No. 102789-3

Court of Appeals No. 84549-7-I

SUPREME COURT
OF THE STATE OF WASHINGTON

MAGGIE PROPERTIES, LLC,

Respondent,

v.

BERNARD NOLAN,

Petitioner.

ANSWER TO PETITION FOR REVIEW

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INTRODUCTION

This Court should deny review of the Court of Appeals' unpublished decision in ***Maggie Properties, LLC v. Nolan***, No. 84549-7-I (Dec. 4, 2023) ("***Maggie***"). The tenant, Bernard Nolan, sent the landlord, Ms. Piper (who is also the property manager) ***88 pages*** of threatening, misogynist, racist, and vulgar texts, over many months. This was nothing new, as Nolan has lived in Maggie Properties' family-owned and operated apartments for over *18 years*. But it was finally all too much, so they properly served him with 3-day notice to vacate.

The notice identified his "substantial or repeated and unreasonable interference with the [landlord's] use and enjoyment of the premises" as his "conduct and behavior" of "repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite requests to cease such communications." RCWs 59.18.650(2)(c) & 650(6)(b); CP 16. At the show

cause hearing, Nolan did not deny sending Ms. Piper all ***88 pages*** of texts, which included language like this:

- "**Cunt**." CP 88; RP 56.
- "Assholes" … your mother "would have been better aborting you all." CP 88; RP 57-58.
- "Nazi Maggie." CP 89; RP 58-59.
- "Shit Heads Fuck You All." CP 89; RP 59.
- "Evil Slumlords." CP 89; RP 59.
- "Hate Crime Bitches." CP 91; RP 59.

Nolan also admitted that Ms. Piper repeatedly asked him to stop sending his threatening, abusive texts – at least twice. RP 49; *see also*, *e.g.*, CP 43-52.

Nolan's appointed counsel tried to argue that he was disabled and so entitled to some sort of "reasonable accommodation," but he failed to identify any such disability and never asked for an accommodation. Both the trial and appellate courts rejected this claim. He has finally dropped it in this Court.

No conflict exists with any relevant decision of this or another appellate court. This Court should deny review.

RESTATEMENT OF NOLAN'S ISSUES PRESENTED FOR REVIEW

1. May a private landlord evict a tall, large, and imposing tenant who repeatedly sends its female property manager abusive texts reaching ***88 pages*** – over many months and despite repeated pleas to stop – for example,

(1) threatening texts (my ally would "like to kill you");

(2) racist texts ("stupid Mexican labor");

(3) misogynist texts ("**Cunt**"; "Bitches");

(4) defamatory texts ("Evil slumlord"; "Nazi Maggie");

(5) vile texts (Your mother "would have been better aborting" all her children); and

(6) obscene texts ("Shit Heads Fuck You All")?

2. Must the landlord post those ***88 pages*** of vulgar texts on the tenant's apartment door, or may the Notice to Vacate simply identify the tenant's "conduct and behavior" of "repeatedly sending lengthy harassing, abusive, and threatening text message to landlord, which include hate speech, despite requests to cease such communications"?

FACTS RELEVANT TO ANSWER

A. *Maggie* accurately summarizes the facts.

Maggie accurately summarizes the relevant facts (at 1-3 & 8-10), which are more fully set forth (with citations to the record) in the Brief of Respondent (BR) at 4-11. Nolan's "facts" are incomplete and misleading.

B. *Maggie* holds that the trial court did not err.

1. The Notice was sufficient to permit Nolan to respond and to prepare a defense under RCW 59.18.650(6)(b).

Maggie notes that review of the sufficiency of the Notice under RCW 59.18.650(6)(b) presents a mixed question of law and fact that is reviewed *de novo*. ***Maggie*** at 5-6 (citing ***Hall v. Feigenbaum***, 178 Wn. App. 811, 819, 319 P.3d 61 (2014)). It holds that a Notice identifying Nolan's "'conduct and behavior'" of "'repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite requests to cease such communications,'" was sufficient to permit

Nolan to respond and to prepare a response, as the statute requires *Id*. at 7-8. This is particularly true where Nolan admitted to sending ***88 pages*** of vulgar, misogynist, racist, and threatening texts to his landlord: *objectively*, he knew the bases for the Notice. *Id*. at 8; *see also id.* at 12.

2. Nolan's unreasonable interference with the landlord's use and enjoyment of the premises was substantial and repeated under RCW 59.18.650(2)(c).

Maggie also holds that substantial evidence supports the determination that Nolan's abusive texts to the landlord/property manager "amounted to substantial or repeated and unreasonable interference with the landlord's use and enjoyment of the premises" under RCW 59.18.650(2)(c). *Id*.; *see also id.* at 10-11 (standard of review is substantial evidence). The property manager (Ms. Piper) testified that Nolan texted her physically threatening messages, including that his friend wanted to kill her. *Id*.; *see also* BR 5-6 (citing RP 26; CP 86-87). She

further testified that Nolan texted racist messages, including slurs directed at Chinese (and Mexican) people. *Id*.; *see also* BR 6 (citing RP 29-30).

Finally, she also testified about Nolan's "defamatory and profane" texts – which are also misogynistic (*id*. at 9):

- Stating it was "**too late Cunt. I'll be dragging it out** . . .."
- Calling her family "assholes . . . pull the plug on your ugly racist mom . . . she would have been better aborting you all."
- Calling her family "abusive, evil monsters."
- Calling Piper a "pig" and "Shitheads Fuck You All."

See also BR 5-7 (citing CP 86-91; RP 24, 26, 56-59).[1] "In short, Piper testified that she felt personally threatened by the nature of the texts, explaining, 'I didn't feel I could go up and do my necessary duties at the building for my other tenants without being fearful of Mr. Nolan." *Id*.; *see also* BR 6 (citing CP 88; RP 26-30, 56).

[1] Nolan's additional filth included "Nazi Maggie," "Evil slumlords," and "Hate Crime Bitches." BR 7 (citing CP 89, 91; RP 56, 59).

Nolan admitted sending all these racist, misogynist, and baseless obscenities despite Piper's repeated pleas that he stop. ***Maggie*** at 9-10; BR 7. He did deny that he also made death threats against his own sister, but the evidence proved otherwise. BR 7 (citing RP 62-63; CP 156-83). The trial court considered this evidence on the issue of Nolan's abysmal credibility. RP 64-65.

Thus, ***Maggie*** found Nolan's claim the landlord failed to submit evidence that he interfered with her use and enjoyment of the premises "simply untrue." ***Maggie*** at 11. Nolan did not even attempt to contradict Ms. Piper's express testimony that she was afraid of him (he is a tall, large, and imposing man, RP 24-25; CP 90) and that he prevented her from completing her duties as Maggie's property manager. ***Maggie*** at 12. Indeed, "Nolan effectively admitted the texts were inappropriate" when he acknowledged that "he would never say" such things "verbally to her." *Id*.; *accord* RP 58. And Nolan did not even

assign error to the trial court's Finding that "Ms. Piper's reaction to [his] texts was reasonable, and interfered with the landlord's use of the premises." CP 120.

