

Commonwealth of Kentucky
Court of Appeals

NO. 2025-CA-0519-MR

ACTON PROPERTIES, L.L.C.

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT
HONORABLE ERIC JOSEPH HANER, JUDGE
ACTION NO. 23-CI-000956

LALANA FEDORSCHSK

APPELLEE

OPINION
AFFIRMING

** ** *

BEFORE: EASTON, ECKERLE, AND McNEILL, JUDGES.

ECKERLE, JUDGE: This matter arises from a landlord-tenant dispute between Appellant, Acton Properties, L.L.C. (“Landlord”) and Appellee, Lalana Fedorschsk (“Tenant”). Landlord appeals the January 29, 2025, Jefferson Circuit Court Judgment on Jury Verdict in favor of Tenant and the subsequent April 22, 2025, Order denying Landlord’s motion for a new trial. (Collectively, “Orders”). After a comprehensive review of the record, we find no error and affirm.

I. Facts and Procedural Background

On July 20, 2021, Landlord, by its signatory and managing member, Anne Acton, and Tenant executed a Lease for a one-bedroom, residential apartment located in a two-unit home at 996 Goss Avenue in Louisville, Jefferson County, Kentucky. Plaintiff's Exhibit ("P. Exh.") 1; *see also* Record ("R.") at 40-44. The one-year Lease was effective between July 20, 2021, and July 19, 2022, with the option for renewal. R. at 40. Prior to its expiration, the Lease required Tenant to give 60-days' notice of intent not to renew. *Id.* The Lease provided for rent in the amount of \$525 per month, due on the 20th day of each month, and it required Tenant to "pay rent for the first and last months of the lease [plus] damage deposit." R. at 40.

Other relevant terms of the Lease included that Tenant: (1) "keep the property clean and in good repair"; (2) "use the plumbing in a reasonable manner and if, by the tenant(s)' misuse, it should freeze, burst or get out of order, the tenant(s) agree to sustain [the] cost of repairs"; and (3) agree to pay the cost of repairs for any damage "caused by carelessness, misuse, neglect or willfulness." R. at 41-43. The Landlord contracted "to maintain and repair at [its] expense any plumbing deficiencies due to normal wear and tear." R. at 41. Tenant noted by handwritten addendum, initialed by both parties, that she would not be responsible for infestation or extermination of termites. R. at 41. Further, the Lease stated

“[t]hat by signing this document[,], the tenant(s) certifies that the property has been inspected and is clean and in good state of repair; [and] [u]pon termination of the lease, the premises shall be left clean and in the same state of repair as at the beginning of the original lease.” R. at 43. Finally, the Lease provided that “[i]n the event there is non-compliance with the terms of this lease, there shall be a management fee imposed at the rate of \$150.00 per hour for all time expended to correct the non-compliance in addition to expenses incurred.” *Id.*

Prior to taking occupancy, Tenant inspected the property with the Landlord. Landlord provided Tenant with a list of the conditions of the property titled “Rental Check List,” which included notes that the carpet, while not new, had been professionally cleaned, and that the apartment had been repainted, checked, and cleaned, prior to the Lease. Defendant’s Exhibit (“D. Exh.”) 6. Upon moving into the apartment, Tenant immediately experienced problems, including finding a bug on her kitchen floor on her move-in day and having a mailbox that was too small for ordinary use and not under cover against rain and other weather conditions. Landlord had the unit inspected for pests and, eventually, added a larger mailbox. Tenant also observed squirrels accessing the exterior, roof, and cables to the unit and entering the interior via a large hole under the gutter near her bedroom. She reported that she heard scratching in the walls. Landlord treated the exterior with non-toxic rodent repellant and placed a no-kill

trap in the attic, but Tenant testified that Landlord did not repair the holes allowing access. When Tenant's internet access was disrupted for several days, she later reported that a responding technician had advised her that the squirrels had chewed through the coaxial cable. Tenant paid to replace the cable and did not report the incident to Landlord.

Not quite one year after signing the lease, in the spring of 2022, Tenant experienced three instances when her bathroom did not function properly due to plumbing issues, including leaking at the base of the toilet, difficulty flushing, sewage water backing up into her bathroom sink, and slow draining in her bathtub. In response to each report, Landlord scheduled a plumber to service and repair the problems. On two occasions, the servicing plumber conducted repairs, including removing and auguring the toilet, snaking the sewage line, replacing the toilet and wax ring, and plumbing the bathtub. Tenant was not present for the third plumber's visit, and Landlord claimed that no substantial repair was needed. Each service/repair visit temporarily resolved the issues. Landlord also had technicians with the Metro Sewer District check the sewage lines.

