

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF GOODHUE

FIRST JUDICIAL DISTRICT

Dawn Kennedy and Jason Kennedy

Court File No. 25-CV-21-1092

Plaintiffs,

vs.

ORDER DENYING MOTIONS

Defendants.

The above-entitled matter came before the Honorable Patrick M. Biren, Judge of Goodhue County District Court, on July 12, 2021, for a Motion Hearing on Defendants' motions. Plaintiffs did not appear, but attorney Paul Zeig appeared on their behalf. Defendants appeared personally and were *pro se*. All appearances were by Zoom.

An initial hearing in this matter took place on June 21, 2021 before the Honorable Kevin Mark, but he has since recused himself from all further proceedings. Prior to his recusal, Judge Mark issued an Order that addressed the arguments made at the June 21, 2021 hearing.

At the July 12, 2021 hearing, this Court heard arguments on all motions Defendants filed since the June 21, 2021 hearing.

Based on the arguments and submissions of the parties, and all documents and records in the Court file, the Court now makes the following:

FINDINGS OF FACT

1. This matter involves a residential eviction filed during the Covid-19 Pandemic.
2. As a direct result of the Covid-19 Pandemic, Minnesota Governor Tim Walz issued Executive Order 20-14, which suspended evictions, writs of recovery, and tenancy

terminations during the peacetime emergency (“Executive Order 20-14”). This Order was issued on March 23, 2020.

3. Executive Order 20-79 was issued on July 14, 2020. Paragraph 3 of this Executive Order indicates that residential landlords must not issue notices of termination of lease or nonrenewal of lease or terminate leases unless certain exceptions are met. Paragraph 4 of Executive Order 20-79 states: “[p]aragraph 3 does not apply to residential landlords who issue a termination of lease or nonrenewal of lease due to the need to move the property owner or property owner’s family member(s) into the property and where the property owner or property owner’s family member(s) move into the property within 7 days after it is vacated by the tenant.”
4. On June 1, 2021, Plaintiff, Dawn Kennedy filed a residential Eviction Action Complaint against Defendants [REDACTED]. The involved property is located at 516 East Avenue, City of Zumbrota, County of Goodhue, State of Minnesota.
5. This Eviction Action Complaint was filed while Executive Order 20-79 was in effect. At the time of filing the Eviction Action Complaint, Plaintiff Dawn Kennedy, through her legal counsel represented that this should proceed because it falls within Paragraph 4 of the Executive Order 20-79.
6. On June 2, 2021, this Court determined that this matter could proceed and ordered Court Administration to issue the Summons.
7. Defendants were personally served with the Summons and Eviction Action Complaint on June 9, 2021.
8. Plaintiffs filed their Answer to the Eviction Action Complaint on June 10, 2021.

9. Plaintiffs filed another Answer along with a Motion for Dismissal or Judgment as a Matter of Law on June 16, 2021.
10. On June 21, 2021, an eviction hearing was held before Goodhue County District Court Judge Kevin Mark. At that hearing, Judge Mark heard arguments on Defendants' Motion to Dismiss the eviction petition. Defendants' motion to dismiss was based on: (1) improper service, and (2) retaliation. Defendants also invoked their right to a jury trial. After the hearing Judge Mark issued an order: (1) denying Defendant's Motions to Dismiss, (2) granting Plaintiff's Motion to Amend the Complaint, and (3) setting this matter for a contested jury trial to commence on Monday, July 20, 2021 at 1:00p.m.
11. On June 22, 2021, Plaintiffs requested that the jury trial be moved up in order to comply with Minn. Stat. § 504B.341(a).
12. Also, on June 22, 2021, Defendants filed a Motion asking this Court to: (1) remove Jason Kennedy from the amended complaint, (2) deny Plaintiffs' request for an earlier trial and reinstate the original trial date, and (3) order Plaintiffs' to provide Defendants with all communications to the court. In this motion, Defendants' also argued they were not properly served with Plaintiff's correspondence that requested to move up the jury trial date and this lack of timely service caused them to be unable to timely file their objection to this request.
13. On June 22, 2021, Judge Mark issued an order setting this matter for a jury trial now to commence on July 12, 2021. This Order was filed prior to the filing of Defendants' objection to Plaintiffs' request.

