

IN THE COURT OF COMMON PLEAS OF LYCOMING COUNTY, PENNSYLVANIA

Randi L. Lapp, : CV-19-1857  
Plaintiff, :  
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v. : CIVIL ACTION  
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Randy L. Lapp, :  
Defendant. :

**OPINION AND ORDER**

Plaintiff Randi L. Lapp (“Plaintiff” or “Ms. Lapp”) initiated the instant action by filing a claim with the Magisterial District Court on October 18, 2019, seeking possession of property located at of 2269 Sylvan Dell Road, South Williamsport, PA 17702 (“Sylvan Dell Property”), unpaid rent, and costs against Defendant Randy L. Lapp (“Defendant” or “Mr. Lapp”). On October 31, 2019, Magisterial District Judge William C. Solomon (“MDJ”) entered judgement in favor of Plaintiff, granting her possession of the Sylvan Dell Property, \$600.00 in rent in arrears, and \$150.53 in costs. On November 12, 2019, Defendant filed a Notice of Appeal from the MDJ’s judgment in this Court, and the Prothonotary issued a rule upon Plaintiff to file a Complaint within twenty (20) days of service.<sup>1</sup> The Defendant paid a \$200 rental bond to the Prothonotary, and so the appeal functioned as a supersedeas to the MDJ’s award of possession.<sup>2</sup>

Plaintiff filed her Complaint on November 27, 2019. Instead of filing an Answer or Preliminary Objections to Plaintiff’s Complaint, as required under the Pennsylvania Civil Rules of Procedure, on December 18, 2019, Defendant filed *pro se* a document titled “Appellant Appeal and Complaint.” The Court liberally construed this document as an answer to the complaint and a “counterclaim” against Plaintiff.<sup>3</sup> In answer to the Complaint, Defendant asserted that he had loaned Plaintiff \$49,000 for the purchase

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<sup>1</sup> Pa.R.C.P.M.D.J. 1004(B) (“If the appellant was the defendant in the action before the magisterial district judge, he shall file with his notice of appeal a praecipe requesting the prothonotary to enter a rule as of course upon the appellee to file a complaint within twenty (20) days after service of the rule or suffer entry of a judgment of non pros.”).

<sup>2</sup> See Pa.R.C.P.M.D.J. No. 1008(3)(b)(i) (“If the rent has not been paid at the time of filing the notice of appeal, the tenant shall pay: at the time of filing the notice of appeal, a sum of money equal to one third (1/3) of the monthly rent[.]”).

<sup>3</sup> See *Mueller v. Com., Pa. St. Police Headquarters*, 532 A.2d 900, 902 (Pa. Commw. 1987)(“[P]leadings filed by pro se litigants are to be construed liberally, [although] a pro se litigant is not to be given any particular advantage because of his lack of knowledge of the law.”).

and improvement of the Sylvan Dell Property pursuant to the parties' verbal agreement, and that in exchange, Defendant would be able to maintain a residence on the property. Defendant's counterclaim sought reimbursement for this alleged \$49,000 loan and reimbursement for another alleged \$6,150 loan, provided in August of 2019 after the purchase of the Sylvan Dell Property, which was used to pay contractors and for the material cost of improvements. Defendant's counterclaim asserted that Plaintiff had committed theft by deception, insurance fraud, bank fraud, and mail fraud. Plaintiff thereafter filed an Answer and New Matter to the "Appellant Appeal and Complaint" on January 3, 2020, denying that Defendant had made the alleged loans, denying that there was a verbal agreement pursuant to which Defendant was permitted to live on the Sylvan Dell Property, and accusing Defendant of squatting on the property.

On January 22, 2020, Plaintiff filed a Motion to Dismiss, seeking dismissal of supersedeas as to possession for Defendant's failure to pay full rent in arrears and ongoing monthly rent to the Prothonotary, as required to maintain the supersedeas,<sup>4</sup> and moving to strike Defendant's counterclaim for not falling within the parameters of a Landlord-Tenant Appeal. The Court by Order dated January 30, 2020 directed Plaintiff to file a Praecipe for Termination of the Supersedeas with the Prothonotary. The Court scheduled argument on the issue of whether Defendant's counterclaim should be dismissed for lack of jurisdiction under the Landlord and Tenant Act of 1951. Plaintiff filed a Praecipe for Termination of Supersedeas on February 11, 2020, and Defendant's supersedeas for possession was then terminated. Following argument held February 13, 2020, the Court by Order dated February 20, 2020 denied Plaintiff's motion to strike Defendant's counterclaim, finding that the counterclaim arose from the same occurrence or transaction as Plaintiff's claim for possession and thereby was within the Court's jurisdiction.<sup>5</sup>

On June 22, 2020 the Court held a civil non-jury trial on Plaintiff's claim for

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<sup>4</sup> 68 P.S. § 250.513(b) (" Within ten days after the rendition of judgment by a lower court arising out of residential lease. . .either party may appeal to the court of common pleas, and the appeal by the tenant shall operate as a supersedeas only if the tenant pays in cash or bond the amount of any judgment rendered by the lower court. . .and pays in cash any rent which becomes due during the court of common pleas proceedings within ten days after the date each payment is due into an escrow account with the prothonotary or the supersedeas shall be summarily terminated.").

