

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

EQUITY RESIDENTIAL
MANAGEMENT, LLC,

Respondent,

v.

MINNIE THOMAS,

Appellant.

No. 85586-7-I

DIVISION ONE

UNPUBLISHED OPINION

HAZELRIGG, A.C.J. — Equity Residential Management LLC filed a lawsuit against its residential tenant, Minnie Thomas, alleging that she breached her lease by refusing to allow Equity to evaluate the damage from a leak she reported and make repairs. Many months later, after the leak was repaired and the basis for the lawsuit was resolved, the trial court granted Equity’s motion for a permanent injunction and entered an order providing protocols for future access to Thomas’ apartment for maintenance or inspection.

Thomas represents herself on appeal. Equity argues that Thomas’ briefing fails to comply with the appellate rules in a manner that affected its ability to provide a substantive response to her appeal. While we agree that the deficiencies in the briefing are material and not merely technical, we decline to dismiss the appeal on procedural grounds. To the extent we are able to discern specific claims, we exercise our discretion to address them. Because Thomas fails to establish that the trial court erred or otherwise abused its discretion, we affirm.

FACTS

Equity owns the Veloce Apartments, located in Redmond, and Minnie Thomas leases an apartment unit in the complex. On December 7, 2021, Thomas reported a water leak in her master bathroom sink to the general manager of the complex.

Almost six months later, on May 24, 2022, Equity's counsel sent Thomas a "10-Day Notice to Cure Default or Vacate Leased Premises."¹ According to the notice, on four occasions in December 2021 and January 2022, Equity issued notices to Thomas, 48 hours in advance, to access the apartment on specific dates, and also attempted to schedule inspection and repairs through "other communications." Equity alleged that Thomas refused to allow its maintenance staff to perform repairs during regular business hours and insisted that Equity's staff could only access her apartment in the evening. Equity claimed that Thomas was in breach of the lease and provided that Thomas could cure the default by allowing Equity's staff to inspect and perform repairs on June 7, 2022, between the hours of 1:00 p.m. and 5:00 p.m. Thomas returned Equity's letter with a handwritten interlineation stating that the inspection "w[ould] not occur" on June 7, or on any other date, until she was "medically able to deal with this or when hell freezes over." In a separate letter to Equity, Thomas "cancelled" the June 7 inspection.

The King County Housing Authority (KCHA) also requested access to Thomas' apartment on July 1, 2022, and again on August 5, in order to ensure that

¹ An identical notice was posted on the door to Thomas' apartment on May 23, 2022.

the unit was maintained in compliance with the “Section 8 Housing Assistance Program.”² Thomas refused to allow the inspection on either date.

On September 26, Equity filed a complaint against Thomas, again alleging that Thomas breached the lease by refusing to allow the landlord and its agents to enter her apartment for inspection and repairs.³ Equity requested injunctive relief. Specifically, Equity sought a court order directing Thomas to allow access to the apartment “at a specified time, during regular business hours, and to grant additional access as needed” to perform any repairs that could not be completed during the initial inspection. Equity then filed a motion seeking a preliminary injunction, requesting an order that prohibited Thomas from interfering with inspection of the apartment at a specific date and time. Equity offered to post a bond to secure the injunction.

On October 28, following argument on Equity’s motion, the trial court granted a preliminary injunction. In its order, the court found that Equity and Thomas were parties in interest to a written lease executed in 2010 that includes a provision granting Equity a right to enter Thomas’ apartment unit in the following circumstances:

19. Right of Entry: Manager may enter the premises without consent of the [r]esident (a) in the case of an emergency; or (b) pursuant to a court order. The [m]anager may also enter the premises to make necessary and agreed upon repairs as requested by the [r]esident. Manager must provide [r]esident with 48 hour written notice for inspection of property.

² The federal Section 8 rental voucher program subsidizes rental payments for qualified families in need. 42 U.S.C. § 1437f(o), 24 C.F.R. § 982.1.

