus, it is easy to see how the TC ruled in favor of CHD.

The short analysis above, although not necessary, was provided to show how this appeal borders on being frivolous. An appeal is frivolous "when the result is obvious or when the appellant's argument is wholly without merit." *Spiegel v. Cont'l Illinois Nat'l Bank*, 790 F.2d 638, 650 (7<sup>th</sup> Cir. 1986). When Elm withdrew her appeal of the April 9, 2021 eviction order, she gave up her right for this Court to review her Eviction and Lease Termination. When Elm failed to appeal the August 31, 2021 TC Order approving CHD's final accounting, she again gave up her right for this Court to review the CHD's wrap-up costs. Yet, in Elm's Notice of Appeal and her Appellant's Briefs she attempts to repackage all her prior arguments that she failed to appeal, into this appeal. Furthermore, Elm's attorney does not present any viable legal arguments. All of his statements regarding the eviction and final accounting are either factually or legally unsupported. We accepted this appeal because of the serious effects an eviction can have on an individual. However, appeals such as this where counsel does not present one shred of evidence demonstrating the TC's ruling was erroneous, wastes the time of the opposing litigants and the Court. Thus, CHD's Motion to Limit the Scope of Appellate Review to the TC's September 2, 2021 Order is granted.

#### Petitioner's Appeal of the Trial Court's Order dated September 2, 2021

Turning to Elm's appeal of the September 2, 2021 TC's Final Order granting CHD's Motion to Enforce Lease Termination and Eviction. Elm seeks compensation in the amount of \$14,123.39 and ask this Court to overturn her eviction. For the reasons stated above, Elm's request is denied. Furthermore, Elm provides no evidence as to why the TC's ruling on September 2, 2021

was clearly erroneous other than her attorney's own statements. For this reason, we affirm the TC's decision to grant CHD's Motion to Enforce Lease Termination and Eviction.

#### DECISION

Based upon the foregoing, the Trial Court's Final Order dated September 2, 2021, which granted CHD's Motion to Enforce Lease Termination and Eviction is hereby *affirmed*.

By the authority vested in the Oneida Judiciary, Court of Appeals, in Oneida General Tribal Council Resolutions 01-07-13-B and 03-19-17-A, this decision is issued this 8th day of April, 2022, in the matter of Case No. 21-AC-010, *Lori Elm v. Oneida Comprehensive Housing Division*.

*It is so ordered.*