Landlord and Tenant engaged in multiple, face-to-face interactions during various inspections and repair appointments, along with lengthy text interchanges between Tenant's mobile phone and a telephone number provided by the Lease. D. Exh. 10. Although Landlord's managing member testified that she

was the sole manager for the property, Tenant testified that she primarily interacted with counsel for Landlord. Video Record (“V.R.”), 1/22/25, 10:21:28-10:22:20; *see also* R. at 193. Further, as supported by the record, the Trial Court observed that “[o]n many occasions during the trial, [Landlord’s] counsel introduced to the jury either through her questioning or through direct statements made in opening what essentially amounted to witness testimony from herself about her own involvement with the [Tenant], and the [Landlord’s] version of events.”¹ R. at 193. Both parties testified or otherwise reported in pleadings that these interactions were often confrontational. Based on the persistent problems at the apartment and intensifying conflict with Landlord, Tenant decided to refrain from renewing the Lease.

Prior to the termination of the Lease on July 19, 2022, Tenant gave her 60-day notice of intent to decline renewal of the Lease. By letter dated June 17, 2022, Landlord confirmed receipt of Tenant’s 60-day notice and advised Tenant that “[t]he apartment is to be returned in a clean and rentable condition” D. Exh. 28. Tenant testified that, prior to moving out of the apartment, she had the carpets professionally cleaned; cleaned the appliances; swept and mopped

¹ This is not the first occasion where counsel for Landlord has engaged in similar behavior. Earlier this year, in *Jasa Properties, L.L.C. v. Kentuckiana Roofing Co. Inc.*, we upheld a Trial Court’s decision to disqualify the same counsel from appearing as a witness while she was serving as counsel for the plaintiff. No. 2024-CA-1258-MR, 2026 WL 119773 (Ky. App. Jan. 16, 2026) (cited as persuasive, non-binding authority pursuant to RAP 41(A)).

the floors; cleaned the baseboards; patched and sanded any nail holes; and left the apartment in an “improved condition” and “much cleaner” than when she had moved into it. V.R., 1/22/25, 11:09:15-11:10:06, 11:19:20-25.

On July 12, 2022, Landlord and Tenant met at the property for a pre-move-out inspection. Despite Tenant’s efforts, Landlord identified unsatisfactory cleaning and repairs. Landlord also claimed that Tenant owed \$450 in management fees that it had billed her on June 17, 2022, and then later, on July 15, 2022. Landlord presented Tenant with a one-page handwritten list of issues, which it titled a “Walkout Conditions Statement.” P. Exh. 4. Tenant added in writing and initialed her own responsive statements, saying that she would “mail a response” to Landlord’s claim of management fees, as opposed to paying them, and she disputed some of the damage claims. *Id.* Further, Tenant later testified at trial that when she requested an opportunity to perform the additional cleaning and repairs that Landlord had identified, she was rebuffed and told that she must return the keys that same day and could not return. V.R., 1/22/25, 11:15:00-11:15:30. After a lengthy interaction, both Tenant and Landlord eventually signed the one-page statement.

Thereafter, Landlord mailed Tenant an invoice dated August 12, 2022, seeking \$920 (\$1,445 less Tenant’s \$525 damage deposit) that represented an unreimbursed plumbing bill, damage repairs, cleaning services, and past due and

new management fees at a rate of \$150 per hour. R. at 45. The management fees were calculated based on unsubstantiated time that Landlord alleged to have expended to remediate Tenant's non-compliance with the Lease. *Id.* Tenant responded, in writing, stating that she was evaluating "all charges, including plumbing bills, management fees, and security deposit deductions" claimed. D. Exh. 30. She also expressed willingness to "wrap up our relationship as smoothly and quickly as possible." *Id.*

After receiving no response from Landlord, on August 26, 2022, Tenant filed a complaint in the Small Claims Division of the Jefferson District Court seeking return of her damage deposit of \$525. R. at 53. In her affidavit, Tenant stated that Landlord had "failed to provide an estimated dollar cost of deductions from [her] damage deposit (\$525) within 30 days of [Tenant's] move out and [had] claimed unreasonably high repair costs after the 30 day period had elapsed." R. at 62. In lieu of answering Tenant's complaint, moving for dismissal, or seeking reimbursement of its \$920 in claimed expenses, Landlord filed a counterclaim alleging fraud by Tenant, which caused "embarrassment, emotional distress, and expenses upon the managing member." R. at 38. Landlord did not include its managing member, Anne Acton, as a party-plaintiff. The counterclaim sought \$1,445 in ordinary damages, an additional \$30,000 in compensatory damages, and \$25,000 in punitive damages. R. at 39. On December 1, 2022, the

District Court transferred the matter to its Civil Division, and then on February 13, 2023, it transferred the Tenant's claim and the Landlord's counterclaim to Jefferson Circuit Court. R. at 3.

On March 6, 2023, Tenant, *pro se*, filed a document with the Jefferson Circuit Court Clerk styled "Letter to Judge Eric Haner," advising that she was seeking to retain counsel. R. 69-71. Soon thereafter, on March 10, 2023, counsel with the Kentucky Equal Justice Center filed a notice of appearance for Tenant. R. at 71. The Trial Court conducted a pretrial hearing on March 7, 2024, during which it addressed discovery matters, and then issued a trial order setting dates for discovery and dispositive motions and a jury trial date of August 27, 2024. R. at 75-77.