In sum, based on his 88 pages of abusive, misogynistic, racist hate texts, and on the totality of the evidence in the record, Nolan plainly violated RCW 59.18.650(2)(c). ***Maggie*** at 12-13. Certainly, a "'fair-minded and rational person' could conclude that such text messages, at a minimum, would cause a fatal rift in any relationship, including the relationship between a landlord and a tenant." *Id*. at 13 (quoting ***Pham v. Corbett***, 187 Wn. App. 816, 825, 351 P.3d 214 (2015)). "Thus, the court did not err in finding that the text messages caused a repeated and substantial interference with the landlord's ability to enter and use the property." *Id*. Granting the writ on this basis was not an abuse of discretion. *Id*.

3. The trial court properly refused to set the undisputed facts for a jury trial.

Maggie also affirmed the trial court's ruling refusing to set the matter for trial, where Nolan failed to raise a genuine issue of material fact. *Id*. at 13-16. Applying *de novo* review, ***Maggie*** held that no "reasonable juror could conclude that [Nolan] did not interfere with the [landlord's] use and enjoyment of the property," notwithstanding his claims that he did not mean what he wrote. *Id*. Nor could a reasonable juror help finding Nolan's assertion that "my ally wants to kill you" a physical threat. *Id*. at 15. After all, "there is no authority, and we decline to create any, that a landlord must wait for a tenant to attempt to physically [harm] them before terminating the tenancy." *Id*. at 16 (citation omitted).

Nolan cited "nothing in the record creating a genuine issue of material fact as to the events which led to the landlord seeking eviction or the tenant's defenses," so "the trial court did not err by declining to grant a trial." *Id*. (citing

Welch v. Brand Insulations, Inc., 27 Wn. App. 2d 110, 117, 531 P.3d 265 (2023) ("summary judgment is appropriate if, from all the evidence, a reasonable person could reach only one conclusion") (cleaned up) (quoting ***Folsom v. Burger King***, 135 Wn.2d 658, 663, 958 P.2d 301 (1998))).

Similarly, Nolan failed to raise a genuine issue of material fact regarding whether the landlord was required to "reasonably accommodate" him. *Id*. at 16-20. Nolan has dropped this argument in his PFR, so ***Maggie***'s holding on this issue resolves it. *See* PFR at 5. This concession is proper, as notwithstanding Nolan's "counsel's repeated attempts, Nolan did not explain how any of his conditions could manifest as causing him to send repeated, threatening, and offensive correspondence." ***Maggie*** at 18. Nor did he show why or how any supposed accommodation was necessary to afford him an equal opportunity to use and enjoy the premises. *Id*. at 18-19. Nor

did he show *how* the landlord could or should have accommodated his alleged disability, or that he gave Maggie Properties enough information to require it to attempt to accommodate him. *Id*. at 19.

Certainly, "it would not have been a 'reasonable' accommodation, or part of a reasonable accommodation, to require a landlord to continue to rent to a tenant who sends continual profane and threatening text messages after being asked to stop." *Id.* It is simply "not reasonable to let Nolan stay indefinitely and to allow him to continue to send harassing and [obscene] correspondence, which indisputably caused the manager to be afraid to enter the property" to do her job. *Id*.; *see also id.* at 20:

> Nolan himself did not testify that he sent the texts due to his mental state, but only in "anger" and in "retaliation." There is nothing in the record that supports . . . Nolan's argument . . . that the landlord evicted him due to a *specific incident* of a mental health crisis. That choice was not before the landlord. Thus, this argument also does not support Nolan's reasonable accommodation claim as a matter of law.

REASONS THIS COURT SHOULD DENY REVIEW

A. No conflict exists with any decision of this Court.

Nolan tacitly concedes that ***Maggie*** does not conflict with any of this Court's precedents, bypassing RAP 13.4(b)(1). And indeed, ***Maggie*** cites and follows this Court's decisions in ***Wash. State Ass'n of Counties v. State***, 199 Wn.2d 1, 502 P.3d 824 (2022); ***Randy Reynolds & Assocs., Inc. v. Harmon***, 193 Wn.2d 143, 437 P.3d 677 (2019); ***Faciszewsi v. Brown***, 187 Wn.2d 308, 386 P.3d 711 (2016); ***Staples v. Allstate* Ins. Co.**, 176 Wn.2d 404, 295 P.3d 201 (2013); ***Lakey v. Puget Sound Energy, Inc.***, 176 Wn.2d 909, 296 P.3d 860 (2013); ***Christensen v. Ellsworth***, 162 Wn.2d 365, 173 P.3d 228 (2007); ***Folsom***, 135 Wn.2d 658; ***Schaaf v. Highfield***, 127 Wn.2d 17, 896 P.2d 665 (1995); and ***DeHeer v. Seattle Post Intelligencer***, 60 Wn.2d 122, 372 P.3d 193 (1962). *See* ***Maggie*** at 3-4, 14-16.

No conflict exists with this Court's decisions.

B. No conflict exists with any other appellate court decisions.

Nolan argues that ***Maggie*** conflicts with three appellate court decisions: ***Kiemle & Hagood Co. v. Daniels***, 26 Wn. App. 2d 199, 528 P.3d 834 (2023) ("***Daniels***"); ***Sherwood Auburn v. Pinzon***, 24 Wn. App. 2d 664, 521 P.3d 212 (2022), *rev. denied*, 526 P.3d 848 (2023) ("***Pinzon***"); and ***Tacoma Rescue Mission v. Stewart***, 155 Wn. App. 250, 288 P.3d 1289 (2010) ("***Stewart***"). ***Maggie*** cites and follows ***Daniels***: no conflict exists. Nolan did not even cite ***Pinzon*** in the Court of Appeals until his motion for reconsideration, and even there he did not note any conflict, as there is none. And as ***Maggie*** explains, ***Stewart*** is easily distinguished and inapposite, not in conflict.

1. *Maggie* follows *Daniels*: no conflict exists.

Nolan concedes that ***Daniels*** held ***sufficient*** a notice generally averring unsanitary conditions and not identifying any specific victim. PFR 17. ***Maggie*** quotes and follows

Daniels' holding that notice is adequate under the RCW if it gives the tenant "sufficient opportunity to defend against [the] allegations." ***Maggie*** at 5-6. Thus, ***Maggie*** is consistent with ***Daniels***. *See also* ***Maggie*** at 7.

