

March 12, 2019

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DIVISION II

AUBOL INVESTMENTS, LLC, a Washington
limited liability company,

Respondent,

v.

AMUND TAYLOR and all others,

Appellant.

No. 49650-0-II

UNPUBLISHED OPINION

Lee, J. — Amund Taylor appeals the trial court’s order denying his motion for return of personal property from his former landlord, Aubol Investments, LLC. Taylor argues that the trial court erred by striking his demand for a jury trial. Because the trial court applied the incorrect legal standard, we agree. We reverse and remand for the trial court to apply the correct legal standard.

FACTS

Beginning in 2012, Taylor rented property from Aubol Investments. In 2014, Aubol Investments gave Taylor notice that they did not intend to renew the lease. Taylor did not want to move from the property, so Aubol Investments offered Taylor a new lease and informed him the new lease had to be signed by February 1, 2015. Taylor did not sign the lease by February 1. Aubol Investments served Taylor with a notice that his tenancy would be terminated on March 31 and he was required to surrender possession of the premises. Taylor did not vacate the premises.

On April 14, Aubol Investments filed an unlawful detainer action against Taylor. On April 22, Aubol Investments obtained an order for a writ of restitution. The sheriff's return on the writ of restitution stated that the Writ of Restitution was served on April 23, and that Taylor subsequently voluntarily surrendered possession of the premises on May 6. On May 12, Taylor was arrested for trespassing on the property.

On October 27, Taylor filed a "Motion for Return of Personal Property."¹ The motion requested the return of personal property that had been left on the premises, or in the alternative,

¹ At various points, Aubol Investments argues that Taylor's motion for return of property exceeds the scope of an unlawful detainer action. Generally, Aubol Investments would be correct. Unlawful detainer actions are intended to be summary proceedings limited to determination of the right of possession and related issues such as restitution and rent. *Munden v. Hazelrigg*, 105 Wn.2d 39, 45, 711 P.2d 295 (1985). Because of their summary nature, other claims, including counterclaims, are not allowed in an unlawful detainer action. *Id.*

However,

[w]here the right to possession ceases to be at issue at any time between the commencement of an unlawful detainer action and trial of that action, the proceeding may be converted into an ordinary civil suit for damages, and the parties may then properly assert any cross claims, counterclaims, and affirmative defenses.

Id. at 45-46. And, "the trial court has inherent power to fashion the method by which an unlawful detainer action is converted to an ordinary civil action." *Id.* at 47.

Here, possession of the property was no longer at issue after May 12—the parties do not dispute that Taylor did not regain or retain possession of the premises after his arrest for trespassing. The record is unclear whether the trial court took any specific action to convert the original unlawful detainer action into a civil action. *See Castellon v. Rodriguez*, 4 Wn. App. 2d 8, 18-19, 418 P.3d 804 (2018) (trial court must do something more than simply granting a party's request for damages). Regardless, Aubol Investments has not filed a cross-appeal. *See* RAP 2.4(a).

damages for the value of the property.² In his declaration, Taylor also asserted he was entitled to relief, damages, and attorney fees under provisions of the Residential Landlord-Tenant Act.

On December 14, Taylor filed a demand for a 12-person jury. Aubol Investments filed a motion to strike the jury demand.

On January 27, 2016, the trial court held a hearing on the motion to strike the jury demand. At the hearing, the parties disputed whether Taylor's claims were legal or equitable in nature. The court ruled,

It seems to me that the underlying premise is that equitable remedies are not entitled to jury. There's nothing that I see in the landlord tenant act that changed that. And all the issues here are equitable issues. So I'm going to strike the jury.

Verbatim Report of Proceedings (Jan. 27, 2015) at 5. The trial court also entered a written order finding that Taylor's motion for return of personal property was purely equitable and not subject to a jury trial.

Following a bench trial, the trial court entered findings of fact and conclusions of law. The trial court found that Aubol Investments complied with RCW 59.18.312, governing the storage and sale of a tenant's personal property. Thus, the trial court concluded that Aubol Investments had the right to sell and dispose of whatever personal property Taylor left at the property. The trial court entered judgment in favor of Aubol Investments and awarded Aubol Investments attorney fees and costs.

Taylor appeals.

² At the time of Taylor's motion, Taylor understood that most, if not all, of his property had either been sold or stolen.

ANALYSIS

Taylor argues that the trial court erred by striking his demand for a jury. We agree.