On July 29, 2024, the matter came before the Trial Court on Tenant's motion to modify the Trial Order and set a new trial date. R. at 86-88. Tenant asked for an extension to file dispositive motions, including a motion for partial summary judgment to reduce the issues to be tried. R. at 86. After arguments by counsel, the Trial Court granted the motion to modify and grant the parties more time. The Trial Court suggested a new trial date in November 2024, and counsel for Landlord stepped away from the podium to retrieve her calendar. V.R., 7/29/24, 08:54:25. While counsel was away from the podium, the Trial Court was still on the record, and counsel for Tenant explained that Tenant was not available

during the week the Trial Court had suggested and apologized. V.R., 7/29/24, 8:54:28:40. In response, the Trial Court stated: “That’s how that happens. That’s okay.” V.R., 7/29/24, 8:54:32-35. Upon Landlord’s counsel’s return to the podium, Landlord’s counsel was made aware of Tenant’s unavailability in November, the parties conferred on other dates, and the Trial Court set a jury trial for January 21, 2025.

On August 12, 2024, Landlord filed a motion for recusal, which alleged that the Trial Judge had engaged in *ex parte* communications. R. at 90-95. Landlord alleged that Tenant’s March 2023 “letter,” which she filed with the Clerk’s office and certified that she had sent to opposing counsel, constituted *ex parte* communication between Tenant and the Trial Judge. *Id.* More significantly, Landlord accused the Trial Judge of engaging in one-sided, *ex parte* communications with Tenant’s counsel during the hearing on July 29, 2024. R. at 93. Landlord stated:

Counsel for the defendant stepped away from the podium to retrieve her calendar from her briefcase which had been left in the general seating area of the courtroom. As she returned to the podium[,] opposing counsel was *exparte* [sic] addressing the court. She heard opposing counsel telling the court he hoped to reduce the issues to nothing more than \$900.00 in damages. The court was observed to be intently listening and had a smile on his face as if in total agreement.

Id. Landlord provided no reference to the video record, either in her motion or during the Trial Court’s August 19, 2024, hearing on the matter. Both the Trial Court and opposing counsel denied that any such *ex parte* communication occurred. However, out of a stated abundance of caution, the Trial Court continued the hearing until September 3, 2024, “to allow counsel for plaintiff to review the video record of the proceedings from motion hour on July 29, 2024.” R. at 98.

At that second hearing two weeks later, Landlord’s counsel reported that she had still not watched the video of the hearing but persisted with her request that the Trial Judge recuse. V.R., 9/2/2024, 8:56:50-8:57:00. After hearing arguments at the bench, the Trial Court asked counsel for both parties to “stand back at the podium,” and stated for the record: “I’m going to deny your motion to disqualify, Ms. Acton. It’s completely baseless.” V.R., 9/2/2024, 8:59:35-8:59:45. A written Order followed and further explained that there had been no *ex parte* communication; Tenant’s pleading titled “letter” was “an actual court filing”; and the alleged conversation between the Trial Judge and Tenant’s counsel on July 29, 2024, “simply did not occur.” R. at 98.

Almost four months later, between January 21 and January 23, 2025, the jury trial occurred. The jury heard from and considered testimony from Tenant, including over two hours under cross-examination; two witnesses for

Landlord, including the managing member and a handyman; and a total of 68 separate exhibits. R. at 193. At the close of Tenant's evidence and again at the close of its own evidence, Landlord moved for a directed verdict. Tenant also moved for a directed verdict as to Landlord's fraud claims. The Trial Court heard arguments from the parties before denying each of the motions, finding that genuine issues of material fact necessitated a decision by the jury.

The Trial Court then presented jury instructions to the parties, who did not object. V.R., 1/23/25, 11:00:18-11:00:40; R. at 153-163. The Trial Court instructed the jury regarding the Tenant's and Landlord's respective duties under the lease and pursuant to Kentucky's Uniform Residential Landlord Tenant Act ("URLTA"). Kentucky Revised Statutes ("KRS") 383.500 *et. seq.* The instructions asked the jury to determine as follows: "Are you satisfied from the evidence that [Tenant] failed to comply with one or more of her duties under Instruction 3?" R. at 157. If the jurors decided that Tenant failed to comply, they were directed to proceed to Landlord's counterclaims. R. at 157-63. If they decided that Tenant did not fail to comply, then the jury was instructed to proceed no further, there being no basis to consider the fraud claim if there was no breach of the Lease or the URLTA. V.R., 1/23/25, 10:31:00-10:31:10; R. at 157.²

² The Trial Court also explained to the parties that it would not instruct the jury regarding Landlord's claim for the recovery of damages for intentional infliction of emotional distress ("IIED"). The Trial Court concluded that Landlord is an L.L.C., not an individual, and was not

At the close of its deliberations, the jury returned a verdict in favor of Tenant, answering “No” to Interrogatory 1, finding that she did not fail to comply with her duties. R. at 157. The jury was not instructed to reach the issue of the return of Tenant’s deposit. Subsequently, the Trial Court entered its written judgment, explaining that the jury’s verdict that Tenant did not breach her duties under the URLTA or the Lease entitled Tenant to the return of her damage deposit, and awarded Tenant her \$525 damage deposit plus interest. R. at 164-165.