But Nolan ignores the key point in ***Daniels***: while the law requires landlords to strictly comply with timing and manner notice requirements, "when it comes to form and content, substantial compliance is sufficient." ***Daniels***, 26 Wn. App. 2d at 215 (emphasis added) (citing ***Marsh-McLennan Bldg., Inc. v. Clapp***, 96 Wn. App. 636, 640 n.1, 980 P.2d 311 (1999) (citing ***Foisy v. Wyman***, 83 Wn.2d 22, 32, 515 P.2d 160 (1973) ("'As to the form and contents of the notice . . . substantial compliance with the statute is sufficient'") (quoting ***Provident Mut. Life Ins. Co. v. Thrower***, 155 Wash. 613, 617, 285 P. 654 (1930)))).

As these citations make clear, this has been the law of Washington for nearly 100 years. Yet Nolan disregards all this controlling law.

Nolan instead relies on *dicta* in ***Daniels*** that "in some cases identifying victims is logically necessary." PFR AT 17 (citing ***Daniels***, 26 Wn. App. 2d at 217). But here, logic – and that long-standing controlling law – dictate otherwise. ***Maggie*** explains that the statute expressly "requires only 'enough specificity as to enable the tenant to respond and prepare a defense to any incidents alleged.'" ***Maggie*** at 7 (quoting ***Daniels***, 26 Wn. App. 2d at 217). Nolan *admitted* to sending his many loathsome texts solely to Ms. Piper – who is *both* the landlord *and* the property manager – and he never alleged that he texted anyone else such filth. *Id*. The texts *were on his phone.* "And, because he was able to attempt to explain the context of those texts at the show cause hearing," Nolan received "sufficient notice under RCW 59.18.650(6)(b)," just like in ***Daniels***. *Id.*

There is no conflict with ***Daniels***, which instead fully supports the ***Maggie*** decision. Review is unwarranted.

2. *Pinzon* is factually and legally inapposite, but it is also consistent with *Maggie*.

Nolan did not cite ***Pinzon*** in his opening or reply briefs, nor did he identify any alleged conflict in his motion for reconsideration, so the Court of Appeals had no occasion to discuss it. But ***Pinzon*** holds that the federal CARES Act, 15 U.S.C.S. § 9058, requires landlords subject to its terms to provide a 30-day notice to tenants prior to commencing an unlawful detainer action. 24 Wn. App. 2d at 667. Although that landlord did serve a 30-day notice, it *first* served a 14-day notice. *Id.* at 668. Because these conflicting notices "were misleading and equivocal and failed to adequately, precisely, and correctly inform the tenants of the rights to which they were entitled" under the CARES Act, ***Pinzon*** correctly reversed the writ and judgment against the tenants. *Id*. at 680-82.

Pinzon is factually inapposite. Here there are no allegations of conflicting or untimely notices, which are

subject to a strict-compliance standard. Rather, the issue here is the *content* of the notice, which is subject only to substantial compliance. *See supra*, Argument § B.1. This notice substantially complied as to its content. *Id*.

Pinzon is also legally inapposite. Nolan never raised the CARES Act or submitted any evidence that Maggie Properties would be subject to its terms, which would require that the landlord accepted the financial benefits of certain federal programs. *See, e.g.*, ***Pinzon***, 24 Wn. App. 2d at 667. Here, Maggie Properties is a private landlord that does not accept § 8 or similar federal funding, and there is no evidence to the contrary, nor even an argument from Nolan that it does. ***Pinzon*** is thus doubly inapposite.

But it is otherwise consistent with ***Maggie***. Both cases cite and follow the same underlying unlawful-detainer law. *Compare* ***Maggie*** at 3-5 *with* ***Pinzon***, 24 Wn. App. 2d at 670-71. It is only as to the CARES Act – and the timeliness vs. the content of the notice – that the two

decisions differ. Since the CARES Act is irrelevant here and neither Nolan nor ***Maggie*** ever raises or discusses it, ***Pinzon*** cannot conflict with ***Maggie***.

3. *Stewart* is also factually and legally inapposite.

As ***Maggie*** explains at 7-8, ***Stewart*** "is facially distinguishable." ***Stewart*** was "decided about a decade before the RCW at issue here was enacted," so does not address that statute's plain language. ***Maggie*** at 7. There, "the tenant appealed his eviction from federally subsidized [§ 8] public housing." *Id*. (citing ***Stewart***, 155 Wn. App. at 251). He claimed the federally subsidized landlord gave him "inadequate notice *under the terms of the lease*." *Id*. While that lease required the notice to contain enough specificity to enable a tenant to understand the grounds for termination, federal Due Process standards solely applicable to *public housing* further required notice of the "'dates, times, locations, and the tenant's alleged victims

so that the tenant can prepare a rebuttal to the landlord's accusations.'" *Id.* (quoting ***Stewart*** at 256 (citing ***Swords to Plowshares v. Smith***, 294 F. Supp. 2d 1067 (N.D. Cal. 2002); ***Cuyahoga Metro. Hous. Auth. v. Younger***, 639 N.E.2d 1253 (1994); ***Housing Auth. of King Cnty. v. Saylors***, 19 Wn. App. 871, 578 P.2d 76 (1978))).[2]

Maggie simply refused to rewrite or amend RCW 59.18.650(6)(b) to add the terms contained in inapplicable federal law regarding *public* housing, which are required by the inapplicable § 8. *Id*. at 7-8. This is fully consistent with

[2] Nolan correctly notes that ***Maggie*** says these additional requirements were in the ***Stewart*** lease; but he fails to disclose that like ***Stewart***, the cases it cites apply federal law to federally subsidized housing, and thus Due Process requirements not binding on private landlords like Maggie Properties. PFR at 13-14. In such cases, the "government as landlord is still the government," so "**unlike private landlords**, it is subject to the requirements of due process of law." ***Saylors***, 19 Wn. App. at 873 (cleaned up) (*quoting* ***Thorpe v. Housing Auth.***, 386 U.S. 670, 678, 18 L. Ed. 2d 984, 87 S. Ct. 1244 (1967) (Douglas, J., concurring) (*quoting* ***Rudder v. United States***, 226 F.2d 51, 53 (D.C. Cir. 1955)) (emphasis added). ***Stewart*** remains inapposite.

longstanding Washington law. *See, e.g.*, BR 12-14 (citing and quoting ***Harmon***, 193 Wn.2d at 155-56):

> The meaning of a statute is a question of law reviewed de novo. ***Dep't of Ecology v. Campbell & Gwinn, LLC***, 146 Wn.2d 1, 9, 43 P.3d 4 (2002). The court's fundamental objective is to ascertain and carry out the legislature's intent, and if the statute's meaning is plain on its face, then the court must give effect to that plain meaning as an expression of legislative intent. *Id*. at 9-10. "Plain meaning 'is to be discerned from the ordinary meaning of the language at issue, the context of the statute in which that provision is found, related provisions, and the statutory scheme as a whole.' While we look to the broader statutory context for guidance, **we 'must not add words where the legislature has chosen not to include them**,' and we must 'construe statutes such that all of the language is given effect.'" ***Lake v. Woodcreek Homeowners Ass'n***, 169 Wn.2d 516, 526, 243 P.3d 1283 (2010) (quoting ***State v. Engel***, 166 Wn.2d 572, 578, 210 P.3d 1007 (2009); ***Rest. Dev., Inc. v. Cananwill, Inc.***, 150 Wn.2d 674, 682, 80 P.3d 598 (2003)). [Bold added.]

