

**IN THE COURT OF APPEALS OF IOWA**

No. 6-338 / 05-0375  
Filed September 21, 2006

**CHARMAINE HUNTER,**  
Plaintiff-Appellant,

**vs.**

**CITY OF DES MOINES MUNICIPAL HOUSING AUTHORITY,  
RUSSELL UNDERSOOD, THERESA TAYLOR and TANGELA WEISS,**  
Defendants-Appellees.

---

Appeal from the Iowa District Court for Polk County, Douglas F. Staskal,  
Judge.

Charmaine Hunter appeals the district court's denial of her motion for  
summary judgment and the entry of judgment on a counterclaim against her.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**

Robert A. Wright, Jr. of Wright and Wright, Des Moines, for appellant.

Michael F. Kelley, Assistant City Attorney, Des Moines, for appellee.

Considered by Vogel, P.J., and Zimmer and Vaitheswaran, JJ.

**VAITHESWARAN, J.**

This appeal is the latest litigation involving a public housing authority's efforts to evict a tenant and the tenant's challenges to the housing authority's actions. We conclude the doctrine of issue preclusion requires reversal of a portion of the district court's rulings in favor of the housing authority.

***I. Background Facts and Proceedings***

Charmaine Hunter leased a home through a public housing authority known as the City of Des Moines Municipal Housing Authority. After thirteen years, the Housing Authority notified Hunter of its intent to terminate the lease based on her failure to report (1) gambling income and (2) an unauthorized boarder.

Hunter filed a grievance challenging the grounds for termination. A hearing officer found evidence to support those grounds, as did a federal district court on judicial review of the grievance decision.

Despite these rulings, Hunter did not voluntarily leave the home and the Housing Authority began eviction proceedings. A small claims court ruled that the Housing Authority was entitled to evict Hunter based on the prior opinions upholding the grounds for the lease termination. The district court, however, reversed this ruling after concluding that the termination notice on which the eviction action was based did not comply with state law. Specifically, the court stated the Housing Authority was obligated to give Hunter an opportunity to cure the claimed breaches. Iowa Code § 562A.27(1) (2001); *Liberty Manor v. Rinnels*, 487 N.W.2d 324, 326 (Iowa 1992) (holding district court lacked jurisdiction to hear forcible entry and detainer action where landlord's notice did not include a

statement of the tenant's right to cure the breach). The notice that Hunter received did not inform her of this right.

Not deterred, the Housing Authority issued Hunter a second lease termination/nonrenewal notice based on the same grounds as the first notice but citing a different statutory provision. See Iowa Code § 562A.34(2). Again, the notice did not give Hunter the right to cure the breaches.

Hunter filed another grievance. The hearing officer considered evidence from the first hearing, took additional evidence, and, for a second time, ruled in favor of the Housing Authority. The hearing officer determined the notice that triggered this proceeding was valid despite the absence of a notice of right to cure. The hearing officer also determined that Hunter breached the lease by failing to report gambling income and by failing to report that a man was staying with her.

Hunter again refused to leave the house voluntarily, and the Housing Authority again initiated eviction proceedings. On Hunter's motion, the district court dismissed the action on the ground that the Housing Authority failed to notify Hunter of her right to cure the breaches. The court rejected the Housing Authority's attempts to circumvent this requirement by issuing the notice pursuant to a different statutory provision.

This brings us to the litigation giving rise to the present appeal. Hunter filed a lawsuit against the Housing Authority and others alleging that the Housing Authority's refusal to give her notices of right to cure amounted to a breach of her lease agreement and an abuse of process. She sought damages and injunctive

relief. The Housing Authority filed a counterclaim alleging Hunter violated the lease by failing to report gambling income and an unauthorized boarder.

Hunter moved for summary judgment, contending she was entitled to judgment as a matter of law on the liability portion of her claims. The Housing Authority filed a cross-motion for summary judgment seeking dismissal of Hunter's claims. The district court denied Hunter's motion and granted the Housing Authority's cross-motion for summary judgment as to Hunter's claims, relying on the prior adjudications that Hunter breached the lease.

The parties then stipulated to facts relating to the Housing Authority's counterclaim. The stipulation stated that the Housing Authority "received information" that someone was residing with Hunter. The stipulation referred to the hearing officer's findings concerning gambling income but reserved the issue of whether this finding was "res judicata."

On the counterclaim, the district court reiterated its conclusion that prior findings in "other proceedings" were "res adjudicata" on whether Hunter violated the lease by having gambling income and an unauthorized boarder. The court entered judgment on the Housing Authority's counterclaim in the amount of \$20,294 plus interest.

## ***II. Summary Judgment Rulings***

We review a ruling on a motion for summary judgment for corrections of errors at law. *Clinkscales v. Nelson Securities, Inc.*, 697 N.W.2d 836, 840-41 (Iowa 2005). Summary judgment is proper only "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to a judgment as a matter of law.” Iowa R. Civ. P. 1.981(3).

***A. Grant of Housing Authority’s Motion for Summary Judgment on Hunter’s Breach of Contract Claim***

To prevail on her breach of contract claim, Hunter was required to prove: (1) the existence of a contract; (2) the terms and conditions of the contract; (3) her performance of the terms and conditions of the contract; (4) breach of the contract by the Housing Authority; and (5) damages. *Molo Oil Co. v. River City Ford Truck Sales, Inc.*, 578 N.W.2d 222, 224 (Iowa 1998). Hunter argued she satisfied these requirements as a matter of law. The Housing Authority argued Hunter did not satisfy the third element.

For purposes of the ruling, the district court decided or assumed that only the third element was not at issue. On this element, whether Hunter performed all the terms and conditions of the contract, the court had before it the hearing officer’s decisions in the grievance proceedings as well as portions of the hearing transcripts from those proceedings. The court also had before it an affidavit from Hunter denying she had gambling income to report and stating that the man in her home was paid by the State to serve as her caretaker.

The district court determined that the issue of whether Hunter breached the lease “was adjudicated in the administrative grievance procedure she pursued following the first notice of termination of her lease.” The court concluded, “this precludes re-litigation of that issue in this proceeding.” Based on the findings of the hearing officer, the court determined that Hunter “committed material and substantial breaches of the lease” which precluded summary

judgment in her favor and required dismissal of the petition. The court also concluded that “Hunter’s breach-of-contract claim fails to the extent it is based on the second FED proceeding.”

It is clear from these pronouncements that issue preclusion was the basis of the court’s ruling relating to Hunter’s breach of contract claim. As the court noted, four prerequisites must be established to apply this doctrine:

(1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

*Hunter v. City of Des Moines*, 300 N.W.2d 121, 123 (Iowa 1981).

We must consider whether this doctrine was correctly applied to three prior rulings: (1) the district court’s ruling dismissing the second eviction action for failure to give a notice of right to cure; (2) the district court’s ruling dismissing the first eviction action for failure to give a notice of right to cure; and (3) the hearing officer’s determinations in the grievance proceedings that Hunter breached the lease agreements.

### ***1. District Court’s Ruling Dismissing Second Eviction Action***

The district court judge determined he was not bound by his colleague’s prior ruling that the Housing Authority’s second notice of termination/nonrenewal was improper. Specifically, the court stated: “I do not believe I am bound by that ruling under the ‘law of the case’ doctrine because this is not the same case as the ones in which that decision was made.”

“The doctrine of law of the case represents the practice of courts to refuse to consider what has once been decided.” *State ex rel. Goettsch v. Diacide*

*Distrib., Inc.*, 596 N.W.2d 532, 537 (Iowa 1999). Under the doctrine, an appellate court decision becomes controlling on the trial court and on any further appeals in the same case. *Springer v. Weeks & Leo Co., Inc.*, 475 N.W.2d 630, 632 (Iowa 1991).

Here, there was no appellate court decision addressing the validity of the Housing Authority's second notice of termination/nonrenewal. See *Spiker v. Spiker*, 708 N.W.2d 347, 351 n.1 (Iowa 2006) (stating that because parties were before the appellate court for the first time, applicable doctrine is res judicata, not law of the case). Therefore, the question before the district court was not whether the law of the case doctrine applied but whether the court was obligated to give binding effect to an earlier ruling by a different judge of the same court.

We conclude the court had that obligation. The issue (whether the Housing Authority gave a proper notice of termination) was identical, the issue was raised and litigated in the prior eviction action pursuant to Hunter's motion to dismiss, the issue was clearly material and relevant to the earlier disposition, and the issue was necessary to the judgment of dismissal. See *Hunter*, 300 N.W.2d at 123. As Hunter asserts, "the Polk County District Court's Order dismissing the Second FED Action is res judicata and the district court is bound by it."

## **2. District Court's Ruling Dismissing First Eviction Action**

As noted, a district court judge dismissed the first eviction action filed by the Housing Authority on the ground that the notice of lease termination was improper. Again, the issue was identical, was raised and litigated in the eviction proceeding, was material and relevant to the disposition, and was necessary to the judgment. *Id.* Therefore, we conclude the district court in the pending

litigation was obligated to give binding effect to the ruling of his colleague in the first forcible entry and detainer action.

### ***3. The Hearing Officer's Determinations in the Grievance Proceedings***

We are left with the grievance officer's findings that Hunter breached the lease. The district court gave preclusive effect to these findings. For several reasons, we come to a different conclusion.

#### **a. Invalidation of Lease Termination Notices**

First, two district court judges invalidated the lease termination notices on which the grievance proceedings were premised. We have already concluded that the district court was bound to give effect to these rulings. Under these rulings, the Housing Authority could not proceed with eviction pursuant to the notices it provided Hunter. Indeed, under *Liberty Manor*, the court was deprived of jurisdiction to hear the eviction action. 487 N.W.2d at 326. In other words, if the court had entered judgment, the judgment would have been void. *Johnson v. Mitchell*, 489 N.W.2d 411, 414 (Iowa Ct. App. 1992) ("A judgment may be considered void where the court acted without or in excess of its jurisdiction."). It follows that the hearing officer's fact findings made pursuant to the invalid notice could not bind the court in this action. *Cf. Housing Auth. of St. Louis County v. Lovejoy*, 762 S.W.2d 843, 845 (Mo. Ct. App. 1988) (stating the procedures of the grievance proceeding "were not intended to supersede or substitute for the procedures of state law").

We recognize that "[t]he res judicata consequences of a final, unappealed judgment on the merits are not altered by the fact the judgment may have been

wrong or rested on a legal principle subsequently overruled in another case.” *Gail v. Western Convenience Stores*, 434 N.W.2d 862, 863 (Iowa 1989). Here, we are not dealing with substantively incorrect grievance decisions.<sup>1</sup> We are dealing with grievance decisions that are premised on invalid lease termination notices. This implicates “elements of due process.” See 24 C.F.R. § 966.53(c)(1) (defining “elements of due process” as “an eviction action or a termination of tenancy in a State or local court in which the following procedural safeguards are required: (1) Adequate notice to the tenant of the grounds for terminating the tenancy and for eviction.”). One of the key elements, adequate notice, was absent.

Notably, the Housing Authority does not dispute that it was bound to provide notices prescribed by state law.<sup>2</sup> It simply argues that, the notices it provided were adequate, notwithstanding two state court rulings to the contrary.<sup>3</sup> In the face of these rulings, we conclude the “res judicata consequences” of the

---

<sup>1</sup> The first grievance decision was affirmed on the merits. No mention was made of the validity of the lease termination notice on which the grievance decision was predicated.

<sup>2</sup> Indeed, the Housing Authority acknowledged that, in 2003, it lobbied for and obtained an amendment to the state notification provisions to deal with the notice deficiencies in this case. The 2003 Iowa legislature added a new subsection 5 to this statute, which states in its entirety:

Notwithstanding any other provisions of this chapter, a municipal housing agency established pursuant to chapter 403A may issue a thirty-day notice of lease termination for a violation of a rental agreement by the tenant when the violation is a violation of a federal regulation governing the tenant’s eligibility for or continued participation in a public housing program. The municipal housing agency shall not be required to provide the tenant with a right or opportunity to remedy the violation or to give any notice that the tenant has such a right or opportunity when the notice cites the federal regulation as authority.

2003 Iowa Acts ch. 154, § 2. (codified at Iowa Code § 562A.27 (2005)).

<sup>3</sup> The Housing Authority’s brief to this court focuses on the adequacy of the second notice, but it also apparently seeks to be bound by the contents of the first notice which was incorporated by reference in the second.

grievance decisions were altered. See *Gail*, 434 N.W.2d at 863 (“A judgment may be attacked collaterally only if it was entered without jurisdiction.”); see also *Corcoran Mgmt. Co. v. Withers*, 513 N.E.2d. 218, 225 (Mass. App. Ct. 1987) (holding trial de novo in action for possession “superseded all that had occurred at the grievance panel hearing”); 24 C.F.R. § 966.57(c) (“A decision . . . which denies the relief requested by the complainant in whole or in part shall not constitute a waiver of, nor affect in any manner whatever, any rights the complainant may have to a trial de novo or judicial review in any judicial proceedings, which may thereafter be brought in the matter.”).<sup>4</sup>

**b. Exception to Issue Preclusion Doctrine**

The Iowa Supreme Court recently articulated a second reason for declining to apply the issue preclusion doctrine. In *Grant v. Iowa Dep’t of Human Servs.*, \_\_\_ N.W.2d \_\_\_, \_\_\_ (Iowa 2006), the court stated, “[e]ven when all elements of the doctrine are satisfied, there are circumstances when it will not be applied to prevent relitigation of an issue.” The court went on to apply the following exception to the issue preclusion doctrine: “[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them.” *Id.* (citing Restatement (Second) of Judgments § 28(3), at 273 (1982)).

Applying this exception here, we conclude the procedures in the grievance proceedings did not warrant application of the issue preclusion doctrine to the

---

<sup>4</sup> There is no question in our minds that this regulation preserves a tenant’s right to state court eviction proceedings in addition to judicial review of the agency decision.

hearing officer's fact findings. As our sister state noted in addressing whether the doctrine of collateral estoppel should apply:

The grievance hearing was not intended to determine the tenant's rights. It was instead intended to prevent the Housing Authority, acting in the capacity of a landlord, from wrongfully or prematurely infringing on the tenant's rights. The findings of the authority are equivalent to a notice to vacate the premises served by a private landlord on a private tenant. The appellant's rights were left unaffected by the findings of the Housing Authority. The Housing Authority's decision is simply a landlord's decision not to renew the lease. The legal rights of the parties remain unadjudicated.

*Lovejoy*, 762 S.W.2d at 845-46.

In *Lovejoy*, the court also noted that the tenant was not "afforded an adequate opportunity to present exhibits or witnesses on his behalf." *Id.* at 845. Although the regulations governing grievance proceedings have been amended since *Lovejoy*, the provision relating to presentation of witnesses still does not authorize the tenant to call her own witnesses. Instead, the regulation states that the tenant has the right "to confront and cross-examine all witnesses upon whose testimony or information the PHA or project management relies." 24 C.F.R. § 966.56(b)(4).

In addition, the regulations require the tenant to "first make a showing of an entitlement to the relief sought." *Id.* at (e). Only after the tenant makes such a showing is the Public Housing Authority obligated to justify its action. *Id.*

We conclude that these differences in the grievance procedures vis-à-vis court procedures provide another reason not to give binding effect to the fact findings of the hearing officer.<sup>5</sup>

---

<sup>5</sup> We do not decide whether this exception to the issue preclusion doctrine should apply whenever a party seeks to be bound by fact findings made under this regulatory

### **c. Selective Application of Issue Preclusion Doctrine**

Finally, we are persuaded that the Housing Authority is attempting to invoke the issue preclusion doctrine selectively. On the one hand, it would like to have the hearing officer's grievance decisions bind the court but, on the other hand, it would not like to be bound by the district court's prior rulings invalidating the notices underlying the grievance decisions. While the same might be said of our opinion, we believe our conclusion that issue preclusion should not apply to the hearing officer's findings is mandated by our conclusion that issue preclusion should apply to the prior court rulings invalidating the lease termination notices.

We conclude the issue preclusion doctrine does not apply to the hearing officer's fact findings concerning Hunter's breach of the lease. Therefore, those fact findings did not bind the district court in this action.

### **B. Summary Judgment on Hunter's Abuse of Process Claim**

Hunter also challenges the district court's grant of the Housing Authority's motion for summary judgment on her abuse of process claim. "Abuse of process is 'the use of legal process, whether criminal or civil, against another primarily to accomplish a purpose for which it was not designed.'" *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 398 (Iowa 2001) (quoting *Fuller v. Local Union No. 106*, 567 N.W.2d 419, 421 (Iowa 1997)). To prevail, Hunter had to prove the Housing Authority: (1) used a legal process, (2) used the legal process in an

---

scheme. Here, the key factor is the absence of an adequate lease termination notice. The Iowa Supreme Court's recent holding in *Grant* merely provides additional support for our conclusion that the invalid notice precluded application of the issue preclusion doctrine.

improper or unauthorized manner, and (3) caused Hunter to suffer damages as a result of that abuse. *Gibson*, 621 N.W.2d at 398.

The parties focus on the second element: whether the Housing Authority used the legal process in an improper or unauthorized manner. On this element, the district court stated:

Hunter's claim fails because she does not state for what improper purpose or end the Housing Agency pursued the FED actions. In fact, she consistently argues that the Housing Agency's purpose in pursuing the FED actions was to remove her from the property. This is the precise purpose for which the FED procedure is intended. The failure of a party to follow the proper procedure in pursuing an action, resulting in its dismissal, is not abuse of process.

We discern no error of law in this conclusion. As the Iowa Supreme Court has stated:

Some act or threat directed to an immediate objective not legitimate in the use of the process is required, and the defendant is not liable if he has done no more than carry the process to its authorized conclusion, even with bad intentions.

*Schmidt v. Wilkinson*, 340 N.W.2d 282, 284 (Iowa 1983). In a forcible entry and detainer action, the only question "is whether the defendant is wrongfully detaining possession of the real property at the time of the trial." *Bernet v. Rogers*, 519 N.W.2d 808, 811 (Iowa 1994). As the Housing Authority filed the eviction actions to remove Hunter from the house, this purpose was satisfied. Therefore, the Housing Authority was entitled to judgment as a matter of law on this claim.

### ***III. Judgment on Agency's Counterclaim***

As noted, the Housing Authority filed a counterclaim for breach of contract based on claimed violations of the lease by Hunter. The parties stipulated to

several facts but reserved the issue of whether issue preclusion applied to bind the court to the agency's fact findings. Our conclusion that those findings are not binding disposes of this question. As the Housing Authority did not prove that it performed all the terms and conditions of the lease and did not prove that Hunter breached the lease, it was not entitled to judgment on its counterclaim.

#### ***IV. Disposition***

We affirm the district court's grant of the Housing Authority's motion for summary judgment on Hunter's abuse of process claim. We reverse the district court's grant of the Housing Authority's motion for summary judgment on Hunter's breach of contract claim. We conclude there exists a genuine issue of material fact precluding a grant of either Hunter's or the Housing Authority's motion for summary judgment on her breach of contract claim. The issue is whether she complied with the terms of the lease. We remand for further proceedings to resolve this issue as well as the question of damages, if applicable.

On the Housing Authority's counterclaim, we reverse and remand for further proceedings.

We find it unnecessary to address the remaining arguments raised by the parties.

Costs are taxed seventy-five percent to the Housing Authority and twenty-five percent to Hunter.

**AFFIRMED IN PART; REVERSED AND REMANDED IN PART.**