On February 5, 2025, Landlord filed a motion for a new trial pursuant to Kentucky Rules of Civil Procedure (“CR”) 59.01(a)-(f). R. at 167-69. Among its arguments, Landlord claimed that the jury’s verdict was based on sympathy for Tenant and not upon the evidence. Landlord also claimed prejudice by Tenant’s alleged noncompliance with the Trial Court’s order regarding discovery. *Id.* Furthermore, Landlord’s motion alleged prejudicial actions (and inaction) by the Trial Court, including failing to make *sua sponte* admonishments to the jury and conveying “an attitude of disdain.” R. at 169. After considering Landlord’s motion, supplemental pleadings, and affidavits, as well as hearing arguments from counsel, the Trial Court denied Landlord’s motion for a new trial. R. at 192-98. That decision, and those underlying it, led to this appeal.

entitled to IIED damages as a matter of law. V.R., 1/23/25, 10:32:00-10:32:35. As stated above, Landlord had not named the managing member, Anne Acton, as a party-plaintiff and did not object to the jury instructions.

II. Rules of Appellate Procedure

Before proceeding to the merits, we address Tenant's assertion that Landlord did not "substantially comply" with the Kentucky Rules of Appellate Procedure ("RAP"), which can be grounds for sanctions as we deem appropriate. RAP 10(B). The first deficiency is Landlord's failure to cite to the Trial Court's record in its opening brief. Landlord provides relatively few page references to the record, and, even when quoting directly from witnesses, Landlord provides nearly no references to the video record of the jury trial.³ Pursuant to RAP 32(A)(3), an appellant's opening brief shall contain "a summary of the facts and procedural events relevant and necessary to an understanding of the issues presented by the appeal, with ample references to the specific location in the record supporting each of the statements contained in the summary." Similarly, an appellant's argument section must also include "ample references to the specific location in the record and citations of authority pertinent to each issue of law." RAP 32(A)(4). Landlord's opening brief clearly fails to provide meaningful references to the record.

This Court very recently emphasized the necessity of compliance with RAP 32(A)(3), wherein we stated:

³ Landlord provides two references to the testimony of its handyman, who had no particular knowledge of the Tenant's occupancy, had never met her, and was not present during any of the parties' interactions. V.R., 1/22/25, 2:57:10-3:00:40.

“It is well-settled that an appellate court will not sift through a voluminous record to try to ascertain facts when a party has failed to comply with its obligation under” applicable briefing rules. *Parker v. Commonwealth*, 291 S.W.3d 647, 676 (Ky. 2009). . . . As the Court, we are not advocates for one or either side in a controversy, and we cannot permit a party to attempt to place us in an adversarial role. Searching for cases and arguments to promote and support one position is not our role. Rather, that is counsel’s job to perform.

W.I.S. v. K.M.B., 722 S.W.3d 569, 575 (Ky. App. 2025). Moreover, we emphasized that the requirement to provide pinpoint citations to the record “may, in fact, be the most substantial requirement of [our rules of procedure].” *Id.* (quoting *Commonwealth v. Roth*, 567 S.W.3d 591, 595 (Ky. 2019)).

The second deficiency is Landlord’s failure to provide a preservation statement or otherwise identify where it noted in the trial record its arguments for appeal. Moreover, Landlord makes several arguments that it did not in fact preserve. RAP 32(A)(4) requires that an appellant’s opening brief “contain at the beginning of the argument a statement with reference to the record showing whether the issue was properly preserved for review and, if so, in what manner.” Our Supreme Court has “strictly mandated compliance with this rule since its inception. . . .” *Gasaway v. Commonwealth*, 671 S.W.3d 298, 310 (Ky. 2023) (citing *Skaggs v. Assad, By & Through Assad*, 712 S.W.2d 947, 950 (Ky. 1986)).

Further, “[i]t goes without saying that errors to be considered for appellate review must be precisely preserved and identified in the lower court.” *Id.*

Significantly, this appeal is at least the second time that counsel for Landlord has blatantly disregarded our rules for appellate advocacy. In a prior appeal that Landlord pursued against another tenant, counsel did not “adequately state how it preserved any of its arguments in the trial court.” *See Acton Props., L.L.C. v. Freese*, No. 2018-CA-000564-MR, 2020 WL 598519, at *2 (Ky. App. Feb. 7, 2020) (cited as persuasive, non-binding authority pursuant to RAP 41(A)).