³ Equity initially filed an unlawful detainer action in June 2022. After that matter was set for trial and Equity’s counsel took Thomas’ deposition, Equity elected to file the instant lawsuit seeking injunctive relief, which it believed that, “if granted, would moot the eviction.” On October 13, 2022, the trial court signed an order continuing trial in the unlawful detainer case.

The court also specifically found that (1) a water leak occurred on December 7, 2021, (2) Thomas refused to allow Equity to access the unit to make repairs, (3) Equity requested permission to enter the unit to make repairs “no fewer than eight times,” (4) after Equity issued a 10-day notice, Thomas refused to allow Equity’s agents to enter the unit on June 7, 2022, (5) Thomas also refused to allow KCHA to inspect the unit in accordance with requirements of the Section 8 housing voucher program, and (6) when the court specifically inquired of Thomas at the hearing about a specific date and time that would accommodate her needs, Thomas declined to provide a date and time, indicating that she simply opposed any access by Equity’s agents.

Based on these factual findings, the court concluded that Equity satisfied all the required elements to obtain a preliminary injunction and ordered Thomas to allow Equity to enter the apartment at 3:00 pm on November 4, 2022 to repair the leak and perform a general inspection. The court also ordered Thomas to allow KCHA to enter and inspect the premises at the same date and time. The order further enjoined Thomas from interfering with the access, repairs, and inspections, and conditioned the relief on Equity’s posting of a \$5,000 bond. The trial court denied Thomas’ untimely motion for reconsideration.

On November 3, the day before the preliminary injunction authorized Equity to enter the apartment, Thomas arranged for another plumber to repair the leak. The next day, on November 4, Thomas eventually allowed Equity’s staff to enter the premises in accordance with the court order and allowed them to replace a faucet. Upon inspection, Equity determined that it also needed to replace

damaged cabinet flashing and assess the condition of the cabinet underneath the flashing. Thomas did not allow a representative from the KCHA to inspect the premises. Equity scheduled the additional repair and inspection for November 17 at 3:00 p.m. On November 17, Thomas did not permit Equity to access her unit to perform the repairs and again did not allow KCHA's representative to enter the apartment.

Thereafter, in December 2022, Equity filed a motion seeking an order of contempt and sanctions. Equity asked the court to set a new date for inspection and repairs. Equity requested that the court impose monetary sanctions and attorney fees and authorize Equity to amend its complaint to add a cause of action for unlawful detainer if Thomas failed to comply. The court scheduled a show cause hearing.

After allowing Thomas to present testimony at the show cause hearing, the trial court granted the motion for contempt and for sanctions. The court found, among other things, that (1) Thomas failed to allow KCHA to access the apartment on November 4, 2022, the date set by the court's order, (2) Thomas refused to allow the landlord to make further repairs and inspect the cabinetry, or allow the KCHA to inspect the premises on November 17, 2022, (3) Thomas failed to explain how any medical condition prevented her from allowing the landlord and/or KCHA to enter or inspect her apartment, (4) Thomas "willfully" failed to comply with the preliminary injunction, and (5) Thomas was in contempt of the court's October 28 order. The court ordered Thomas to pay \$3,055 in attorney fees and costs as a sanction, and to allow KCHA and Equity to inspect and make further repairs at 3:00

p.m. on January 20, 2023. The court additionally ordered Equity's maintenance staff to wear respirator masks and gloves inside Thomas' apartment.

The court's contempt order provided that, if Thomas failed to allow access on January 20, she would be subject to \$25 in sanctions per day, for up to 30 days, and Equity would be permitted to amend its complaint to seek a writ of restitution. The order further provided that the attorney fee sanction would be withdrawn if Thomas "fully and timely" complied with the court's order. The court denied Thomas' motion for reconsideration. On January 20, 2023, Thomas provided access to Equity and KCHA to inspect and repair.

