IN THE MISSOURI COURT OF APPEALS
WESTERN DISTRICT

COMPLETE TITLE OF CASE

MELISSA K. ESPINOSA, TRUSTEE OF THE MELISSA K. ESPINOSA REVOCABLE TRUST,

Respondent,

v.

ERIC BAKER AND VERONICA BAKER,

Appellants.

DOCKET NUMBER WD83911

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

DATE: July 27, 2021

APPEAL FROM

The Circuit Court of Boone County, Missouri
The Honorable Tracy Z. Gonzalez, Judge

JUDGES

Division Three: Ardini, P.J., and Pfeiffer and Thomson, JJ. CONCURRING.

ATTORNEYS

Steve Scott, Columbia, MO, Attorney for Respondent.

Danieal H. Miller and James P. Barton, Jr., Columbia, MO, Attorneys for Appellants.

MISSOURI APPELLATE COURT OPINION SUMMARY

MISSOURI COURT OF APPEALS
WESTERN DISTRICT

MELISSA K. ESPINOSA, TRUSTEE OF THE MELISSA K. ESPINOSA REVOCABLE TRUST, Respondent,
v.
ERIC BAKER AND VERONICA BAKER, Appellants.

WD83911 **Boone County**

Before Division Three Judges: Edward R. Ardini, Jr., Presiding Judge, and Mark D. Pfeiffer and W. Douglas Thomson, Judges

Eric Baker and Veronica Baker (the "Bakers") appeal from the judgment entered by the Circuit Court of Boone County, Missouri ("trial court"), awarding Melissa K. Espinosa, Trustee of the Melissa K. Espinosa Revocable Trust ("Espinosa"), possession of certain real property (the "Premises") and Chapter 534 statutory damages, on her Petition for Unlawful Detainer. The Bakers assert two substantial-evidence challenges to the judgment on appeal. The Bakers contend that the trial court erred in entering judgment in favor of Espinosa because: (1) there was no substantial evidence that the Bakers "wrongfully" continued in possession of the Premises; (2) the Bakers would have supported their claim that there was no substantial evidence that they "wrongfully" continued in possession of the Premises had the trial court admitted their evidence of the "inhabitability" of the Premises.

AFFIRMED.

Division Three holds:

1. Section 534.030.1 defines four distinct classes of persons guilty of unlawful detainer: the holdover tenant class, the foreclosure class, the holdover employee class, and the wrongful possession class. The Bakers' argument that they were in the "wrongful possession class" is *not* consistent with the undisputed "holdover tenant class" evidence at trial. In their Answer, the Bakers admitted that they obtained possession of the Premises by becoming tenants pursuant to the Lease prior to October 23, 2019. The Bakers next admitted that they agreed to mutually terminate the Lease on October 23, 2019. And, finally, the Bakers admitted that Espinosa was entitled to possession of the Premises since the termination date of the Lease. Accordingly, the Bakers unlawfully and willfully possessed the Premises from October 24, 2019, until possession was finally surrendered on January 28, 2020.

2. The Bakers waived any claim that the trial court erred in refusing evidence of "inhabitability" by failing to make an offer of proof below and by failing to assert evidentiary error in their point relied on in this appeal. The Bakers' argument that the "inhabitability" evidence (which was not admitted into evidence) would have supported their assertion that there was no substantial evidence of "wrongfulness" is an argument addressed and rejected in our analysis of the Bakers' first point. Perhaps more importantly, in the context of an unlawful detainer proceeding, a counterclaim or

affirmative defense for breach of warranty of habitability does not challenge or otherwise address who is entitled to current possession of the property but, rather, addresses the property's suitability for human habitation prior to the termination of a tenancy. Therefore, such a counterclaim or affirmative defense exceeds the limitations of an unlawful detainer action brought under Chapter 534 and is substantively barred.

3. Espinosa filed a motion asserting a right to attorney's fees on appeal pursuant to provisions of the Lease. However, this proceeding is not a rent and possession case initiated under Chapter 535, pursuing damages arising from a breach of the Lease. Instead, *all* of Espinosa's remedial damages (possession and statutory damages) arose as a result of the Chapter 534 statutory scheme for unlawful detainer. The damages relating to possession and statutory double damages in the judgment began on October 24, 2019, one day after the parties had both stipulated the Lease had been terminated. Hence, the Lease cannot provide a basis for authorizing an award of attorney's fees under the terms of the contract, and Chapter 534 does not authorize an award of attorney fees in the statutory scheme. Therefore, Espinosa's motion for attorney fees on appeal is denied.

Opinion by: Mark D. Pfeiffer, Judge July 27, 2021

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THIS SUMMARY IS **UNOFFICIAL** AND SHOULD NOT BE QUOTED OR CITED.