Finally, we observe that Landlord’s statement of authorities failed to comply substantially with RAP 32(A)(2), which provides, in pertinent part:

[A] statement of points and authorities . . . shall set forth, succinctly and in the order in which they are discussed in the body of the argument, the appellant’s contentions with respect to each issue of law relied upon for a reversal, listing under each the authorities cited on that point and the respective pages of the brief on which the argument appears and on which the authorities are cited.

By itself, such an oversight may be a relatively minor violation. However, coupled with the other deficiencies in Landlord’s opening brief, it further frustrates our appellate review.

In its reply brief, Landlord defends its opening brief, stating flatly that “[t]here was no flagrant non compliance with RAP” and otherwise that “[a]ny omissions and/or errors are excusable neglect resulting from the circumstances

necessitating that [counsel was] out of state with a family member.” Appellant’s Reply Brief at 1. Finally, Landlord argues that because the opening brief cited trial exhibits, there was no prejudice to Tenant. *Id.* However, these claims are not proper justifications for failing to follow the RAP. “Appellate procedural rules, including those for briefing, cannot be ignored by appellate advocates.” *White v. Fowler*, 717 S.W.3d 176, 180 (Ky. App. 2025). Indeed, we most recently held that:

There is no more basic element of competency in the practice of appellate advocacy than knowing and simply following the Court’s rules of procedure and brief writing. Failure in that regard has only two explanations: (1) an ignorance of the rules, or (2) an impertinent refusal to follow them. Both provide reasons for sanctioning an attorney.

W.I.S., 722 S.W.3d at 578-79 (quoting *J.P.T. v. Cabinet for Health and Family Services*, 689 S.W.3d 149, 151 (Ky. App. 2024)).

We are “well within our discretion” to strike Landlord’s brief and dismiss its appeal for counsel’s failure to comply with the RAP. *Curty v. Norton Healthcare, Inc.*, 561 S.W.3d 374, 378 (Ky. App. 2018). However, unlike the egregious violations in *W.I.S.* and *J.P.T.*, which persisted through multiple appeals, the matter *sub judice* comes before us for the first time, and its failures are somewhat less flagrant. But because rule violations occurred here, we will issue a warning. Therefore, we exercise mercy here and elect not to impose more

stringent sanctions at this time, but issue an admonishment, coupled with strong caution to counsel, to expect no such continued leniency in the future. We intend for this reprimand, as well as using a different standard of review discussed below, to suffice to curtail future, similar issues.

III. Standard of Review

In light of Landlord’s violations of the RAP and failure to preserve the issues properly, we conclude that the appropriate remedy in addition to the lecture is to treat the alleged errors as unpreserved and to review this matter for manifest injustice only. *Hallis v. Hallis*, 328 S.W.3d 694, 696 (Ky. App. 2010); *see also Mullins v. Ashland Oil, Inc.*, 389 S.W.3d 149, 154 (Ky. App. 2012). However, “[b]ecause an objective standard is appropriate for measuring whether a judge’s impartiality might reasonably be questioned from the perspective of a reasonable observer who is informed of all the surrounding facts and circumstances,” we will review Landlord’s claims that the Trial Judge should have recused and, in failing to do so, was biased against her, on a *de novo* basis. *Abbott, Inc. v. Guirguis*, 626 S.W.3d 475, 484 (Ky. 2021).

IV. Recusal & Bias

It is axiomatic that “Judges of this Commonwealth have ‘a duty to sit’ absent valid reasons for recusal.” *White v. Fowler*, 717 S.W.3d 176, 181 (Ky. App. 2025), *reh’g denied* (Jun. 10, 2025) (quoting *Commonwealth, Revenue*

Cabinet v. Smith, 875 S.W.2d 873, 879 (Ky. 1994)). Most recently, in *Jordan v. Boss*, we comprehensively addressed the standard for judicial recusal, which follows:

KRS 26A.015(2) requires recusal when a Judge has “personal bias or prejudice concerning a party, or personal knowledge of disputed evidentiary facts concerning the proceedings, or has expressed an opinion concerning the merits of the proceeding[.]” KRS 26A.015(2)(a). The statute also requires recusal “where he has knowledge of any other circumstances in which his impartiality might reasonably be questioned.” KRS 26A.015(2)(e); *see also* SCR^[4] 4.300, Canon 3B.

