

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

SHALONDA E. WILKS,

Appellant,

v.

HERBERT GREENE and JOANN GREENE,

Appellees.

CASE NO.: 2014-CV-000036-A-O

Lower Case No.: 2014-CC-004299-O

Appeal from the County Court, for Orange County,
Florida, Faye Allen, County Judge.

Bruce Kirkpatrick Eason, Esquire, for Appellant.

Robert W. Anthony, Esquire, and
Spencer M. Gledhill, Esquire, for Appellees.

Before TURNER, UNDERWOOD, and MYERS, JR., J.J.

PER CURIAM.

FINAL ORDER REVERSING TRIAL COURT

Appellant, Shalonda E. Wilks (“Wilks”), timely appeals the trial court’s “Final Judgment – Eviction” entered June 2, 2014 in favor of Appellees, Herbert and Joann Greene (“the Greens”). This Court has jurisdiction pursuant to section 26.012(1), Florida Statutes, and Florida Rule of Appellate Procedure 9.030(c)(1)(A). We dispense with oral argument. Fla. R. App. P. 9.320.

Summary of Facts and Procedural History

On April 11, 2014, the Greenes filed an eviction action against Wilks who was served with the complaint on April 16, 2014. The rent as alleged in the complaint was \$950.00 per month and attached to the complaint was a form three-day notice that was served on Wilks on April 7, 2014. On April 24, 2014, Wilks filed an answer, affirmative defense, and a motion to determine the amount of rent to deposit into the court registry (“motion to determine rent”). Wilks’ affirmative defense alleged that the three-day notice was defective because the amount of rent and late fees of \$3,350.00 claimed to be due, was not correct and the date to pay it by was April 7, 2014 which was the same date the notice was served. Also on April 24, 2014, in conjunction with her pleadings and motion, Wilks deposited the undisputed rent amount of \$1900.00 into the court registry. On May 1, 2014, Wilks deposited an additional \$950.00 into the court registry for her May rental payment thus, totaling \$2850.00 in the court registry.

Thereafter, on May 8, 2014, the Greenes served Wilks with an amended three-day notice demanding her to pay \$2,850.00 by May 14, 2014 and filed that notice with the court. On May 21, 2014, Wilks’ motion to determine rent was heard and the trial court determined that she should pay further rental installments into the court’s registry in the amount of \$950.00 beginning on June 3, 2014 and on the third of each month thereafter until the case was resolved.

On May 29, 2014, the final hearing of eviction was held and the trial court found that at the time the lawsuit was filed, Wilks owed the Greenes \$1900.00 as she was delinquent in paying the rent for the months of September 2013 and April 2014. The trial court also found that the Greenes had properly terminated the rental agreement with the amended three-day notice per section 83.60, Florida Statutes, despite Wilks’ deposit into the court registry of the amount due. The court stated that “[p]osting the money in the registry only saves you from being evicted

immediately...it's not deemed, in effect, paid on time, just because it's been posted in the registry." The court further found that Wilks' procedural arguments with respect to the complaint not being amended were not sufficient so as to prevent judgment because she did not object to the amended three-day notice at the previous hearing. Thus, the trial court granted a writ of possession to the Greenes and ordered that the money in the court registry be disbursed to them. Subsequently, on June 2, 2014, Wilks filed an emergency motion for reconsideration and motion to stay the writ of possession that the trial court denied.

Arguments on Appeal

Wilks argues that the trial court erred by entering the eviction judgment because: 1) prior to service of the amended three-day notice, she had cured the alleged default by depositing the entire amount demanded into the court registry and 2) the Greenes failed to comply with Florida Rule of Civil Procedure 1.190 by not seeking leave of court or her consent to amend their pleadings; and 3) the evidence presented at the final hearing regarding the statutory conditions precedent was insufficient to support the eviction judgment. Wilks also filed a motion for appellate attorney's fees and costs per sections 83.48 and 59.46, Florida Statutes, and Florida Rule of Appellate Procedure 9.400.

Conversely, the Greenes argue: 1) while payment into the court registry allows a tenant to present defenses, there is nothing in section 83.60(1), Florida Statutes, stating that a tenant complies with a three-day notice by paying the amount owed into the court registry; instead, such payment must be made to the landlord before suit is filed; 2) the three-day notice is not a pleading requiring leave of court to amend and the only amendments to the complaint would include a decreased amount owed and the date of service as stated in the amended three-day notice; and 3) Wilks waived her argument as to non-compliance with rule 1.190, Fla. R. Civ. P.,

by failing to object to the amended three-day notice and even if she had objected, the trial court would have been correct to conform the pleadings to the evidence per the rule.

Standard of Review

A trial court's interpretation of a statute involves a question of law and thus, is subject to de novo review. *In re Guardianship of J.D.S. v. Dep't of Children & Families*, 864 So. 2d 534, 537 (Fla. 5th DCA 2004). Also, when the sufficiency of evidence is challenged on appeal, the appellate function is to determine if there is competent substantial evidence in the record to support the trial court's ruling. *De Groot v. Sheffield*, 95 So. 2d 912, 916 (Fla. 1957) (defining competent substantial evidence as relevant evidence as a reasonable mind would accept as adequate to support a conclusion). Also, the standard of review applicable to the amendment of pleadings is abuse of discretion. *Gate Lands Co. v. Old Ponte Vedra Beach Condo.*, 715 So. 2d 1132 (Fla. 5th DCA 1998).