14. On June 23, 2021, Defendants filed another Motion asking this Court for permission to file a Motion to Reconsider the Court's June 21, 2021 ruling pursuant to Minn. R. Gen. Prac. 115.11.
15. On June 27, 2021, Defendants filed another Motion, a Motion to Dismiss with Prejudice. This Motion argues the eviction matter should be dismissed because it does not comply with the exception to the Executive Order 20-79 allowing evictions to proceed in cases where the property owner or property owner's family member needs to move into the property. This motion also repeats and raises alleged issues of ex-parte communications and Defendants being improperly served court documents.
16. This Court has previously found that this matter can proceed under Executive Order 20-79.
17. Based on the arguments of the parties, and on all documents and records in the court file, this Court finds Defendants have received all court filings in a timely manner and no prejudice has occurred as a result of any alleged defects in service of documents.
18. On June 29, 2021, Defendants filed a Notice of Motion asking the court for an Involuntary Dismissal with Prejudice pursuant to Minn. R. Civ. P. 41.02, and Expungement.
19. On June 29, 2021, Defendants filed an Affidavit in Support of Motion to support their June 27, 2021 Motion. The Affidavit simply asserts that the facts set forth in Defendants' motion are true.
20. During the 2021 special legislative session, Chapter 8-H.F. No. 4 was signed into law by Governor Tim Walz on June 29, 2021. Article 5 of this legislation is captioned "Eviction Moratorium Phaseout". As identified in its title, this Article addresses the phaseout of

Executive Orders 20-14, 20-73 and 20-79, determining that they are null and void with certain identified exceptions. There is no identified “family need” exception similar to Paragraph 4 of Executive Order 20-79, within this Article. Article 5 also does not contain any retroactive date. Rather, the effective date is identified as the “day following final enactment.” Thus, the effective date of Article 5 is June 30, 2021.

21. On July 1, 2021, Plaintiffs filed a response asking this Court to deny Defendants’ Motions.

22. Also on July 1, 2021, Defendants filed a reply to Plaintiffs’ response.

23. At the July 12, 2021 motion hearing, the Parties raised the issue of what law currently applies to evictions in Minnesota given the recent passage of Chapter 8-H.F. No. 4.

NOW, THEREFORE, based upon the above Findings of Fact, the Court makes the following:

CONCLUSIONS OF LAW

Defendants’ Motions

1. “Motions to reconsider are prohibited except by express permission of the court, which will be granted only upon a showing of compelling circumstances. Requests to make such a motion, and any responses to such requests, shall be made only by letter to the court of no more than two pages in length, a copy of which must be served on all opposing counsel and self-represented litigants.” Minn. R. Gen. Prac. 115.11
2. Defendants’ first motion following the initial hearing in this matter was filed June 22, 2021, and asks this Court to (1) remove Jason Kennedy from the amended complaint, and (2) deny the request for an earlier jury trial.
3. With respect to amending the complaint, Judge Mark granted the amendment to the complaint after Plaintiffs requested the amendment at the initial hearing. Defendants

were present at that hearing and had the opportunity to object. Defendants' motion seeking to remove Jason Kennedy from the Complaint is an attempt to reconsider a prior court order. This Court will not reconsider this issue as it was already decided and there are no compelling circumstances that would make a request for reconsideration of Judge Mark's June 21, 2021 Order to add Jason Kennedy as a Plaintiff appropriate.