The burden of proof required for recusal of a Judge is an onerous one. *Stopher v. Commonwealth*, 57 S.W.3d 787, 794 (Ky. 2001). The bar is set high purposely and by necessity, to prevent parties and attorneys from crassly using the motion as a tactic to dispense with Judges whose rulings they do not like. There must be a showing of facts “of a character calculated seriously to impair the judge’s impartiality and sway his judgment.” *Id.* (citing *Foster v. Commonwealth*, 348 S.W.2d 759, 760 (Ky. 1961)). Motions for recusal are to be considered in the timeframe in which they present themselves. *See United States v. Liggins*, 76 F.4th 500, 508 (6th Cir. 2023). *See also Petzold v. Kessler Homes, Inc.*, 303 S.W.3d 467, 471 (Ky. 2010) (“Both the statute and the judicial canons, however, look prospectively at recusal to guide judges and litigants with regard to ongoing or future proceedings.”).

726 S.W.3d 663, 674 (Ky. App. 2025). Regarding *ex parte* information, “which is by definition off the record, outside of Court, and generally supportive of only one

⁴ Rules of the Kentucky Supreme Court.

side and against the other,” recusal is generally necessary if such communications are received directly by a Judge. *Id.* at 674.

Here, and preliminarily, there is no evidence that the Trial Judge either received the letter directly or reviewed it off the record. But there is evidence that a copy of the same letter was served upon opposing counsel, thus and by definition, the communication was not *ex parte*, even though it is not generally proper to attempt to correspond with Judges about pending cases.

Second, we did not view the video record as showing that the Trial Judge and Tenant’s counsel engaged in *ex parte* communications while on the record. While Landlord’s counsel was retrieving her calendar, opposing counsel, still at the podium, communicated that Tenant was unavailable for one of the dates offered by the Trial Court. However, the Trial Court shared this information to Landlord’s counsel immediately thereafter. We cannot discern that absolutely no *ex parte* communication ever occurred between the Trial Court and Tenant or her counsel, and we do not have sufficient proof that Landlord’s counsel is lying about a conversation she says that she heard. However, the record reflects that both the Trial Court and opposing counsel afforded Landlord’s counsel deference due to her self-reported hearing impairment, including by repeating their statements, speaking louder, and addressing every objection at the bench.

Finally, Landlord's chief complaint on appeal is that the Trial Court reacted angrily after the recusal motion and demonstrated bias and disdain when ruling, thus leading to an unfair final judgment. However, Landlord provides no citations to the trial record to support these claims. As a general rule, "[a] predisposition acquired by a judge during the course of the proceedings will only constitute impermissible bias when it is so extreme as to display clear inability to render fair judgment." *Alred v. Commonwealth ex. Rel. Judicial Conduct Comm'n*, 395 S.W.3d 417, 433 (Ky. 2012) (internal quotation marks and citations omitted). As we held in *Boss*:

"The mere belief that the judge will not afford a fair and impartial trial is not sufficient grounds for recusal." *Stopher*, 57 S.W.3d at 794-95 (citing *Webb v. Commonwealth*, 904 S.W.2d 226 (Ky. 1995)). Likewise, a "trial court's adverse ruling[s], even if erroneous, [do] not provide a basis for finding bias." *Bissell v. Baumgardner*, 236 S.W.3d 24, 29 (Ky. App. 2007).

726 S.W.3d at 674.

Our independent review of the record found that the Trial Judge took measures to preserve and express his impartiality during preliminary hearings and the jury trial. And we observe that Landlord's claims are exclusively based on counsel's impression that she herself was the target of harmful action by the Tenant, opposing counsel, and Trial Judge, rejecting evidence to the contrary.

Therefore, we find that Landlord has not made a sufficient showing that the Trial Judge was under a duty to recuse.

V. Appeal of Trial Court's Orders

Next, we conduct the limited review mentioned earlier for Landlord's appeal of the Trial Court's denial of its motions for directed verdict and motion for a new trial. On review for manifest injustice, "the required showing is probability of a different result or error so fundamental as to threaten a [party's] entitlement to due process of law." *Martin v. Commonwealth*, 207 S.W.3d 1, 3 (Ky. 2006).

A. Motion for Directed Verdict; KRS 383.580

First, Landlord argues that the Trial Court erred by not finding that KRS 383.580 precluded Tenant from filing her claim. Landlord did not properly preserve this claim, which it failed to present to the Trial Court until after the jury verdict and only referenced in passing in a Court-ordered supplement to her motion for a new trial. R. at 181.

KRS 383.580 provides in pertinent part:

(3) At the termination of occupancy, the landlord shall inspect the premises and compile a comprehensive listing of any damage to the unit which is the basis for any charge against the security deposit and the estimated dollar cost of repairing such damage. The tenant shall then have the right to inspect the premises to ascertain the accuracy of such listing. The landlord and the tenant shall sign the listing, which signatures shall be conclusive evidence of the accuracy of such listing. If the tenant shall refuse to sign such listing, he shall state specifically

in writing the items on the list to which he dissents, and shall sign such statement of dissent.

(4) No landlord shall be entitled to retain any portion of a security deposit if the security deposit was not deposited in a separate account as required by subsection (1) of this section and if the initial and final damage listings required by subsections (2) and (3) of this section are not provided.