<sup>5</sup> See Pa.R.C.P. 1056(a).

unpaid rent and costs, and Defendant's counterclaim for reimbursement. Plaintiff appeared represented by Attorney Daniel K. Mathers, Esquire, while Defendant proceeded *pro se*.<sup>6</sup> Attorney Mathers first called Plaintiff, Randi Lapp, to testify. Ms. Lapp testified that the Sylvan Dell Property had been within the Lapp family for as long as she could remember. She described the property as consisting of a large lot with a farmhouse as a residence. She stated that the farmhouse contained separate upstairs and downstairs apartments, with a garage to the side. She averred that the Sylvan Dell Property had once been part of a larger parcel that had been broken up and sold as separate lots. She provided that since her childhood, the property had been owned by her grandmother, Myrtle Lapp.

Ms. Lapp testified that Myrtle Lapp's son, Shane Lapp, lived in the upstairs apartment, paying taxes on the property and rent to Myrtle Lapp, along with maintaining flood insurance on the house. Myrtle Lapp lived in the downstairs apartment with her son, Randy Lapp, Ms. Lapp's father. Ms. Lapp testified that Randy Lapp worked only sporadically, and did not pay rent. By deed executed on March 25, 1999, Myrtle Lapp sold her interest in the Sylvan Dell Property to her three sons, Shane, Paul, and Randy, for the nominal price of one dollar.<sup>7</sup> Each son received a one-third interest in the property. Subsequently, Paul Lapp passed away in 2013 and his share passed to his wife, Connie Lapp. Then, in 2016, Shane Lapp passed away. Randy Lapp became the executor over his share.

Following Shane Lapp's death, Myrtle Lapp's own health began to severely decline. Ms. Lapp testified that she and her father applied for a waiver program through which they were able to hire professional caregivers for Myrtle Lapp. Ms. Lapp, herself a professional caregiver, served as a caregiver for her grandmother in both a voluntary

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<sup>6</sup> At the start of trial, the Court inquired of Defendant whether he intended to precede *pro se*, providing that the trial could be continued if he needed additional time to secure counsel. Defendant confirmed that he intended to precede *pro se*. However, Defendant contested that Attorney Mathers had a conflict of interest and could not appropriately represent Plaintiff in the instant matter. Defendant explained that Attorney Mathers had represented him in a custody matter some twenty (20) years prior, in which Defendant sought visitation of a grandchild (not Plaintiff's child). Attorney Mathers provided in response that he did not recall the specifics of the custody proceeding and stated that he had understood pursuant to his prior conversations with Defendant that there would be no objection to his appearance on behalf of Plaintiff. The Court ruled that there was no conflict of interest and allowed the trial to proceed.

<sup>7</sup> See Plaintiff's Exhibit 1 – March 25, 1999 Deed.

and professional basis.

Ms. Lapp testified that it was around this time that her father began attempting to persuade her to purchase the Sylvan Dell Property. She averred that he first offered her the chance to purchase the house at a price of \$100,000, and later lowered the asking price to \$65,000. Ms. Lapp provided that she was not eager to purchase the property even at this lower price, as it was located in a floodway and the farmhouse had not been well maintained. She further indicated that she was uncomfortable becoming involved in business dealings with her father. She claimed that her father was desperate to sell the Sylvan Dell Property, as he had not been able to keep up with tax payments and the property had been listed for tax sale.

Ms. Lapp stated that her father continued lowering his asking price until she ultimately agreed to purchase the Sylvan Dell Property for \$58,500 from her father, individually, and as the executor of Shane Lapp's estate, and from Connie Lapp. However, Ms. Lapp testified that pursuant to a "gift letter" drafted by Randy Lapp's attorney, Scott A. Williams, Esquire, her father gifted her equity in his one-third share in the property, worth \$19,300, effectively rendering the purchase price \$38,600.<sup>8</sup> In exchange, as memorialized in a Memo drafted by Attorney Williams, Ms. Lapp agreed that Myrtle Lapp would be able to continue living on the property, and that Randy Lapp would be able to stay on the property as Myrtle's caregiver for the rest of Myrtle Lapp's lifetime.<sup>9</sup>

The parties signed an Agreement for Sale of Real Estate on May 16, 2019. Ms. Lapp and her mother, Tammie Drake, both signed as purchasers.<sup>10</sup> Ms. Lapp testified that her mother signed the Agreement only as a surety to enable Ms. Lapp to obtain a loan from Jersey Shore Bank to help pay off the purchase price of the house. Closing was to occur within forty-five (45) days from the signature of the Agreement. Myrtle Lapp passed away on July 22, 2019, before the closing date. Ms. Lapp testified that even though this meant that Randy Lapp was no longer qualified to remain on the Sylvan Dell Property, he voluntarily signed over the deed to the property on August 9,

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<sup>8</sup> See Plaintiff's Exhibit 4 – Gift Letter.