Again, ***Maggie*** is consistent with all relevant Washington law, including all precedents from this Court, as Nolan tacitly concedes.

Nonetheless, Nolan claims that the applicable RCW and the ***Stewart*** lease provision "lay out the same

requirement for the specificity of termination notices." PFR at 14. Remarkably, here Nolan manages to be both false and misleading. This is false because the statutory term ("with enough specificity so as to enable the tenant to respond and prepare a defense to any incidents alleged") is *obviously* not "the same" as the ***Stewart*** lease term ("with enough specificity to enable the resident to understand the grounds for termination"). The different language means that quite different inquiries are required.

That is, to test the adequacy of the notice under the RCW, one must ask whether the tenant could "respond and prepare a defense," which is *precisely* the objective inquiry ***Maggie*** pursued at 6-8. But under the ***Stewart*** lease, the inquiry was whether the tenant could "understand the grounds for termination," which the ***Stewart*** tenant claimed he could not. The two provisions are not "the same."

Moreover, Nolan's assertion is misleading because he is in fact relying on *additional federal law specificity*

requirements imposed on public housing authorities under the federal Due Process clause, which appear *nowhere* in our RCWs. Our Legislature plainly could have added such requirements to the statute, but it did not. They are thus not applicable under RCW 59.18.650(6)(b). Therefore, ***Maggie*** cannot and does not conflict with ***Stewart***.

The difference between ***Maggie*** and ***Stewart*** is the federal due process requirements imposed on public housing authorities who receive federal money, so must comply with federal mandates under § 8, which are inapplicable to private landlords like Maggie Properties. That legally significant difference fully explains the different outcomes in the two cases. Yet Nolan claims that Maggie Properties did not meet *the federal requirements*. PFR 15. They simply do not apply under RCW 59.18.650(6)(b).

And Nolan's argument that this landlord should have identified the times and dates he sent his filthy texts – over many months – or even *posted the texts themselves on his*

door – where children might have read them – is unsupported by any *applicable* Washington law. PFR at 15. Posting ***88 pages*** of Nolan's own foul screed on his door would not have made him any more ready to respond or prepare a defense, as he *admitted to sending every vile text*. Private landlords should not be required to risk offending their other tenants by making public displays of a tenant's execrable ranting that is unfit even for private communications, much less public exhibition.

But in any event, ***Stewart*** has nothing to do with ***Maggie***, as Judge Díaz correctly wrote for the unanimous panel at 6-8, affirming Judge Judith Ramseyer's correct decision adopting Commissioner Bradford G. Moore's correct – and *unchallenged* – Findings, as well as the inescapable Conclusions flowing from them.

C. No issue of substantial public interest that this Court should determine exists here.

Having failed to identify any actual conflict with existing Washington law, Nolan argues that the sky is falling. PFR 22-27. He goes so far as to claim that the Court of Appeals "shifted the burden" to him to show a "subjective lack of understanding of the allegations in the notice," or required tenants "to show confusion or prejudice." *Id*. at 24, 26. Of course, ***Maggie*** does none of that. And Maggie Properties did not cause the housing crisis he hides behind: it sheltered *him* – and many others – for *18 years*.

Rather, ***Maggie*** finds sufficient a notice identifying Nolan's "conduct and behavior" of "repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite repeated requests to cease such communications," because it identified the facts and circumstances known to the landlord with enough specificity to enable Nolan to respond

and prepare a defense. ***Maggie*** at 6-8. *Objectively*, Nolan did respond and prepare a defense. *See, e.g.*, RP 1-85. He *admitted* every salient allegation under oath. *See* BR 7. He thus *did not put at issue* the bases for his eviction.

That is why the ***Maggie*** decision does not dwell at greater length on the sufficiency of the notice: it plainly told Nolan what outrageous actions he took to get himself evicted, and he admitted them.

Maggie Properties – a small family business – has been more than patient with Nolan's ongoing misconduct. He posted a small bond, so he is still their very difficult tenant. This Court should promptly deny review and let this landlord and its other tenants have some peace.

The public interest requires no less.

CONCLUSION

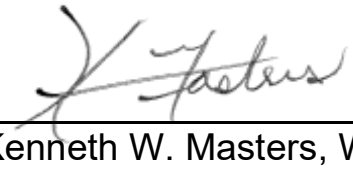
- "**Cunt**."
- "Stupid Mexican laborers."
- "Nazi Maggie."
- "Hate Crime Bitches."
- Your mother – whom Nolan *knew* – should have aborted all of her children – whom Nolan *also knew* over the *18 years* they put up with his repulsive behaviors.
- . . .

This Court should deny review.

The undersigned hereby certifies under RAP 18.17(2)(b) that this document contains **4,098** words.

RESPECTFULLY SUBMITTED this 19th day of April 2024.

MASTERS LAW GROUP, P.L.L.C.



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IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

MAGGIE PROPERTIES, LLC, a Washington Limited Liability Company, Respondent, v. BERNARD NOLAN, Appellant, ALL OTHER OCCUPANTS, Defendants	No. 84549-7-I DIVISION ONE UNPUBLISHED OPINION

DÍAZ, J. — Maggie Properties LLC (Maggie Properties or landlord) filed an unlawful detainer action to evict Bernard Nolan from his apartment, alleging he sent harassing and abusive text messages to the property manager. The trial court granted the unlawful detainer, issued a writ of restitution, and denied a motion for revision. Nolan appeals, claiming that notice for the unlawful detainer was deficient, that his (admittedly) inappropriate texts did not rise to the level of interference with the landlord's use of the apartment, as required by the statute, and that his landlord failed to accommodate his disability. Finding no error, we affirm.

I. BACKGROUND

Nolan was a tenant in Maggie Properties' residential building in Shoreline for 18 years. Nolan regularly corresponded via text message with the family who managed the building, including with the mother, and later the daughter, Janice Piper. As will be described in more detail below, between June and August 2022, Nolan's text messages to Piper became antagonistic after the two had a dispute over some repairs he believed should be made at the apartment.

On July 18, 2022, the landlord filed a complaint with the superior court for unlawful detainer, asking for a writ of restitution under RCW 59.18.650(2)(c). At the subsequent show cause hearing, Piper provided unrebutted testimony that she found many of the text messages Nolan sent during that summer to be harassing, abusive and/or caused her to fear Nolan, including texts using racially-charged language, profanity, and threats of harm.