(5) A tenant who disputes the accuracy of the final damage listing given pursuant to subsection (3) of this section may bring an action in District Court. Tenant's claim shall be limited to those items from which the tenant specifically dissented in accordance with the provisions of subsection (3) of this section, or except as otherwise provided, and if the tenant shall fail to sign the listing or specifically dissent in accordance with subsection (3) of this section, the tenant shall not be entitled to recover any damages under this section.

Landlord argues that because Tenant signed Landlord's handwritten list of damages, the so-called "Condition Statement" was "conclusive evidence of the condition of the unit." Appellant's Opening Brief at p. 10. Under this theory, Landlord asserts that the Trial Court should have directed a verdict in its favor.

As stated *supra*, Landlord failed to preserve this argument before the Trial Court or to introduce the argument at the proper time during the original proceedings. Landlord's statutory argument may have been an affirmative defense to Tenant's Small Claims complaint or even an appropriate claim on a motion for summary judgment. However, Landlord chose instead to file a

counterclaim before the Trial Court alleging fraud and seeking \$50,000 in damages.

Even if Landlord had preserved the argument before the Trial Court, the material facts of the case do not support the argument. Tenant explicitly disputed Landlord's list of damages and claim to management fees when she signed said list. P. Exh. 4. First, Tenant noted the purported damages that she disputed, specifically that she patched holes in the drywall. *Id.* Second, she disclaimed the Landlord's handwritten statement that Tenant had agreed to pay the management fees, clarifying that she would only "mail a response" to those claims. *Id.* Finally, Tenant responded, in writing, that she was evaluating "all charges, including plumbing bills, management fees, and security deposit deductions" claimed in the invoice that Landlord had sent her. D. Exh. 30. The express language of KRS 383.580(5) and the terms of the Lease permitted Tenant to seek the reimbursement of her damage deposit.

Further, KRS 383.510 provides that, unless displaced by the provisions of the URLTA, "principles of law and equity, including the law relating to capacity to contract, mutuality of obligations, principal and agent, real property, public health, safety and fire prevention, estoppel, fraud, misrepresentation, duress, coercion, mistake, bankruptcy, or other validating or invalidating cause supplement its provisions." Therefore, Tenant had the legal

and equitable right to seek the return of her damage deposit based on the terms of the Lease and to defend against Landlord's counterclaim of fraud.

Even if it had properly preserved its statutory argument before the Trial Court, Landlord has not shown a probability that would have changed the result. Thus, we find no manifest injustice resulting from the Trial Court's denial of Landlord's motion for a directed verdict regarding Tenant's claim for return of her damage deposit.

B. Motion for Directed Verdict on Fraud

Similarly, the Trial Court did not err in denying Landlord's motion for a directed verdict on Landlord's counterclaim of fraud.

In ruling on a motion for directed verdict, the trial court takes as true all evidence favoring the [non-movant] and all reasonable inferences which can be drawn from such evidence. It is not at liberty to determine the weight or credibility to be given to the evidence, that function being reserved for the finder of fact. *Cochran v. Downing*, 247 S.W.2d 228, 229-30 (Ky. 1952). Granting the motion is warranted only if the court determines the verdict would be "palpably or flagrantly against the evidence so as to indicate it was reached as a result of passion or prejudice." *National Collegiate Athletic Ass'n By and Through Bellarmine College v. Hornung*, 754 S.W.2d 855, 860 (Ky. 1988) (internal quotation marks omitted). Otherwise, the matter should be submitted to the jury. *Id.*

United Parcel Serv., Inc. v. Barber, 557 S.W.3d 303, 308 (Ky. App. 2018).

Naturally, where there is conflicting evidence, it is the responsibility of the jury,

the trier of fact, to weigh the evidence and the credibility of the witnesses to resolve such conflict. *National Collegiate*, 754 S.W.2d at 860.

The evidence presented at trial, including the testimony and exhibits, necessitated that the jury issue some determinations of credibility. Tenant testified that she had legitimate issues with her plumbing that she did not cause. She testified that she never “put anything unusual down the drains” and “did not flush anything” but waste and toilet paper. Trial Record (“T.R.”), 1/22/2025, 10:49:20-10:50:35. Landlord’s managing member testified that the plumbers had seen “residue” in the bathtub, and one plumber had shown her “stuff” he had found when he unclogged the drain. T.R., 1/22/2025, 00:03:43-00:03:49. Each of the plumbing problems that Tenant reported required investigation and/or repair by a plumber.

At the close of all the evidence, the Trial Court denied Landlord’s motion, as well as Tenant’s motion, given that it was the jury’s function to weigh the credibility of the witnesses and that a verdict against either party would not be “palpably or flagrantly against the evidence.” *Id.* Further, “[o]n appellate review, we will reverse the trial court’s ruling only if we find that the jury could not have ‘reasonably reached its verdict on the basis of the evidence before it.’” *Belt v. Cincinnati Ins. Co.*, 664 S.W.3d 524, 530 (Ky. 2022) (quoting *Ellison v. R&B Contracting, Inc.*, 32 S.W.3d 66, 75 (Ky. 2000)). We

make no such finding, and, thus, affirm the Trial Court's denial of Landlord's motion for directed verdict, and by so doing, affirm the Court's judgment following the jury's verdict.