At this point, although the issue that led to the lawsuit was resolved, Equity filed a motion for summary judgment, seeking a permanent injunction to set forth protocols for future inspections and repairs, and provide a clear remedy in the event of a future breach of the lease. Equity stated that, so long as a permanent injunction was in place, it was willing to waive its claim under the lease for more than \$55,000 in attorney fees incurred in the litigation to date.⁴

After a hearing on Equity's motion, the court found "reasonable grounds" to grant the motion, "particularly in light of [Equity's] offer to forgo its right to recover reasonable attorney's fees pursuant to the [l]ease." The court entered numerous factual findings consistent with its prior orders, setting forth the relevant provisions of the lease, factual background related to the reported leak, attempts to negotiate access to Thomas' apartment to inspect the damage and perform repairs, prior

⁴ The lease provides for attorney fees stating, "In the event that [m]anager has to enforce the terms and provisions of this agreement . . . the [m]anager shall be entitled to all reasonable attorney fees and costs, including pre-judgment interest . . . whether or not suit is filed, and including on appeal."

court orders, and resolution of the leak issue in January 2023. The court found that Equity was willing to maintain the safety protocols included in the contempt order for future inspections and maintenance, and to accommodate Thomas' preference for scheduling maintenance and/or repairs for after 3:30 p.m. The court also found that Thomas' violation of her obligation to allow KCHA inspections "potentially" threatened her rental voucher, which could be then be lost to Equity as well. The court found that Equity satisfied the requirements for a permanent injunction:

The [c]ourt finds that the balance of the equities favors [l]andlord. Landlord has established a clear legal and equitable right to access [d]efendant's unit. Landlord has a well-grounded fear of invasion of [l]andlord's rights. Tenant's conduct, if not enjoined, will cause actual and substantial injury to [l]andlord; including the risk of serious damage to the building and attorney fees and costs like those incurred as a result of [t]enant's prior conduct.

The court granted judgment as a matter of law as to Equity's claim for breach of the lease. The injunction provides that, in the event of a need for nonemergency repairs or maintenance, the landlord will provide notice two days prior to entry, schedule repairs or maintenance for 3:30 p.m. or later, and follow safety protocols, including the use of respirator masks and gloves. The order further provides that, if Thomas refuses access, Equity may issue a 10-day notice to cure, and if Thomas fails to cure after 10 days, Equity may file a motion to enforce the injunction. If Equity is forced to file such a motion on account of Thomas' breach, she will be liable for the attorney fees and costs incurred.

Thomas timely appealed.

ANALYSIS

I. Rules of Appellate Procedure

As a preliminary matter, Equity contends that deficiencies in Thomas' briefing preclude addressing the merits of her appeal. As Equity points out, Thomas' handwritten briefing is challenging to decipher. See GR 14(a) (requiring court filings to be "legibly written or printed"). Similarly significant is Equity's point that Thomas' briefing fails to include precise assignments of error, references to the record to support each factual assertion, and citations to relevant legal authority. The briefing thus fails to adhere to the content requirements of RAP 10.3(a)(4)-(6). And, although Equity designated additional trial court filings in order to enable appellate review, Thomas designated only a limited number of documents, all filed by her in the trial court. Thomas' designated filings did not include Equity's complaint, any of its motions, or any of the trial court's orders. See *Sunderland Fam. Treatment Servs. v. City of Pasco*, 107 Wn. App. 109, 116, 26 P.3d 955 (2001) (appellant bears burden of providing record sufficient to review issues raised). Thomas also fails to provide precise assignments of error with specific reference to the trial court's rulings or orders. Thomas provides citations to the record that are largely unrelated to her factual assertions, fails to identify or apply any applicable standard of review, or cite any relevant legal authority to support her arguments. The rules are designed to facilitate appellate review and the failure to follow them in this case impacts the extent of our review.

That said, we also liberally interpret the appellate procedural rules "to promote justice and facilitate the decision of cases on the merits." RAP 1.2.

Despite the material deficiencies of Thomas' briefing, we are able to discern her primary arguments. Therefore, we decline to resolve Thomas' appeal on procedural grounds.

II. Breach of the Lease

In its orders that granted the preliminary and permanent injunctions, the trial court determined that Thomas breached the lease by denying Equity the access "needed to repair the water leak beneath the sink." Thomas appears to challenge the court's findings that she denied access and its conclusion of breach based on evidence in the record indicating that she allowed maintenance staff to enter her apartment on December 28, 2021.