In the hearing, when counsel asked Piper why she felt personally threatened, she answered:

> It was the language that was used, the abusive language, um, calling me the C word; telling me that my mother should have aborted all three of us children. Uh, telling me that I have to stop lurking -– creeping around the building. To the extent that *I didn't feel I could go up and do my necessary duties at the building for my other tenants without being fearful of Mr. Nolan.*

(emphasis added).

In response, Nolan admitted to sending each and every such message, i.e., those that Piper testified she found harassing or abusive, even after she asked him to stop. Nolan defended the text messages as "a retaliatory last resort to back off." He further testified he sent his messages "in anger and frustration." Otherwise, he

testified his medication and health "possibly" affected his behavior, but never explained how.

The trial court granted the writ, and denied Nolan's subsequent motion for revision. The court also did not grant Nolan's request, in the alternative, for a trial. Nolan timely appeals.

II. ANALYSIS

By way of background, an unlawful detainer action is "a statutorily created proceeding that provides an expedited method of resolving the right to possession of property." Christensen v. Ellsworth, 162 Wn.2d 365, 370-371, 173 P.3d 228 (2007).

"The procedures set forth in the generalized unlawful detainer statutes, chapter 59.12 RCW, 'apply to the extent they are not supplanted by those found in the Residential Landlord-Tenant Act [(RLTA)].'" Randy Reynolds & Assocs., Inc. v. Harmon, 193 Wn.2d 143, 156, 437 P.3d 677 (2019) (quoting Hous. Auth. of City of Pasco & Franklin County v. Pleasant, 126 Wn. App. 382, 390, 109 P.3d 422 (2005)). The RLTA applies to disputes, as here, involving a residential lease. Carlstrom v. Hanline, 98 Wn. App. 780, 786, 990 P.2d 986 (2000). Because "[c]hapters 59.12 and 59.18 RCW are statutes in derogation of the common law," they "are strictly construed in favor of the tenant." Harmon, 193 Wn.2d at 156.

A landlord has cause to evict a tenant if, among other grounds, the "tenant continues in possession after having received at least three days' advance written notice to quit after [the tenant] commits . . . substantial or repeated and unreasonable interference with the use and enjoyment of the premises by the

landlord or neighbors of the tenant." RCW 59.18.650(2)(c). "A tenant cannot hold over in the premises after the termination of the rental agreement." Harmon, 193 Wn.2d at 156 (citing RCW 59.18.290). If the tenant has not complied with the eviction, the landlord may serve the tenant a summons and complaint. Id. (citing RCW 59.18.365). The landlord may apply for a writ of restitution "at the same time as commencing the action or at any time thereafter." Id. at 157.

"To obtain a writ, a landlord must apply for an order for a show cause hearing . . . and serve that order on the tenant. A show cause hearing is a 'summary proceeding[ ] to determine the issue of possession pending a lawsuit' and is not the final determination of rights in an unlawful detainer action." Id. (alteration in original) (citation omitted) (quoting Hanline, 98 Wn. App. at 788, RCW 59.18.370). This opportunity for immediate temporary relief makes the show cause process similar to a preliminary injunction proceeding. Faciszewski v. Brown, 187 Wn.2d 308, 315 n.4, 386 P.3d 711 (2016).

"At the show cause hearing, the court will determine if the landlord is entitled to a writ of restitution before a trial on the complaint and answer." Harmon, 193 Wn.2d at 157 (citing RCW 59.18.380). At the hearing, the "court shall examine the parties and witnesses orally to ascertain the merits" of the case. RCW 59.18.380. "If a writ of restitution is issued at the RCW 59.18.380 show cause hearing, the landlord can deliver the writ to the sheriff, who will serve it on the tenant." Harmon, 193 Wn.2d at 158 (citing RCW 59.18.390(1)).

"Whether or not the court issues a writ of restitution at the show cause hearing, *if material factual issues exist*, the court is required to enter an order

directing the parties to proceed to trial on the complaint and answer." Id. at 157 (emphasis added).

A. Notice for eviction

We conclude that Nolan had sufficient notice to respond and prepare a defense, thereby satisfying RCW 59.18.650(6)(b).

1. Law

When a landlord provides a tenant a notice of unlawful detainer,

> [A]ll written notices . . . must (a) be served in a manner consistent with RCW 59.12.040;[1] and (b) identify the facts and circumstances known and available to the landlord at the time of the issuance of the notice that support the cause or causes with enough specificity so as to enable the tenant to respond and prepare a defense to any incidents alleged.

RCW 59.18.650(6)(b).

At the time of this opinion, it appears that only one case specifically has discussed RCW 59.18.650(6)(b). In Daniels, at issue was whether the landlord's notice to a tenant provided enough facts for the tenant to "effectively rebut the conclusion reached" by the landlord. Kiemle & Hagood Co. v. Daniels, 26 Wn. App. 2d 199, 215, 528 P.3d 834 (2023) (citing Hous. Auth. Of DeKalb County v. Pyrtle, 167 Ga. App. 181, 182, 306 S.E.2d 9 (1983)). The court concluded that the notice was sufficient because it included and referred to prior notices the property manager sent to the tenant regarding lease violations. Id. at 217. Thus, such

[1] To be compliant with RCW 59.12.040, the landlord must, among other things, provide proof of service by delivering a copy of the relevant notices to the tenant. RCW 59.12.040. Maggie Properties affixed a copy of its notice to terminate to Nolan's door, as well as sending the same by certified mail. Nolan does not contest that condition (a) was met and, thus, we will not discuss service further.

notice was enough to give the tenant "a sufficient opportunity to defend against [the] allegations." Id.

"A challenge to the adequacy of notice presents a mixed question of law and fact, which we review de novo." Hall v. Feigenbaum, 178 Wn. App. 811, 819, 319 P.3d 61 (2014).

2. Discussion

The landlord's notice stated, "Your tenancy is being terminated in accordance with RCW 59.18.650(2)(c), which provides a month-to-month tenancy may be terminated upon 3 days' notice where . . . substantial or repeated and unreasonable interference with the use and enjoyment of the premises by . . . the landlord." The notice attached an explanation of the "facts and circumstances" of that interference, specifically citing his "conduct and behavior" of "repeatedly sending lengthy harassing, abusive, and threatening text messages to landlord, which include hate speech, despite requests to cease such communications."[2]

Nolan argues that the notice was insufficient because it lacked specificity under RCW 59.18.650(6)(b). According to Nolan, the notice was a "list of alleged behaviors, none of which contained names of witnesses, dates, or other specific facts." Nolan relies on Tacoma Rescue Mission v. Stewart, 155 Wn. App. 250, 288 P.3d 1289 (2010), for the claim that "names, dates," etc. are required in the notice.