C. Motion for New Trial

Landlord's appeal of the Trial Court's Order denying its motion for a new trial is largely an attempt to relitigate the case, restate counsel's beliefs concerning bias, which we have addressed, and argue that there were various other errors, which it did not preserve. For example, Landlord claims that opposing counsel's use of the term "bully" during his opening statement was unduly prejudicial and unethical. Yet, Landlord made no objections during Tenant's opening statement, instead asserting afterwards with no legal basis that the Trial Court should have issued an admonition *sua sponte*.

Similarly, Landlord claims that Tenant's testimony regarding her personal circumstances during her tenancy, including her grief regarding her mother's death, was inappropriately intended to elicit sympathy for Tenant and prejudice Landlord. Again, Landlord failed to make any contemporaneous objection at trial. Finally, Landlord argues that the jury instructions were "inappropriate" because all the Trial Court "asked the jury to do was to decide whether [Tenant] violated any provision of KRS 383.605 subsections B C and F and paragraphs 10 and 31 of the lease" and because the Trial Court did not use

the instructions tendered by Landlord. Appellant’s Opening Brief at 21, 26.⁵

Not only does Landlord offer no basis or reference for this claim, but Landlord also affirmatively stated on the record that it had no objection to the jury instructions. V.R., 1/23/25, 11:00:42.

On review by an appellate court, a Trial Court’s ruling on a motion for a new trial under CR 59.01 is entitled to “a great deal of deference.”

Bayless v. Boyer, 180 S.W.3d 439, 444 (Ky. 2005). Our Supreme Court has held in this regard that:

This high level of deference by an appellate court is necessary because the decision to grant a new trial “depends to a great extent upon factors which may not readily appear in the appellate record.” [*Bayless*, 180 S.W.3d at 444] (quoting *Turfway Park Racing Ass’n v. Griffin*, 834 S.W.2d 667, 669 (Ky. 1992)). Indeed, unlike appellate judges, the trial judge “has heard the witnesses firsthand and observed and viewed their demeanor and . . . has observed the jury throughout the trial.” *Davis v. Graviss*, 672 S.W.2d 928, 932 (Ky. 1984).

It is important to remember that the trial court’s observations “cannot [be] replicate[d] by reviewing a cold record.” *Greenleaf v. Garlock, Inc.*, 174 F.3d 352,

⁵ Landlord did not present as an error on appeal that the Trial Court failed to instruct the jury to award Tenant return of her deposit. However, it did note in its motion for a new trial that “Plaintiff made no demand for interest and/or cost.” Appellant’s Brief, Appendix 2 at p. 2. It also stated, without any citation, that: “The court has no authority to award a general order of right of execution which is contrary to law governing limited liability companies in Kentucky.” *Id.* In its supplement to its motion for a new trial Landlord stated: “the jury awarded the Plaintiff no amount. Thereafter the court drafted and entered its own Judgment therein awarding Plaintiff \$525 with pre- and post-judgment interest and costs with the right of immediate execution.” Appellant’s Brief, Appendix 3 at p. 5.

366 (3d Cir. 1999). Consequently, an appellate court is “precluded from stepping ‘into the shoes’ of a trial court” in reviewing decisions under CR 59.01. *Miller v. Swift*, 42 S.W.3d 599, 601 (Ky. 2001) (citing *Prater v. Arnett*, 648 S.W.2d 82 (Ky. App. 1983)).

CertainTeed Corp. v. Dexter, 330 S.W.3d 64, 71 (Ky. 2010).

In the case *sub judice*, all of Landlord’s unpreserved claims fell well within the first-hand observation and discretion of the Trial Court. Moreover, none of the issues Landlord identifies fall “outside the scope of proper advocacy so as to be obviously improper . . . [and they] certainly did not create manifest injustice to qualify for palpable error.” *Nami Res. Co., L.L.C. v. Asher Land & Min., Ltd.*, 554 S.W.3d 323, 339 (Ky. 2018). Therefore, “[w]ithin the context of the palpable error rule,” and in light of the deference we necessarily afford the Trial Court, we find no grounds for relief from the judgment. *Id.* at 340.

IV. Conclusion

For the foregoing reasons, we affirm the Jefferson Circuit Court’s:

- (1) Orders denying Landlord’s motions for directed verdict;
- (2) Judgment on jury verdict in favor of Tenant, ordering Landlord to return her security deposit in the amount of \$525 plus prejudgment interest and dismissing with prejudice Landlord’s counterclaim; and
- (3) Order denying Landlord’s motion for a new trial.

ALL CONCUR.

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