When an appellant challenges the trial court's findings and conclusions, our review is limited to determining whether substantial evidence supports the findings and, if so, whether those findings support the conclusions of law. *Graser v. Olsen*, 28 Wn. App. 2d 933, 941, 542 P.3d 1013 (2023). Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the finding is true. *Id.* We defer to the trier of fact on the persuasiveness of the evidence, witness credibility, and conflicting testimony. *Id.* at 941-42. We view the evidence and all reasonable inferences in the light most favorable to the party who prevailed in the trial court. *Garza v. Perry*, 25 Wn. App. 2d 433, 453, 523 P.3d 822 (2023).

The evidence Thomas relies on is her own handwritten document that includes a two-line excerpt, apparently taken from a multi-page declaration of Equity's general manager, Alexander Martin. The reproduced portion of Martin's declaration states as follows:

14. On December 28, 2021, Thomas permitted the Veloce service team to enter the [l]eased [p]remises for the first time since the December 7, 2021 water leak. The Veloce service . . .

Thomas does not provide the full paragraph, let alone the complete declaration, to provide the context of this statement. Contrary to Thomas' argument, the excerpt, even standing alone, does not establish that Thomas allowed access that was "needed to repair the water leak beneath the sink" on December 28, 2021; it simply does not demonstrate that Thomas allowed the service team to enter the master bathroom or inspect the sink. Even overlooking the fact that Thomas wholly omits the context of the declaration testimony, the evidence does not undermine the trial court's findings.

Moreover, even if the evidence showed that Thomas allowed the full access necessary to inspect and repair the leak on December 28, 2021, and that Equity failed to perform the repair on that date for whatever reason, nothing in the lease suggests that Equity has a right of entry "to make necessary and agreed upon repairs" only once. There may be any number of reasons why, despite being granted entry and access, the landlord's agents would need to reschedule in order to perform or complete a given repair. Thomas does not challenge the trial court's findings that, on several subsequent occasions, she refused access that was necessary to inspect and repair issues related to the water leak. *Pierce v. Bill & Melinda Gates Found.*, 15 Wn. App. 2d 419, 429, 475 P.3d 1011 (2020) (this court treats unchallenged findings as verities on appeal).

Thomas also suggests there was no urgent need for Equity to enter her apartment because, upon discovering the leak, she shut off the water to the

affected sink so that it would not cause further damage. Also, relying on the opinions of the plumber she ultimately retained to repair the leak, Thomas asserts that Equity intended to inconvenience her more than necessary by indicating that it would be necessary to temporarily shut off the water to the entire unit during the repair.

However, the lease provision unambiguously provides that the landlord has a right to enter the leased apartment to perform repairs. The tenant is entitled only to advance notice in the case of a nonemergency. Breach occurs if, despite proper notice, the tenant refuses to allow access to inspect or perform repairs, whether or not the tenant previously allowed the landlord to enter the apartment. Thomas' opinions about the extent of urgency or what type of repair was necessary are immaterial to these issues. There was evidence to establish that Equity provided advance notice, requested entry and access to Thomas' apartment on several occasions, and Thomas refused to allow the inspection and repair. Thomas admitted in her deposition testimony that she was initially unwilling to allow Equity to enter her apartment because Equity refused to accommodate her request to perform the maintenance at night. Thomas also said that, after Equity initiated legal action, she was unwilling and unable to allow entry at any specific scheduled date and time. To the extent that Thomas challenges the trial court's findings that she denied access needed to inspect and perform repairs, substantial evidence in the record supports the court's findings and the findings support the conclusion that she breached the lease.

III. Reasonable Accommodation

Thomas claims that Equity failed to reasonably accommodate her “severe chronic medical condition” by insisting on her agreement to schedule time to enter her apartment during business hours. However, the trial court found, in its January 20, 2023 contempt order that

Thomas had, and continues to have, the clear and present ability to comply with the [c]ourt’s order. Thomas has cited various medical conditions, which she has declined to specify. Regardless of their source, Thomas has never articulated any conceivable nexus between any medical condition and an inability to grant [l]andlord and/or KCHA with access to the [l]eased premises.