Analysis

Section 83.60, Florida Statutes (2014), provides procedures as to defenses in actions for rent or possession and the portions of this statute applicable to the issues in this case are as follows:

(1)(a) In an action by the landlord for possession of a dwelling unit based upon nonpayment of rent or in an action by the landlord under s. 83.55 seeking to recover unpaid rent, the tenant may defend upon the ground of a material noncompliance with s. 83.51(1), or may raise any other defense, whether legal or equitable, that he or she may have, including the defense of retaliatory conduct in accordance with s. 83.64. **The landlord must be given an opportunity to cure a deficiency in a notice or in the pleadings before dismissal of the action.** *[Emphasis added]*

(2) In an action by the landlord for possession of a dwelling unit, if the tenant interposes any defense other than payment, including, but not limited to, **the defense of a defective 3-day notice, the tenant shall pay into the registry of the court the accrued rent as alleged in the complaint or as determined by the court and the rent that accrues during the pendency of the proceeding, when**

due. The clerk shall notify the tenant of such requirement in the summons. Failure of the tenant to pay the rent into the registry of the court or to file a motion to determine the amount of rent to be paid into the registry within 5 days, excluding Saturdays, Sundays, and legal holidays, after the date of service of process constitutes an absolute waiver of the tenant's defenses other than payment, and the landlord is entitled to an immediate default judgment for removal of the tenant with a writ of possession to issue without further notice or hearing thereon. If a motion to determine rent is filed, documentation in support of the allegation that the rent as alleged in the complaint is in error is required. Public housing tenants or tenants receiving rent subsidies are required to deposit only that portion of the full rent for which they are responsible pursuant to the federal, state, or local program in which they are participating. *[Emphasis added]*

First, Wilks complied with the statutory procedures by timely filing a motion to determine rent by the deadline of April 24, 2014 that was within 5 days after service of complaint on April 16, 2014 (excluding the Good Friday holiday on April 18th and the following Saturday and Sunday).

Second, Wilks had a valid defense due to the initial defective 3-day notice because service of a proper three-day notice is a statutory condition precedent for a residential eviction action for non-payment of rent and must include the exact amount due, on the date it is due. *See Kaplan v. McCabe*, 532 So. 2d 1354, 1357 (Fla. 5th DCA 1988).

Third, while section 83.60(1)(a), Florida Statutes, provided the Greenes with the opportunity to cure a deficiency in the notice or pleadings, this Court concurs with Wilks that the opportunity to cure did not automatically entitle the Greenes to a judgment of eviction merely because the amended notice was statutorily compliant. When the Greenes choose to cure the deficiency in the three-day notice by serving upon Wilks the amended three-day notice, Wilks was entitled to the opportunity to comply with the amended notice.

The Greenes argue that per the 3-day notice, Wilks was required to pay them directly and that depositing the money into the court registry instead did not preclude eviction. Upon review of both 3-day notices neither of them actually state that payment must be made to the Greenes as

the landlords and most important in this case, the lawsuit was already pending and the correct amount of money was deposited into the court registry when Wilks was served with the amended 3-day notice. Also, from review of the applicable statutes, there is nothing stating that a tenant, in order to avoid eviction, must still directly pay the landlord the money owed instead of depositing it into the court registry when an action for eviction has already been commenced. “When the language of the statute is clear and unambiguous and conveys a clear and definite meaning, there is no occasion for resorting to the rules of statutory interpretation and construction; the statute must be given its plain and obvious meaning.” *A.R. Douglass, Inc. v. McRaine*, 102 Fla. 1141, 137 So. 157, 159 (Fla. 1931); *Fla. Dep’t of Revenue v. New Sea Escape Cruises, LTD.*, 894 So. 2d 954, 960 (Fla. 2005) (applying the plain meaning of the statute and quoting *A.R. Douglas*); *Osorio, Sr. v. Board of Professional Surveyors and Mappers*, 898 So. 2d 188, 190 (Fla. 5th DCA 2005) (applying the plain meaning of the statute). Thus, the Greenes’ argument that Wilks should have paid them directly to avoid eviction is not applicable in this case when the amended notice was served after the lawsuit was initiated and the pleadings were filed.

Accordingly, this Court finds that Wilks complied with the amended 3-day notice as the amended amount of rent money demanded was already deposited into the court registry when she was served with the amended notice. Further, this Court concurs with Wilks that because the lawsuit was already pending, the proper procedural route was to comply with rule 1.190, Fla. R. Civ. P. as to the amended 3-day notice. Lastly, due to the facts and procedural history in this case, the entry of the eviction judgment was inequitable and contrary to the purpose of the 3-day notice which is to give tenants the opportunity to pay past rent due and not be evicted. *See Sharpe v. Sentry Drugs, Inc.*, 505 So. 2d 618 (Fla. 3d DCA 1987).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED**:

1. The trial court's "Final Judgment-Eviction" entered on June 2, 2014 is **REVERSED** and **REMANDED** for further proceedings consistent with this opinion.

2. Wilks' "Appellant's Motion for Appellate Attorney's Fees" filed August 12, 2014 is **GRANTED** and the assessment of the attorney's fees is **REMANDED** to the trial court.

3. Wilks is entitled to have costs taxed in her favor by filing a proper motion with the trial court pursuant to Florida Rule of Appellate Procedure 9.400(a).

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida on this 11th day of February, 2015.

/S/

THOMAS W. TURNER
Presiding Circuit Judge

UNDERWOOD and MYERS, JR., J.J., concur.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order has been furnished to: **Bruce Kirkpatrick Eason, Esquire**, Palmetto Law Group, P.A., 17 MLK St. South, Suite 200, St. Petersburg, Florida 33157; **Robert W. Anthony, Esquire and Spencer M. Gledhill, Esquire**, Fassett, Anthony & Taylor, P.A., 1325 W. Colonial Drive, Orlando, Florida 32804; and the **Honorable Faye Allen, Orange County Judge**, 425 N. Orange Avenue, Orlando, Florida 32801, on this 11th day of February, 2015.

/S/

Judicial Assistant