4. With respect to Defendants' motion to continue the trial to the originally scheduled date, Plaintiffs' request for an earlier trial was granted pursuant to Minn. Stat. § 504B.341(a) which states "[i]n an eviction action, the court, in its discretion, may grant a continuance of the trial for no more than six days unless all parties consent to longer continuance." None of the exceptions stated in Minn. Stat. § 504B.341(b) apply. To the extent this request for an earlier trial date was made prior to the Court receiving Defendant's objection, the Court was bound by statute to schedule the jury trial for a sooner date as none of the limited exceptions apply. Therefore, the Court will not reconsider this issue and Defendants' request for a later trial date is denied.
5. Defendants' second motion, filed June 23, 2021, is expressly a request to file a motion to reconsider, and this Court will treat as such. Defendants' have shown no compelling circumstances to grant Defendants' request, and Defendants' request to file a motion to reconsider is denied.
6. Defendants' third motion, filed June 27, 2021, asks this Court to dismiss the eviction proceeding with prejudice because it allegedly does not fall within the exceptions to the current executive order. However, it was already determined this matter could proceed because it *does* fall within the exception to the executive order. Defendants argued Plaintiffs do not need to move into the house and that therefore, this matter cannot

proceed. However, based on the arguments, and all pleadings and documents in the court record, the Court still finds this matter falls within the exception to Executive Order 20-79. Therefore, the Court will not reconsider this decision, and Defendants' Motion to Dismiss based on not falling within the exception to Executive Order 20-79 is denied. However, Plaintiffs still have to produce admissible evidence at the jury trial that establishes the family member exception outlined in paragraph 4 of Executive Order 20-79 applies.

7. Defendants' fourth motion, filed June 29, 2021, seeks involuntary dismissal pursuant to Minn. R. Civ. P. 41.02, as well as expungement.
8. "The court may upon its own initiative, or upon motion of a party, and upon such notice as it may prescribe, dismiss an action or claim for failure to prosecute or to comply with these rules or any order of the court." Minn. R. Civ. P. 41.02.
9. Here, Plaintiffs have, and still are, prosecuting this matter. Therefore, the Court will deny Defendants' Motion for involuntary dismissal pursuant to Minn. R. Civ. P. 41.02.
10. Finally, Defendants' motion for expungement is premature because the matter is proceeding to a Jury Trial on the merits.

Application of Executive Order 20-79

11. "No law shall be construed to be retroactive unless clearly and manifestly so intended by the legislature." Minn. Stat. § 645.21.
12. "[S]ection 645.21 requires the legislature to express its intention to make a law retroactive, regardless of whether that law affects procedural or substantive rights." *In re a Pet. for Instructions to Construe Basic ADR 876 of Port Auth. of City of St. Paul*, 772 N.W.2d 488, 494 (Minn. 2009).

13. Here, Article 5 of Chapter 8 of H.F. No.4, enacted into law on June 29, 2021, contains no provision expressly making the law retroactive. In fact, all of the sections of Article 5 contain the clause “EFFECTIVE DATE. This section is effective the day following final enactment.”

14. Plaintiffs were purportedly given notice to vacate on April 23, 2021. The summons in this matter was issued on June 7, 2021, and the initial hearing in this matter was held on June 21, 2021. At the time this action commenced, and throughout the proceedings, Executive Order 20-79 applied. Further, the legislature’s new law was not enacted until June 29, 2021, well after these proceedings began. Therefore, the legislature’s “off-ramp” provisions outlined in Article 5 do not apply to this matter. As such, the Court will apply the procedural rules outlined within Executive Order 20-79 as that was the law at the time this action commenced, and up to and through the time of the first hearing.

Now, therefore, based upon the foregoing Findings of Fact and Conclusions of Law, the Court hereby makes the following:

ORDER

1. Defendants’ motions are hereby **DENIED**.
2. The Jury Trial will commence on **Thursday, July 15, 2021, at 9:00 a.m.** at the Goodhue County Justice Center, 454 W 6th St, Red Wing, MN 55066.
3. At the Jury Trial, in addition to providing admissible evidence to support their Eviction Action Complaint, Plaintiffs shall also provide admissible evidence to establish this matter falls within the moratorium exception of Paragraph 4 of Executive Order 20-79. Defendants will also be given the opportunity to provide admissible evidence that they

have a valid defense to the Complaint, which they have identified as the defense of retaliation.

BY THE COURT:

Biren, Patrick



2021.07.13

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Dated: July 13, 2021

Patrick M. Biren

Judge of District Court