Thomas does not challenge this finding. In August 2022, Thomas stated that she could not say when her medical condition would “ease” to the point where she could “let [Equity’s] maintenance people in” her apartment. Thomas did not elaborate on what her condition was or why it precluded maintenance staff from entering her apartment to inspect and repair the sink. Thomas indicated her preference not to be in her bedroom during the maintenance appointment, and that she generally only felt able to be out of bed at night, after she ate and took medication. But, Thomas did not explain why she was unable to eat and take medication earlier on a given day or could not remain in her bedroom while the bathroom sink was inspected and repaired. Additionally, the heavily-redacted medical documents in the record neither establish Thomas’ current medical condition nor do they explain how any condition limited her ability to allow entry and access to her apartment or to schedule maintenance on a specific date and time within normal business hours. Thomas fails to establish an abuse of discretion as to the provision of the permanent injunction that allows Equity to schedule nonemergency maintenance any time after 3:30 p.m.

IV. Nature and Sufficiency of the Evidence

Throughout her briefing Thomas appears to challenge the underlying trial court orders and findings therein based on the blanket assertion that the trial court disregarded her “solid, concrete and irrefutable evidence,” and relied instead on Equity’s “unproven” and “false” statements. Thomas’ arguments do not reference particular findings of fact and she does not point to any evidence that the trial court refused to consider.

Although it is clear that Thomas believes that her evidence was more persuasive, each side relied on the same *type* of evidence to support their positions—declaration testimony and documentary evidence. As an appellate court, we do not determine credibility or weigh evidence. See *McClure & Sons, Inc. v. Dep’t of Lab. & Indus.*, 16 Wn. App. 2d 854, 861, 487 P.3d 186 (2021). Accordingly, the fact that there may be conflicting evidence in the record is not a basis for a reviewing court to disturb findings of fact, so long as the findings are supported by substantial evidence in the record. *Merriman v. Cokeley*, 168 Wn.2d 627, 631, 230 P.3d 162 (2010). Thomas fails to tie her repeated refrain to any particular findings, present specific arguments, or engage with the evidence presented by Equity, other than to characterize it as “false.” Our Supreme Court has explained,

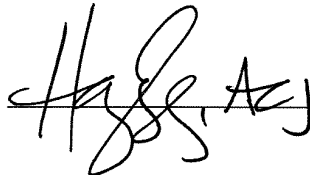
If we were to ignore the rule requiring [parties] to direct argument to specific findings of fact which are assailed and to cite to relevant parts of the record as support for that argument, we would be assuming an obligation to comb the record with a view toward constructing arguments for [the party] as to what findings are to be assailed and why the evidence does not support these findings. This we will not and should not do.

In re Est. of Lint, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). We decline to “comb the record” to further address Thomas’s generic challenge to the trial court’s findings.⁵

V. Attorney Fees on Appeal

Equity requests attorney fees on appeal under the terms of the lease. RAP 18.1(a) allows us to award a party attorney fees on appeal where “applicable law” permits. RCW 4.84.330 provides that, in actions on a contract or lease where the agreement “specifically provides that attorneys’ fees and costs” incurred to enforce the agreement “shall be awarded to one of the parties, the prevailing party . . . shall be entitled to reasonable attorneys’ fees.” Under the plain language of the lease, the landlord is entitled to “all reasonable attorney fees and costs,” “including on appeal,” if the landlord “has to enforce the terms and provisions” of the lease. Equity brought this action to enforce the terms of the lease and has prevailed on appeal. Accordingly, Equity is entitled to reasonable attorney fees on appeal under RAP 18.1, RCW 4.84.330, and under the lease, subject to compliance with the procedures outlined in RAP 18.1.

Affirmed.



WE CONCUR:

Díaz, J.

Mann, J.

⁵ Likewise, apart from bare allegations, Thomas makes no specific argument to support her claim that the trial court erred when it denied her motion for a finding of perjury in the order granting a permanent injunction. We decline to address this argument.

In addition, we deny Thomas’ motion for oral argument in this appeal.