[2] The notice included four additional allegations of interference. The trial court ruled that the first four facts and circumstances were not sufficiently specific to provide adequate notice, but ruled that the reference to Nolan's texts met the specificity requirements. Maggie Properties did not cross appeal, and we will not consider further whether the other listed grounds were sufficiently specific.

In Stewart, decided about a decade before the RCW at issue here was enacted, Stewart, the tenant, appealed his eviction from federally subsidized public housing. Id. at 251. Stewart argued that the trial court erred because Tacoma Rescue Mission (TRM) gave inadequate notice *under the terms of the lease*. Id. Similar to the statute here in question, Stewart's lease required TRM to "state the reasons for such termination with enough specificity to enable the resident to understand the grounds for termination." Id. at 255. However, the lease also expressly required the notice to include "dates, times, locations, and the tenant's alleged victims so that the tenant can prepare a rebuttal to the landlord's accusations." Id. Nolan argues such details should be required here.

Stewart is facially distinguishable. The dispute in Stewart was about the specific terms of a lease. Id. at 257. The dispute in the present case is over the meaning of the statute. Stewart did not address and did not create binding requirements of notice under RCW 59.18.650(6)(b), which again requires only "enough specificity as to enable the tenant to respond and prepare a defense to any incidents alleged." Daniels, 26 Wn. App. 2d at 217.

Here, Nolan admitted he texted Piper, whose family had owned and managed the building as long as Nolan had resided there. He admitted to sending her many texts that included racially charged language, profanity, and possible threats, despite her requests to stop, which will be reviewed in more detail below. There is nothing in the record evincing confusion about which texts were at issue. If there had been any doubt, Nolan simply could have reviewed the text messages he wrote and sent from his own phone, which included dates, times, and other

information he claims is required.

Nolan also was able to, and did, prepare a cogent response, including, in part, that the inappropriate text messages were due to the state of his mental health in the summer of 2022, which he supported with a declaration from a social worker who attempted to connect him with proper medical treatment.

In short, the notice sufficiently identified the recipient (the landlord) and content of the offending text messages, which Nolan admitted sending, were well-documented and available to him. And, because he was able to attempt to explain the context of those texts at the show cause hearing, we conclude Maggie Properties gave Nolan sufficient notice under RCW 59.18.650(6)(b).

B. Repeated and unreasonable interference

1. Substantial evidence

We conclude that there was substantial evidence that Nolan's text messages to the property manager amounted to substantial or repeated and unreasonable interference with the landlord's use and enjoyment of the property.

a. Additional factual background

At the show cause hearing, Piper testified that during the summer of 2022, Nolan sent her continuous text messages over a period of several days, which were "consistently harassing and abusive . . . when I asked him to stop . . . they continued. Often they would continue day and night for up to two days straight." The trial court admitted the text messages.

More specifically, Piper testified as to at least three types of text messages she found offensive. First, she testified Nolan sent text messages that were

physically threatening. For example, her counsel asked, "At some point did Mr. Nolan reference that a friend of his, Todd, wanted to kill you?" Piper answered, "Yes, he did." Piper was referring to the following text message, "TODD well I dunno he'd like to kill you for so many abuses."

Second, Piper expressed concern over the racially charged nature of Nolan's texts. She testified, "He blames his Chinese doctors for all his health issues." She further testified:

> I told him that it disturbed me because I have several Asian family members and loved ones . . . he continued his texts with that abusive language . . . we have a repair person who is Hispanic . . . and he said he didn't want the Mexican guy in his place.

Finally, Piper testified about several defamatory and profane statements Nolan made, including:

- Stating it was "too late cunt. I'll be dragging it out with eviction like all your other pissed off tenants."
- Calling her family "assholes…pull the plug on your ugly racist mom….she would have been better aborting you all."
- Calling her family "abusive, evil monsters."
- Calling Piper a "pig" and "shitheads, fuck you all."

In short, Piper testified that she felt personally threatened by the nature of the texts, explaining, "I didn't feel I could go up and do my necessary duties at the building for my other tenants without being fearful of Mr. Nolan."

For his part, when examined by his counsel, again, Nolan did not deny he sent each of these texts. Instead, he testified he was "withdrawn" and "hostile" because of estrangement from his own family members and because he had

recently been released from jail. Further, Nolan testified to knowing that Piper asked him to "stop sending her harassing text messages" more than once. He characterized his messages to Piper "as a retaliatory last resort to back off . . . in anger and frustration."

As to the threat that "Todd" would "like to kill you for so many abuses," Nolan testified as follows:

> Q: You were – you were letting Ms. Piper know that your brother-in-law –
> A: I have an ally.
> Q: Would like to kill her. Is that correct?
> A: No. Just that I have an ally and he's angry. That's a figure of speech.
> Q: So, it says he'd like to kill you? Is that correct?
> A: No. Uh, it's a figure of speech. Like he'll kill ya. I mean, that's about it.

Finally, despite his counsel's repeated efforts, Nolan did not explain how his medications or health conditions affected his behavior. And, he provided no evidence to contradict Piper's stated fear or her claim she could not complete her duties as property manager.

b. Standard of review

"'On appeal, this court reviews the superior court's ruling, not the commissioner's.'" Tedford v. Guy, 13 Wn. App. 2d 1, 12, 462 P.3d 869 (2020) (quoting Maldonado v. Maldonado, 197 Wn. App. 779, 789, 391 P.3d 546 (2017)). "Thus, here we review the superior court's order adopting the commissioner's rulings, findings of fact, and conclusions of law." Id.

"A trial court's findings of fact will not be overturned on appeal if it is supported by substantial evidence." Leda v. Whisnand, 150 Wn. App. 69, 85 n. 6,

207 P.3d 468 (in an unlawful detainer action, considering whether the trial court's "finding of fact" on an element of a writ was erroneous); MH2 Co. v Hwang, 104 Wn. App 680, 685, 16 P.3d 1272 (2001) (in an unlawful detainer action, holding "On appeal, the trial court's findings of fact must support its conclusions of law; the findings must be supported by substantial evidence").

"Substantial evidence exists when there is a sufficient quantity of evidence to persuade a fair-minded, rational person that a finding is true." Pham v. Corbett, 187 Wn. App. 816, 825, 351 P.3d 214 (2015) (quoting Hegwine v. Longview Fibre Co., Inc., 132 Wn. App. 546, 555-56, 132 P.3d 789 (2006)). Unchallenged findings of fact are verities on appeal. Id.

c. Discussion

In its order granting the writ of restitution, the court found "by a preponderance of the evidence that the text messages . . . constitute[d] . . . or substantial repeated and unreasonable interference . . ." In particular, the court found Piper's reaction to the text messages "reasonable."

Nolan contends that (1) Maggie Properties "failed to provide any evidence that the landlord had not been able to use or enjoy the property . . . because of [Nolan's] texts." Nolan further argues (2) that granting the writ "based on the subjective fears of the property manager" was error. We conclude neither argument is persuasive.

First, it is simply untrue that there is no evidence the landlord could not use and enjoy the property because of Nolan's threats. Piper testified she "didn't feel like [she] could . . . do [her] necessary duties at the building for my other tenants

without being fearful of Mr. Nolan," and Nolan provided no contravening evidence and did not even cross-examine her on this statement.

Second, we review, not only whether Piper subjectively experienced fear,[3] but ultimately whether the commissioner reasonably concluded, based on the available evidence, that Nolan was in violation of RCW 59.18.650(2)(c) by repeatedly and unreasonably interfering with the property manager's use.

Here, consistent with RCW 59.18.650(2)(c), the commissioner based its decision on the 88 pages of text messages between Piper and Nolan attached to the parties' briefing, and the sworn testimony of both. Piper testified to the contents of the text messages, including threats, profanity, and other offensive content. Piper testified to asking Nolan to "stop sending these harassing texts" multiple times, and expressed that, based on all of the correspondence she received from him, that she felt afraid to enter the property. She testified that this fear, caused by Nolan's messages, prevented her from completing her duties as property manager. In contrast, Nolan offered no evidence to contradict the events as Piper described them, or to contest whether she felt afraid to enter the property. He admitted to sending the text messages. And, Nolan effectively admitted the texts were inappropriate, when acknowledging he would never say it verbally to her.

The totality of these facts are such that they could persuade a reasonable

[3] It is not error to consider under RCW 59.18.650(2)(c) whether the landlord or property manager subjectively experienced fear. The statute asks whether Nolan engaged in "unlawful activity that affects the use and enjoyment of the premises, or other substantial or repeated and unreasonable interference with the use and enjoyment of the premises by the landlord or neighbors of the tenant." RCW 59.18.650(2)(c). One way to ascertain whether such conduct occurred is to determine whether the landlord or property manager subjectively experienced fear.

person that Nolan interfered with the use and enjoyment of the property because Piper reasonably was afraid to enter the property due to Nolan's text messages toward her. A "fair-minded and rational person" could conclude that such text messages, at a minimum, would cause a fatal rift in any relationship, including the relationship between a landlord and a tenant. Pham, 187 Wn. App. at 825.

Thus, the court did not err in finding that the text messages caused a repeated and substantial interference with the landlord's ability to enter and use the property. Therefore, we conclude that granting the writ based on this evidence was not an abuse of discretion.[4]

2. Failure to grant Nolan a trial

We conclude that Nolan's statements do not otherwise create a genuine issue of material fact warranting a trial, and thus, the trial court did not err in not granting a trial.

a. Standard of review

As part of the unlawful detainer process, a landlord may seek relief such as a termination of a tenant's lease at a show cause hearing regardless of whether

[4] Nolan also argues that this court should analyze this matter as similar to a nuisance cause of action. Specifically, he cites to authority from other state courts, which construe claims of common law nuisance and unreasonable interference to be synonymous. In turn, Nolan avers this court should impose the higher burden of proof required in nuisance claims. This argument is unpersuasive, first, because RCW 59.12.180 states that "the provisions of the laws of this state with reference to practice in civil actions are applicable to, and constitute the rules of practice in the proceedings mentioned in this chapter," including the preponderance of the evidence standard. Nolan also cites to no binding authority that should compel this panel to apply a different standard. "When a party provides no citation to support an argument, this court will assume that counsel, after diligent search, has found none. State v. Loos, 14 Wn. App. 2d 748, 758, 473 P.3d 1229 (2020).

the court grants a writ of restitution. Webster v. Litz, 18 Wn. App. 2d 248, 254, 491 P.3d 171 (2021). However, if issues of material fact exist, the matter must proceed to trial in the "usual manner." Id. (quoting Meadow Park Garden Assocs. v. Canley, 54 Wn. App. 371, 374, 773 P.2d 875 (1989)).

For example, in Webster, a case addressing unlawful detainer, this court concluded there was a genuine issue of material fact warranting trial when the landlord argued the tenant was using methamphetamine on the premises, and the tenant testified they did not. Id. at 255. "Because a question of fact existed about the use and presence of methamphetamine on the premises, a trial was required before the court could grant the Websters' request for 'other relief.'" Id. at 255-256 and id. at 253-254 (holding, we must look at the specific requirements of RCW 59.18.380 that if there is "a substantial issue of material fact" as to the right of possession, the court shall enter an order directing the parties to proceed to trial. (quoting RCW 59.18.380)); see also Wash. State Ass'n of Counties v. State, 199 Wn. 2d 1, 13, 502 P.3d 825 (2022).

Stated otherwise, even if a landlord obtains preliminary success through a writ of restitution, trial on the right of possession must be ordered if the tenant raises genuine issues of material fact pertaining to a defense or set-off. RCW 59.18.380. "This is nearly the identical language that governs summary judgment." Daniels, 26 Wn. App. 2d at 218 (citing CR 56(c)). And of course, we review summary judgment orders de novo. Id. at 218; see also Staples v. Allstate Ins. Co., 176 Wn.2d 404, 410, 295 P.3d 201 (2013). "Thus, it appears something close to de novo review should apply, at least when a tenant denies the landlord's

grounds for eviction or raises an affirmative defense." Id. at 218-219. "A tenant's legal defense might be a claim that the landlord's basis for eviction is untrue." Id. at n.5.

Finally, a court may resolve a question of reasonableness "as a matter of law where reasonable minds could come to only one conclusion." Lakey v. Puget Sound Energy, Inc., 176 Wn.2d 909, 924, 296 P.3d 860 (2013).

b. Discussion

The only specific attempt Nolan makes to create a genuine issue of material fact is by claiming he used "kill" as a "figure of speech." Otherwise, Nolan only generically claims that "there was at least a material dispute as to whether his behavior rose to the level of repeatedly or substantially and unreasonably interfering with the landlord's use of the property."

As to the specific argument, we hold that reasonable minds can only reach one conclusion, given the context of the text exchanges; namely, that Nolan's threat that an ally wants to kill her is a threat of some kind. Nolan had used that term in the context of an ongoing conflict with Piper, where (again) he insulted, harassed and abused her and her family verbally. No reasonable juror could conclude that he did not interfere with the use and enjoyment of the property. In that charged context, no reasonable juror would conclude that the statement "my ally wants to kill you" is not a physical threat of some kind.