<sup>9</sup> See Plaintiff's Exhibit 3 – Memo from Attorney Williams.

<sup>10</sup> See Plaintiff's Exhibit 2 – May 16, 2019 Agreement for Sale of Real Estate.

2019.<sup>11</sup>

Ms. Lapp testified that she left on vacation following closing on the property, and returned within a few weeks only to find her father still living on the property. She claimed that her father told her that he did not expect Myrtle Lapp to pass so quickly, and appealed to her sympathy by telling her that he had been diagnosed with cancer. Ms. Lapp testified, however, that the medical documents he showed her provided only a diagnosis of tonsillitis. Ms. Lapp claimed that she informed her father that he could stay on the property if he signed a lease agreement requiring him to pay \$600 a month in rent. Randy Lapp refused to sign a lease, but pursuant to the parties' verbal agreement he made one payment of \$600 in September. Ms. Lapp then decided to terminate the verbal lease agreement by serving Randy Lapp a Notice to Quit in late September. Randy Lapp refused to leave the property and stopped making rental payments. Ms. Lapp testified that this ultimately drove her to file the action for ejectment and rent in arrears in the Magisterial District Court.

Attorney Mathers then questioned Ms. Lapp regarding Randy Lapp's counterclaims. Ms. Lapp denied that Randy Lapp had loaned her any money to purchase to Sylvan Dell Property, excluding his gift of his one-third equity share in the property. She denied that she and Randy Lapp had a verbal agreement that he could stay on the property in exchange for a loan, noting that their only agreement was that her father could remain on the property during the course of Myrtle Lapp's lifetime if he served as caregiver. Attorney Mathers had Ms. Lapp review Plaintiff's Exhibit 6, which Ms. Lapp identified as a note drafted by Randy Lapp itemizing the work and materials constituting his claim for reimbursement of \$6,150. Ms. Lapp testified that she had paid for several of the itemized materials, such as the wood and the contractor fees, out of her own pocket. She stated that her father may have made the other listed purchases, such as the purchase for gravel and the lawnmower. However, she stated that these purchases were made without her knowledge or consent. She similarly stated that any work that her father performed on the house was done without her knowledge or approval.

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<sup>11</sup> Plaintiff's Exhibit 5 - August 5, 2019 Deed.

Once Attorney Mathers finished his examination, Randy Lapp had the opportunity to conduct cross-examination. However, pursuant to Attorney Mather's objections that Mr. Lapp was merely taking the opportunity to provide his own rebuttal testimony, the Court was required to repeatedly instruct Mr. Lapp that the purpose of cross-examination was to question the witness. After taking the opportunity to impute his daughter's sobriety, Mr. Lapp elected to close his cross-examination.

Following the close of Ms. Lapp's testimony, Attorney Mathers called Tammie Drake to the stand. At this point Randy Lapp, unwilling to countenance Ms. Drake's testimony, exited the courtroom of his own volition and did not return.

Ms. Drake largely confirmed her daughter's testimony. She testified that the farmhouse on the Sylvan Dell Property was in a state of disrepair, and that there were no other buyers interested in the property prior to her daughter's purchase. She provided that she knew of no verbal agreement between Randi Lapp and Randy Lapp pursuant to which Randy Lapp would be permitted to continue living on the property indefinitely following the sale. After reviewing Mr. Lapp's itemized list of purchases, she stated that she was unaware whether Mr. Lapp had indeed purchased the listed items, or whether he had done any work on the house. She specifically noted, however, in regard to Mr. Lapp's claim of \$550 for the purchase of a lawnmower, that she had personally purchased a riding mower for the Sylvan Dell Property and had not seen any other lawnmower on the property. She testified that she did not ask Mr. Lapp to purchase any items or to provide upkeep on the property.

In light of the testimony provided at trial, the Court deems the testimony of Randi Lapp and Tamie Drake credible and supported by Plaintiff's exhibits. Therefore, the Court will ENTER JUDGMENT IN FAVOR OF PLAINTIFF AND AGAINST DEFENDANT the amount of \$2,550.53. This accounts for unpaid rent for the months of October of 2019 through January of 2020, with rent set at \$600, and an additional \$150.35 in costs. The Court denies Plaintiff's request for attorney's fees, as Plaintiff has failed to provide any evidence relating to those fees. The Court further ORDERS AND DIRECTS the Prothonotary to RELEASE Defendant's \$200 rental bond to Plaintiff, which will account for Defendant's continued residence at the property through February 11, 2020.

The Court denies Defendant's counterclaims for reimbursement, as Defendant

has failed to introduce any credible evidence in support of those counterclaims.

IT IS SO ORDERED this 15<sup>th</sup> day of July 2020.

BY THE COURT,

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Eric R. Linhardt, Judge

ERL/cp

cc: Randy L. Lapp

*2269 Sylvan Dell Rd., South Williamsport, PA 17702*

Daniel K. Mathers, Esq.

Prothonotary's Office

Gary Weber, Esq. / Lycoming Reporter