

NOT FINAL UNTIL TIME EXPIRES FOR REHEARING AND, IF FILED, DETERMINED

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, STATE OF FLORIDA
APPELLATE DIVISION**

DARIUSZ DOLACINSKI,
Appellant,

REF: 20-000009AP-88A
UCN: 522020AP000009XXXXCI

-vs-

ZHEZHERIA VALENTYN
Appellee.

_____/

Opinion filed: _____

Appeal from Final Judgment
Pinellas County Court
Judge Edwin Jagger

Dariusz Dolacinski
Self-represented

Gregory Bryl, Esq.
Attorney for Appellee

PER CURIAM

THIS CAUSE is before the Court on appeal, filed by Dariusz Dolacinski, from the Final Judgment for Unlawful Detainer entered January 27, 2020, in favor of Zhezheria Valentyn. Upon review of the briefs, the record on appeal, and the applicable case law, this Court dispensed with oral argument pursuant to Florida Rule of Appellate Procedure 9.320. We affirm the findings of the trial court.

STATEMENT OF FACTS

Appellant entered into a written lease with a Mr. Damian Glowaty for a term longer than one year for property located at 935 Riverside Ridge Road, Tarpon Springs, FL 34688 on January

25, 2019. Appellant did not immediately record the lease in the official records of Pinellas County. Appellant states he paid a year rent in advance to Mr. Damian Glowaty. Appellee received title to the 935 Riverside Ridge Road property through a quit claim deed from Mr. Damian Glowaty's son, Nicholas Glowaty acting under a power of attorney executed by Mr. Damian Glowaty. The subject property was quit claim deeded to Portfolio Investments, LLC which in turn executed a quit claim deed to Appellee on April 26, 2019. Appellant argues that he has superior right to the property because he had signed a lease with Mr. Damian Glowaty prior to Appellee taking ownership of the property. On October 28, 2019, Appellee filed a Complaint for Unlawful Detainer. Appellant recorded his lease with Mr. Damian Glowaty on November 13, 2009. The matter proceeded to an evidentiary hearing on the Plaintiff's Motion for Final Judgment for Unlawful Detainer on January 16, 2020. After consideration of the evidence and the testimony presented, the trial court found that Appellee satisfied the due diligence requirements at the time of the purchase of the 935 Riverside Ridge Road property, that Appellee had no knowledge of a written lease and that Appellee's title was superior to Appellant's title. Final Judgment for Unlawful Detainer was entered January 27, 2020. Appellant timely appealed the trial court's ruling.

STANDARD OF REVIEW

The standard of review is whether the trial court's findings of fact are supported by competent substantial evidence. *Michele K. Feinzig P.A. v. Deehl & Carlson, P.A.*, 176 So.3d 305 (Fla. 3d DCA 2015).

DISCUSSION

Appellant raises several issues on appeal. We affirm the trial court's Final Judgment for Unlawful Detainer and write only to address the most coherently presented issues. Appellant

argues that the transfer of the property from Nicholas Glowaty to Portfolio Funding through the power of attorney is not valid as the original power of attorney was not filed in the official records and the quit claim deed from Portfolio Funding to Appellee only transferred “the quit claimer’s interest, not the interests of the other parties, such as [Appellee]. Additionally, Appellant argues that because he entered into a lease prior to the transfer of the property to Portfolio Funding and then Appellee, he is the rightful tenant and should be allowed to remain at the residence.

Florida is a “notice” jurisdiction. Fla. Stat. 695.01 provides that “[n]o conveyance, transfer, or mortgage or real property, or any interest therein, nor any leaser for a term of 1 year or longer, shall be good and effectual in law or equity against creditors or subsequent purchasers for a valuable consideration and without notice, unless the same be recorded according to law.” The trial court found that Appellant’s lease was for a term longer than one year, therefore it is subject to Fla. Stat. 695.01. See *Winn-Dixi Stores, Inc. v. Dolgencorp, Inc.*, 964 So.2d 261 (Fla. 4th DCA 2007). The Appellee is a subsequent purchaser who purchased the subject property for value and without notice of the lease. Appellee’s title is superior to Appellant. Appellant argues that the failure to record the power of attorney prior to the quit claim deed rendered the transfer invalid. The statute does not invalidate the transfer, but failure to record the power of attorney could make the transfer vulnerable to attacks by subsequent purchasers. As Appellee was the subsequent purchaser, she would be vulnerable party.

Appellant argues that once he recorded his lease in the official records, he remedied the notice provision. Appellant is incorrect. The recording of the lease after the transfer of the property to Appellee does not put Appellee on notice prior to her purchase of the property. The requirement of recording a lease in excess of one year is to put any potential buyers on notice that there may be a superior right in the property. Appellee was unable to determine if there was any

other interest in the property, such Appellant's lease, as he failed to record the lease thereby putting all potential buyers on notice.

Further, and more importantly, the Court finds that there is not a transcript or a statement of the evidence from the trial below. The law in Florida is that the decision of the trial court has the presumption of correctness and the burden is on the appellant to demonstrate error. *Applegate v. Barnett Bank of Tallahassee*, 377 so.2d 1150, 1152 (Fla. 1979); *Bei v. Harper*, 475 So.2d 912, 914 (Fla. 2d DCA 1985). As the trial court is charged with determining the weight, credibility, and sufficiency of the testimony and evidence presented, Appellant is unable to overcome the presumption of correctness of the trial court's ruling without a transcript. See *Applegate*; see also *Smiley v. Greyhound Lines, Inc.*, 704 So.2d 204, 205 (Fla. 5th DCA 1998)(explaining that the appellate court cannot substitute its opinion of the evidence but rather must indulge every fact and inference in support of the trial court's judgement, which is the equivalent of a jury verdict.). Therefore it is,

ORDERED AND ADJUDGED that the Final Judgment for Unlawful Detainer is affirmed.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida this _____ day of _____, 2020.

Original Order entered on December 9, 2020, by Circuit Judges Jack R. St. Arnold, Patricia A. Muscarella, and Sherwood Coleman.

Copies furnished to:

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Honorable Edwin Jagger
County Judge