In response, for the first time in this appeal, Nolan argues, without citing any authority of such a requirement, that "there was never any evidence that [he] even attempted to harm anyone." Assuming he means "physical harm," there is no

authority, and we decline to create any, that a landlord must wait for a tenant to attempt to physically harmed them before terminating the tenancy. DeHeer v. Seattle Post-Intelligencer, 60 Wn.2d 122, 126, 372 P.2d 193 (1962) ("Where no authorities are cited in support of a proposition, the court is not required to search out authorities, but may assume that counsel, after diligent search, has found none.").

Finally, as to the second generic argument, we hold that it is insufficient to simply claim without any reference to the record, as here, that the court effectively just got it wrong. Welch v. Brand Insulations, Inc., 27 Wn. App. 2d 110, 115, 531 P.3d 265 (2023) ("If the moving party satisfies its burden, then the burden shifts to the nonmoving party to 'set forth specific facts evidencing a genuine issue of material fact for trial.'") (quoting Schaaf v. Highfield, 127 Wn.2d 17, 21, 896 P.2d 665 (1995)).

Because Nolan cites to nothing in the record creating a genuine issue of material fact as to the events which led to the landlord seeking eviction or the tenant's defenses, the trial court did not err by declining to grant a trial. Id. at 117 (summary judgment is appropriate "'if, from all the evidence, a reasonable person could reach only one conclusion.'") (quoting Folsom v. Burger King, 135 Wn.2d 658, 663, 958 P.2d 301 (1998)).

C. Reasonable accommodation

We conclude that the court did not err in denying his reasonable accommodation claim because Nolan did not demonstrate multiple elements of the claim, as required under law.

1. Law

"Both federal and state law prohibit landlords from discriminating against disabled tenants, including the failure to reasonably accommodate a tenant's disability." Daniels, 26 Wn. App. 2d at 221 (citing 42 U.S.C. § 3604(f)(2), (3)(B) (the Fair Housing Act ("FHA")); RCW 49.60.222(1)(f), (2)(b)). As a defense to eviction, a tenant may claim a landlord failed to accommodate their disability. Id.

"To make out a claim of discrimination based on failure to reasonably accommodate, a plaintiff must demonstrate that (1) he suffers from a handicap as defined by the FHAA; (2) defendants knew or reasonably should have known of the plaintiff's handicap; (3) accommodation of the handicap 'may be necessary' to afford plaintiff an equal opportunity to use and enjoy the dwelling; and (4) defendants refused to make such accommodation." Giebeler v. M & B Assocs., 343 F.3d 1143, 1147 (9th Cir. 2003); see also, Daniels, 26 Wn. App. 2d at 221-222. The FHA only requires accommodations that are "reasonable." Daniels, 26 Wn. App. 2d at 222 (quoting Giebeler, 343 F.3d at 1148).

2. Discussion

At the show cause hearing, Nolan testified to receiving social security disability benefits based on his "depression related to fibromyalgia, and chronic fatigue syndrome" as well as "spinal stenosis which includes occipital pain syndrome, which is a headache condition." He testified that he had bouts of depression for forty years. He described frustration with the condition of the apartment and concern that it affected or exacerbated an eye condition. He also texted the property managers about his eye symptoms generally. From this

testimony, Nolan argues that the trial court erred because it denied his reasonable accommodation claim, or affirmative defense, when it granted the writ of restitution.

Arguably, Nolan meets the first two elements of the test from Giebeler. Namely that he suffers from a "handicap" and the landlord knew or reasonably should have known about it. Giebeler, 343 F.3d at 1147. However, neither in the show cause hearing nor in the briefing, did Nolan connect his health conditions to a reasonable accommodation that the landlord could provide. At the hearing, he discussed how his conditions impaired his life and that he received benefits and treatment for those conditions. Despite his counsel's repeated attempts, Nolan did not explain how any of his conditions could manifest as causing him to send repeated, threatening, and offensive correspondence.

In other words, the issue is whether there is a causal link between the landlord's alleged failure to accommodate and Nolan's disabilities. Id. at 1155. Giebeler is an instructive contrast. There, the court found a causal link between Giebeler being unemployed due to his disability, leaving him "insufficient income to qualify for the apartment." Id. The landlord denied his proposed accommodation of having his mother pay for the apartment, thus, preventing him from his equal opportunity to enjoy a dwelling he otherwise would have. Id. at 1155-1156.

Here, Nolan did not explain how the text messages he sent to the property management were related to his conditions. On the contrary, Nolan testified, unrebutted, that he sent the text messages to Piper "out of anger and frustration." He did not affirmatively blame his behavior on his diagnosed depression or his

physical pain. Nothing in the record, including Nolan's own testimony, supports the claim that his behavior was a result of his "heavy medication," as suggested in his briefing. Thus, Nolan does not meet the third element.[5]

As to the fourth element (the landlord's refusal to make a necessary accommodation), we are able only to assess the accommodation that Nolan requested. In the hearing, Nolan requested more time to connect with crisis care professionals. Otherwise, Nolan did not explain how the landlord should have accommodated any of his conditions and there is no record of Nolan making a request for the landlord to deny prior to the hearing. Nor did Nolan provide Maggie Properties enough information to show he should have received an accommodation as in Giebeler. Thus, Nolan also does not meet the fourth element.

We further note that, on this record, it would not have been a "reasonable" accommodation, or part of a reasonable accommodation, to require a landlord to continue to rent to a tenant who sends continual profane and threatening text messages after being asked to stop. Nolan requested more time to seek help. However, it is not reasonable to let Nolan stay indefinitely and to allow him to continue to send harassing and correspondence, which indisputably caused the property manager to be afraid to enter the property.

[5] Nolan would have presented a stronger case if he had testified the symptoms of his disability clearly manifested as uncontrollable utterances. For example, if he established that, and warned the landlord, he was prone to sending such outbursts, he may have been able to show a connection between this behavior and a proposed accommodation of accepting such messages without consequence. But again, he made clear in his testimony that his texts were simply retaliatory.

Finally, in his briefing, Nolan characterizes the problem with trial court's order simply as an issue of whether a landlord may evict a tenant because they send "heated texts" while experiencing a mental health crisis. We review Nolan's statements in the hearing and in his correspondence rather than how the briefing characterized his state of mind at that time. Nolan himself did not testify that he sent the texts due to his mental state, but only in "anger" and in "retaliation." There is nothing in the record that supports the predicate of Nolan's argument, namely, that the landlord evicted him due to a *specific incident* of a mental health crisis. That choice was not before the landlord. Thus, this argument also does not support Nolan's reasonable accommodation claim as a matter of law.

III. CONCLUSION

We affirm the trial court's decisions to grant Maggie Properties a writ of restitution, to not order a trial, and to deny Nolan's reasonable accommodation claim.

Díaz, J.

WE CONCUR:

Feldman, J.

Mann, J.

CERTIFICATE OF SERVICE

I certify that I caused to be filed and served a copy of the foregoing **ANSWER TO PETITION FOR REVIEW** on the 19th day of April 2024 as follows:

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