The Washington State Constitution provides an inviolate right to a jury trial. WASH. CONST., art. I, section 21; *Brown v. Safeway Stores*, 94 Wn.2d 359, 365, 617 P.2d 704 (1980). Our Supreme Court has “consistently interpreted this constitutional provision as guaranteeing those rights to trial by jury which existed at the time of the adoption of the constitution.” *Brown*, 94 Wn.2d at 365. Therefore, there is a right to a jury trial when the action is purely legal in nature, and there is not right to a jury trial when the action is purely equitable in nature. *Id.* “The overall nature of the action is determined by considering all the issues raised by all of the pleadings.” *Id.*

However, when the pleadings present both legal and equitable issues, the trial court has wide discretion to allow a jury on “ ‘some, none, or all issues presented.’ ” *Id.* at 367 (quoting *Scavenius v. Manchester Port Dist.*, 2 Wn. App. 126, 129, 467 P.2d 372 (1970)). The trial court must determine whether the issues are primarily equitable or primarily legal. *Id.* at 368; *see also Shepler Constr., Inc. v. Leonard*, 175 Wn. App. 239, 249, 306 P.3d 988 (2013). In making this determination, the trial court should consider a variety of factors, including, but not limited to the following:

“(1) who seeks the equitable relief; (2) is the person seeking the equitable relief also demanding trial of the issues to the jury; (3) are the main issues primarily legal or equitable in their nature; (4) do the equitable issues present complexities in the trial which will affect the orderly determination of such issues by a jury; (5) are the equitable and legal issues easily separable; (6) in the exercise of such discretion, great weight should be given to the constitutional right of trial by jury and if the nature of the action is doubtful, a jury trial should be allowed; (7) the trial court should go beyond the pleadings to ascertain the real issues in dispute before making the determination as to whether or not a jury trial should be granted on all or part of such issues.”

No. 49650-0-II

Brown, 94 Wn.2d at 368 (quoting *Scavenius*, 2 Wn. App. at 129-30). The court must also examine the remedy sought to determine whether it is equitable or legal in nature. *Auburn Mechanical, Inc. v. Lydig Const., Inc.*, 89 Wn. App. 893, 899, 951 P.2d 311, *review denied*, 136 Wn.2d 1009 (1998). “Any doubt should be resolved in favor of a jury trial, in deference to the constitutional nature of the right.” *Shepler Constr.*, 175 Wn. App. at 249-50. We review the trial court’s decision to strike a jury demand for an abuse of discretion. *Brown*, 94 Wn.2d at 368.

Here, Taylor raised the issue of his personal property in a motion for the return of personal property. The motion for the return of personal property sought relief by the return of the personal property, or in the alternative, monetary damages for the value of the personal property. Return of personal property is an equitable remedy; however, monetary damages are a legal remedy. *See Auburn Mechanical*, 89 Wn. App. at 901-02 (distinguishing between monetary damages, legal in nature, and coercive orders such as injunctions or decrees of specific performance, equitable in nature). Therefore, Taylor sought both legal and equitable remedies.

Also, the declaration supporting Taylor’s motion demonstrates he was making a legal claim and pursuing legal remedies because he specifically argues he is entitled to relief and damages under specific provisions of the Residential Landlord Tenant Act. Therefore, although Taylor’s motion appears to be equitable (seeking specific performance by return of personal property), an examination of the pleading in its totality demonstrates that Taylor was pursuing issues that were both legal and equitable in nature. Therefore, we determine whether the trial court abused its discretion by striking Taylor’s request for a jury in its entirety.

A trial court abuses its discretion if its decision is manifestly unreasonable or based on untenable grounds or reasons. *In re Marriage of Littlefield*, 133 Wn.2d 39, 46-47, 940 P.2d 1362 (1997).

A court's decision is manifestly unreasonable if it is outside the range of acceptable choices, given the facts and the applicable legal standard; it is based on untenable grounds if the factual findings are unsupported by the record; it is based on untenable reasons if it is based on an incorrect standard or the facts do not meet the requirements of the correct standard.

Id. at 47.

Here, the trial court abused its discretion by basing its decision on untenable grounds and untenable reasons. First, the record does not support the trial court's determination that Taylor's claim was purely equitable. Second, the trial court failed to apply the correct legal standard by neither weighing nor considering any of the seven factors outlined by our supreme court in *Brown*. *Brown*, 94 Wn.2d at 368. Accordingly, the trial court abused its discretion by striking Taylor's jury demand.

ATTORNEY FEES ON APPEAL

Aubol Investments requests attorney fees under RAP 18.1 and RCW 59.18.290. RCW 59.18.290(2) states,

It shall be unlawful for the tenant to hold over in the premises or exclude the landlord therefrom after the termination of the rental agreement except under a valid court order so authorizing. Any landlord so deprived of possession of premises in violation of this section may recover possession of the property and damages sustained by him or her, and the prevailing party may recover his or her costs of suit or arbitration and reasonable attorney's fees.

However, the attorney fees on appeal do not result from Taylor improperly holding over in the premises or excluding Aubol Investments from the property. Therefore, RCW 59.18.290 does not

No. 49650-0-II

apply and does not entitle Aubol Investments to attorney fees on appeal. We deny Aubol Investments's request for attorney fees.

We reverse and remand further proceedings consistent with this opinion.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record in accordance with RCW 2.06.040, it is so ordered.



We concur:




