**AFFIRMED and Opinion Filed June 16, 2020**

**In the**
**Court of Appeals**
**Fifth District of Texas at Dallas**

**No. 05-19-00058-CV**

**THE HOUSING AUTHORITY OF THE CITY OF DALLAS, TEXAS-BRACKINS VILLAGE, Appellant**
**V.**
**WANETTE SIMS RUDD AND ALL OTHER OCCUPANTS, Appellees**

**On Appeal from the County Court at Law No. 3**
**Dallas County, Texas**
**Trial Court Cause No. CC-18-06231-C**

# MEMORANDUM OPINION

Before Justices Myers, Schenck, and Carlyle
Opinion by Justice Carlyle

The Housing Authority appeals from the trial court's take-nothing judgment in its forcible detainer action against Wanette Sims Rudd and all other occupants of her apartment. We affirm in this memorandum opinion. *See* TEX. R. APP. P. 47.4.

## Background

Ms. Rudd leases an apartment from the Housing Authority. Under her lease, Ms. Rudd must refrain from:

> any drug-related or violent criminal activity or other activity that threatens others, including but not limited to:

(1) Engaging in any activity, including physical and verbal assaults, that threatens the health, safety or right to peaceful enjoyment of DHA's premises by other Tenants or their guests, DHA employees, agents of DHA, or other persons;

(2) Engaging in any violent criminal activity or other activity that threatens the life, health or property of other Tenants or their guests, DHA employees, or other persons.

Section three states that a "criminal conviction is not needed to demonstrate serious violations of the lease."

On May 8, 2018, Ms. Rudd was involved in a fight with another tenant at her apartment complex. The Housing Authority notified Ms. Rudd it was terminating her lease because of the fight and demanded she vacate the property. Ms. Rudd refused, and the Housing Authority filed this forcible detainer action.

Ms. Rudd did not answer, and the justice court entered a default judgment against her. She timely appealed, and the county court vacated the justice court's judgment and held a trial de novo. *See* TEX. R. CIV. P. 510.10(c); *Villalon v. Bank One*, 176 S.W.3d 66, 69–70 (Tex. App.—Houston [1st Dist.] 2004, pet. denied). Ms. Rudd appeared for trial pro se and the Housing Authority was represented by counsel.

The Housing Authority presented one witness at the trial—the property manager—who testified she did not witness the fight because it occurred after hours. Although she later saw a video of the fight, the video did not show how the fight began, and the property manager acknowledged not knowing who threw the first

punch. The trial court explained that it wanted to know who threw the first punch, because "maybe somebody was defending themselves. I don't know."

Ms. Rudd testified the other woman had approached her earlier that day and asked her to bring her sister outside. Ms. Rudd told the woman her sister could not come outside because Ms. Rudd did not want to get in trouble with the property manager, who had previously warned Ms. Rudd about her sister being seen too frequently at the property, a separate violation. The woman left, but confronted Ms. Rudd again later that day, demanded to see her sister, and punched Ms. Rudd when she refused. Ms. Rudd said she fought the woman in self-defense after she was punched. The court asked if any weapons were involved in the fight, and Ms. Rudd confirmed there were not.

Rachel Johnson witnessed the fight, and her testimony corroborated Ms. Rudd's version of events. Although she was nearby when the fight broke out, Ms. Johnson could not hear exactly what was said before it began. But she heard Ms. Rudd tell the other woman she "she didn't want to get into it with nobody" before she saw the other woman punch Ms. Rudd. She saw Ms. Rudd fight the other woman, but Ms. Rudd "was defending herself." Ms. Johnson confirmed to the court that she never saw the other woman try to leave or get away from the fight.

Ultimately, the trial court credited the only testifying eyewitness, whose testimony corroborated Ms. Rudd's testimony that she fought the other woman in self-defense, and entered a take-nothing judgment against the Housing Authority.

**The record does not show judicial bias.**

In its first issue, the Housing Authority contends the trial court abused its discretion by failing to remain impartial and by acting as an advocate for Ms. Rudd. It complains that she never pleaded self-defense, which it suggests is an affirmative defense, and that the court both introduced and inappropriately developed self-defense in the trial. Having reviewed the transcript and record in this short bench trial, we disagree.

We review complaints about the administration of a trial for abuse of discretion. *See Chambers v. Pruitt*, 241 S.W.3d 679, 688 (Tex. App.—Dallas 2007, no pet.). A trial court abuses its discretion when it acts in an arbitrary or unreasonable manner without reference to guiding rules or principles. *Jelinek v. Casas*, 328 S.W.3d 526, 539 (Tex. 2010).

"All parties have a right to a fair and impartial trial before a neutral judge," *Ellason v. Ellason*, 162 S.W.3d 883, 887 (Tex. App.—Dallas 2005, no pet.), who "should not act as an advocate for or adversary toward any party." *In re E.M.*, No. 02-18-00351-CV, 2019 WL 2635565, at *2 (Tex. App.—Fort Worth June 27, 2019, orig. proceeding.) (mem. op.). A trial court has broad discretion to conduct a trial and may express itself while exercising that discretion. *Dow Chem. Co. v. Francis*, 46 S.W.3d 237, 240 (Tex. 2001). "[J]udicial remarks during the course of a trial that are critical or disapproving of, or even hostile to, counsel, the parties, or their cases, ordinarily do not support a bias or partiality challenge." *Id.* (citing *Liteky v. United*

*States*, 510 U.S. 540, 555 (1994)). Rather, to show bias or partiality implicating a party's ability to obtain a fair trial, the trial court must "display a deep-seated favoritism or antagonism that would make fair judgment impossible." *Id.* Nothing in this case rises to that level.

A party generally waives error based on a trial court's improper comment if it does not timely object. *In re E.M.*, 2019 WL 2635565, at *2. The Housing Authority did not object to any of the comments it now complains of on appeal. A narrowly drawn line of cases allows judicial conduct complaints to be raised for the first time on appeal "if a judge's bias and prejudice as shown on the face of the record were harmful, thereby depriving a litigant of his important constitutional right to a fair trial with an impartial fact-finder and resulting in an improper judgment." *See In re L.S.*, No. 02-17-00132-CV, 2017 WL 4172584, at *16 (Tex. App.—Fort Worth, Sept. 21, 2017, no pet.) (mem. op.) (bench trial where judge committed fundamental error by abdicating the "responsibility to be neutral and unbiased and to decide this case only on this case's merits"). None of the comments here qualify.

The trial court's statement during Ms. Rudd's testimony, "You're saying you're defending yourself," is an accurate legal description for the lay testimony she had just given. Ms. Rudd testified she and the woman were talking and that the woman hit her. Another of the court's comments, that "maybe somebody was defending themselves" suggested that the trial court wanted to develop the factual record underlying the Housing Authority's assertion that Ms. Rudd violated the

terms of her lease. Instead of objecting, Housing Authority counsel asked the court for an opportunity to "develop that testimony."

Finally, the trial court did not display incurable bias or prejudice on the face of the record by disagreeing with Housing Authority counsel's accusations that Johnson was providing contradictory, if not perjured, testimony on cross-examination. *See In re L.S.*, 2017 WL 4172584, at *16. The court was neither obligated to accept the Housing Authority's characterization of Johnson's testimony nor required to permit the Housing Authority to argue with Johnson about the extent to which that testimony was inconsistent. *See* TEX. R. EVID. 611(a). "[A] trial court may properly intervene to maintain control in the courtroom, to expedite the trial, and to prevent what it considers to be a waste of time." *See Dow*, 46 S.W.3d at 241. The court's other comments fall under the same umbrella.

"Allegations that a judge has put his or her thumb on the scale should not be made simply because a party disagrees with the judge's rulings." *In re E.M.*, 2019 WL 2635565, at *2. A trial court has wide discretion in a bench trial to question witnesses and develop the factual record. *See id.* at *3. It is true that the trial court played a role in questioning the witnesses, but (1) this was a bench trial where the court acted in its dual capacity as both fact-finder and magistrate and (2) Ms. Rudd appeared pro se against the Housing Authority, represented by counsel. *See Daniels v. Balcones Woods Club, Inc.*, No. 03-03-00310-CV, 2006 WL 263589, at *3 (Tex. App.—Austin Feb. 2, 2006, pet. denied) (mem. op.); *Cranberg v. Consumers Union*

*of U.S., Inc.*, 756 F.2d 382, 391–92 (5th Cir. 1985). We conclude the trial court's conduct here does not demonstrate deep-seated bias that calls into question the Housing Authority's ability to obtain a fair trial, and thus an objection was required. *See In re E.M.*, 2019 WL 2635565, at *3.

Also, self-defense is not an affirmative defense here—it is a direct attack on the claim that Ms. Rudd engaged in "physical or verbal assault" or "activity that threatens others." In this way, it is like a defendant in a breach of contract case claiming lack of consideration. *See Belew v. Rector*, 202 S.W.3d 849, 854 (Tex. App.—Eastland 2006, no pet.); *cf. Gorman v. Life Ins. Co. of N. Am.*, 811 S.W.2d 542, 546 (Tex. 1991) ("Pleading an affirmative defense permits introduction of evidence which does not tend to rebut the factual propositions asserted in the plaintiff's case, but which seeks to establish an independent reason why the plaintiff should not recover."). We note that the Housing Authority premised its entire first issue on self-defense being an affirmative defense, yet has failed to cite any case or make any argument to support this foundational proposition. Tellingly, the Housing Authority failed to object to Ms. Rudd's failure to plead self-defense or her introduction of evidence supporting it, meaning it was tried by consent and "shall be treated" as if it was raised in the pleadings in any event. *See* TEX. R. APP. P. 67.

The Housing Authority has failed to preserve anything for our review in its first issue and we overrule it. *See In re E.M.*, 2019 WL 2635565, at *2.

**The trial court did not err by concluding the Housing Authority failed to prove a material breach of the lease agreement.**

In its second issue, the Housing Authority contends it established as a matter of law that Ms. Rudd breached the lease by participating in the fight—even if she acted in self-defense. In an appeal from a bench trial, the trial court's findings of fact have the same weight as a jury verdict and are conclusive if supported by the evidence. *Wyde v. Francesconi*, 566 S.W.3d 890, 894 (Tex. App.—Dallas 2018, no pet.). Where, as here, neither party requests findings of fact and conclusions of law following a bench trial, we imply all findings necessary to support the trial court's judgment. *Lee v. Paik*, No. 05-17-01406-CV, 2019 WL 1033869, at *2 (Tex. App.—Dallas Mar. 5, 2019, no pet.) (mem. op.). The Housing Authority does not challenge the trial court's implicit factual finding, supported by the evidence, that Ms. Rudd acted in self-defense after the other woman physically attacked her.

Because, for purposes of this issue, the Housing Authority sets aside its dispute that Ms. Rudd acted in self-defense, the issue presents a pure question of law that we review de novo. *See Reliance Nat'l Indem. Co. v. Advance'd Temps., Inc.*, 227 S.W.3d 46, 50 (Tex. 2007). The relevant legal question is whether the lease unambiguously required Ms. Rudd to refrain from using reasonable force to defend herself against a physical attack at her apartment complex. We conclude it does not.

Again, the relevant contractual language requires Ms. Rudd to refrain from:

> any drug-related or violent criminal activity or other activity that threatens others, including but not limited to:

(1) Engaging in any activity, including physical and verbal assaults, that threatens the health, safety or right to peaceful enjoyment of DHA's premises by other Tenants or their guests, DHA employees, agents of DHA, or other persons;

(2) Engaging in any violent criminal activity or other activity that threatens the life, health or property of other Tenants or their guests, DHA employees, or other persons.

The Housing Authority incorrectly asserts it "is undisputed that Ms. Rudd engaged in a physical **and** verbal assault with another tenant on DHA's premises."

Nothing in the record suggests Ms. Rudd verbally assaulted the other woman. *See City of Watauga v. Gordon*, 434 S.W.3d 586, 589 (Tex. 2014) (noting that the common-law tort of assault involves placing someone in apprehension of imminent bodily contact). The trial court concluded she did not physically assault the woman. To the contrary, the record supports the trial court's implicit finding that Ms. Rudd, acting in self-defense, did not violate the lease. *See id.* at 590. The Housing Authority did not establish, as a matter of law, that Ms. Rudd violated the lease by "engaging in . . . a physical [or] verbal assault[]." But that does not end our inquiry.

The relevant lease provision also purports to prohibit any "other activity that threatens others." Construed literally, that phrase is broad enough to capture all sorts of conduct that, while posing some risk of danger to others, no reasonable person would conclude violates the lease—for example, driving a car, cooking dinner, operating a clothes-dryer, or playing catch. Settled law requires us to interpret even broad contractual provisions like this in relation to the entire instrument, within

reasonable bounds, and to avoid strictly construing them when that leads to absurd results. *See Fortis Benefits v. Cantu*, 234 S.W.3d 642, 650 n.54 (Tex. 2007); *Kourosh Hemyari v. Stephens*, 355 S.W.3d 623, 626–27 (Tex. 2011) (per curiam).

The issue we must decide, therefore, is whether the parties intended the lease to include using force against an attacker when it prohibited "other activities that threaten others." Ultimately, "our quest is to determine, objectively, what an ordinary person using those words under the circumstances in which they are used would understand them to mean." *URI, Inc. v. Kleberg Cnty.*, 543 S.W.3d 755, 764 (Tex. 2018).

Here, the relevant phrase is a "catchall" provision at the end of a list that specifically prohibits "any drug-related or violent criminal activity." "Where the more specific items, [a] and [b], are followed by a catchall 'other,' [c], the doctrine of *ejusdem generis* teaches that the latter must be limited to things like the former." *Ross v. St. Luke's Episcopal Hosp.*, 462 S.W.3d 496, 504 (Tex. 2015). This suggests the phrase "other activity that threatens others" is aimed at activities similar to "drug-related or violent criminal activities." *See id.*

And the specific examples following the phrase "other activity that threatens others," while not limited to criminal activities per se, are aimed at either criminal activities or activities that inherently pose a high risk of danger to innocent third-parties: (1) assault; (2) violent crimes; (3) drug crimes; (4) allowing a lifetime-registered sex offender onto the property; (5) using or threatening to use weapons to

harm others; and (6) owning or possessing illegal weapons. *See Fiess v. State Farm Lloyds*, 202 S.W.3d 744, 750–51 (Tex. 2006) (explaining that, under the interpretive canon of *noscitur a sociis*, the meaning of an uncertain word or phrase can be revealed by its association with other nearby words or phrases).

We conclude the parties did not intend the lease to prohibit using reasonable force to defend oneself against an attacker because it is not inherently dangerous to innocent third-parties in the ways the other prohibited conduct is. And, the Housing Authority's argument would lead to absurd results by empowering bullies and fight-starters: by attacking tenants who react in self-defense, these bad actors could ensure their targets qualify for eviction from public housing. Ms. Rudd's conduct was not criminal, and though a tenant can breach the lease by conduct short of criminal activity, the fact that Ms. Rudd acted in self-defense by the letter of the law is relevant to whether she violated the lease. *See* TEX. PENAL CODE §§ 9.31, 22.01.

We pause to address the case the Housing Authority cites to support this issue, *Barajas v. Housing Authority*, 882 S.W.2d 853 (Tex. App.—Corpus Christi 1994, no pet.). The first major distinction between that case and this one is procedural: the court there reviewed a grant of summary judgment in favor of the Housing Authority. The second major distinction is factual: the Housing Authority evicted Barajas after the man she leased her apartment with was arrested for drug-related criminal activity on Housing Authority premises.

Barajas first claimed the trial court granted summary judgment in error, but the court of appeals affirmed, seeing no fact issues when the Housing Authority submitted unchallenged evidence supporting the man's guilt of cocaine distribution and that the lease listed "engaging in criminal activity" as grounds for termination. Barajas next claimed the Housing Authority failed to consider all the circumstances when it declined to allow her to remain in the apartment, basing her argument on a misreading of a federal regulation granting housing authorities discretion to let co-tenants or family members remain when evicting another. Neither of these complaints merited reversal. *See Barajas*, 882 S.W.2d at 855–56.

Nor do they support reversal here. Ms. Rudd prevailed at a trial, and the trial court, both as fact-finder and judge of law, was empowered to determine that Ms. Rudd did not breach the lease. Neither the evidence nor the lease compels a conclusion that the court erred. We overrule the Housing Authority's second issue as well and affirm.

/Cory L. Carlyle/
CORY L. CARLYLE
JUSTICE

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# Court of Appeals
# Fifth District of Texas at Dallas

## JUDGMENT

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| THE HOUSING AUTHORITY OF THE CITY OF DALLAS, TEXAS-BRACKINS VILLAGE, Appellant | On Appeal from the County Court at Law No. 3, Dallas County, Texas Trial Court Cause No. CC-18-06231-C. |
| No. 05-19-00058-CV V. | Opinion delivered by Justice Carlyle. Justices Myers and Schenck participating. |
| WANETTE SIMS RUDD AND ALL OTHER OCCUPANTS, Appellees | |

In accordance with this Court's opinion of this date, the judgment of the trial court is **AFFIRMED**.

It is **ORDERED** that appellees Wanette Sims Rudd and all other occupants recover their costs of this appeal from appellant The Housing Authority of the City of Dallas, Texas–Brackins Village.

Judgment entered this 16th day of June 2020.