

IN TX3.E COUIt OF APPEALS OF WOOD> CIIIUNTY

Bowling Green Manor
Limited l3rtne.rsh.i.p

Court of Appeals No. 94wD12s

Appellee WOOD Fj//... & ;ial. Court No. 9cvcamk

COURT OF APPh

v *

JAN 12 1995

Debbie Kirk

DECISION AND JUDGMENT ENTRY

Appellant *Debbie Kirk*

Decided: JAN 12 1995

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This matter ia before the court on appe.l.laat*s mctioz to mqdify..the terms of d nuperscdcas bond aet by the Bowling Green Municfpai Court and to #tay execution of a writ of restitu-tion.

AppcLLant, Debbie P.ir!c, ia the defendant in the forc-ible entry and detainer action which in the subject of this appeal. On Dectmber 1.6, 1994, a referee filed his or her report nnCL recommendations. On that siamc date, an act&q judge entered a judgment of eviction.

On December 21, 1994, appcllnt filed a notj.ce of appeal from that judgment. With her notice of appeal, appellant filed an affidavit of indigency izl which she attented to the fact that the sole source of income faz her faraiLy of three in \$600 per month i.n child support payments.

Appe.l!.~t: also filed, in the trial court, a mation for ri use ar,d occupancy bond and s~.izy of execution of -judgment during the pedency of this appeal. On December 23, 1994, the municipal. court overx:Led appelkrx's motion for a use ana occupancy bond.

The UJFRIRRAI ~ D ed the rcy?ort and recotnmendaticrrs of the

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ret"erce but stayed executLon of judgment, oniy until Dcce&e~: 30, 1994. It ordered appellartt to po-at a \$3,000 cash bond by four o'clock P.M. o,r that date, Absent the posting of said bond, the Otay expired.

Appellant now a&o this court, to modify the aupernedeas bond by conditioning any ~txy on her continued pa-peat of her **monthly reut.** Appellant argues that sha is indigent and cannot afford a supersedeas bond *in* the amount of \$3,900 and, therefore, the trial cou~?~~B order violates her r.j.ght to due prccaoa and equal protection uncfcr the law.

App .,9. 7 (A) provides, in part:

"Appli.cation for a stay of judgment or crdzt cf a trial court pending appeal, or for the determinatkn of the amount of and the ap-approval of a supersedeas bond mu& ordinarily be made in the first ir:z&ancc in the trial co71Jrt. A motion for such relief or an crder suspending, mo&ifying, rcstorlng or *granting* an injuntioz during the pendency of au ap-'peal may be, made lo thee court of appaa.l.o cr to a judge thereof, but, except in ca;i5cs of injunction pending appeal, the motion sha.l.l. show that application to the tr:ia3. court is not. prac?5xable, or that the court haa by journal entry, denied--an application or failed to afford the rclicf which the appli-cant requested."

Am-R. 7 (A) requires the movant tc ahow the reasons *fc?r* the relief .rzqueat& and the facts reli.ed upon. If the facts are subject to dispute, the mot:kn must be accompanied by afffilavitn or other sworn stateaents. In addition, under App.R. 7(A), relevant parto of the rcxxrd which ar2 reasonably available must be filed wlith the wtion for a stay or other ral.i.ef.

In this case, appellant provided appellee with a copy of the trial court's order which overruled her motion for CL use and occupancy bond and, through her affidavit of indigency, her inability to post the bond set by the trial court. This court also considered appellant's objection to the referee's report and recommended that appellant argue that appellee received a federal low cost housing credit and was thereby bound by federal regulations governing the eviction of tenants. Based on these materials, we are of the opinion that the trial court abused its discretion when it set bond at \$3,000. See Bibb v. Rome S. F.I.L. Co 1991, 63 Ohio App.3d 751, 752. In reaching this conclusion, we are well aware of the fact that we recently found an abuse of discretion on the part of the same court in a case similar to this one. See Quinn v. ... (Dec. 7, 1991, Wood App. No. 9dWD117, unreported). We have concluded, however, that in considering the facts of this case, particularly the allegation that this case involves "low cost housing" or federally funded housing, appellant's motion for a reduction of the bond amount and motion for a stay must be found well-taken. -.

Accordingly, it is hereby ordered that: appellant is granted a stay of execution on the judgment for possession of the premises until January 30, 1995. If appellant posts a bond in the amount of two months rent and costs by **that date, the stay** shall remain in effect during the pendency of this appeal and

will be conditioned only on her compliance with the terms of the lease'.

Charl. au C. & god. P.S. ..

elvin I., Reonick, J.

Tamas R. Shwk. J .
CONm .

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¹In the event t-hat appellec has alrsacly taken pcooeo-
sion of the leasad prerrcioes, we direct t.ll~ parties' attcr,tion to
R.C. 1923.14. Pursuant to R.C. X923.14, a writ of restit.uti.on.
shall be executed by a sherif?, police officer, constable or
bailiff within ten days after ito rcccipt. If a notice of appeal
is filed from a judgment of restitution and tAe defendant-
appellant obtains a stay 02 proceedlnya and filea any required
bond with the ruling cnurt, the judge muot issue an order staying
execution of the writ. If the premxxs have al.ready been
restored tr; the piaintiff-appellec, the sbas:i.ff, police officer,
constable or bailiff must forthwith place the d&e&ant in
possession of them. Id.



IN THE COURT OF APPEALS OF WOOD COUNTY

Bowling Green Manor
Limited Partnership
FILED
WOOD COUNTY, OHIO
Appellee

Court of Appeals No. WD-94-125

Trial Court No. 94CVG01059

v.

JAN 27 1995

Debbie Kirk

Rebecca E. Bhaer

Appellant

DECISION AND JUDGMENT ENTRY

Clerk

Decided: JAN 27 1995

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This matter is before the court on appellant's motion for an injunction. Appellee, Bowling Green Limited Partnership, doing business as Bowling Green Estates, filed a memorandum in opposition and asks this court to order appellant to pay her rent to the trial court during the pendency of this appeal.

On January 12, 1995, this court granted appellant Debbie Kirk's motion for a stay of execution of the trial court's judgment, a writ of restitution, during the pendency of this appeal. The stay was conditioned, among other things, upon the posting of a bond in the amount of two months rent plus costs.

In an affidavit filed with appellant's motion, appellant's attorney attests to the fact that appellant pays \$87 per month as her share of the rent and that she has posted two months of that rental amount plus court costs (a total of \$269). The affidavit states that the remaining portion of appellant's total rent payment of \$455 is paid directly to appellee by the Henry County Metropolitan Housing Authority. The housing authority agreed to provide its share of the two months rent; however, it

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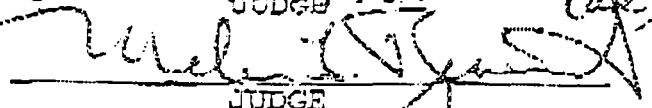
would only pay those funds directly to appellee. Appellant's attorney avers that appellee refuses to accept the two months rent from the housing authority and, therefore, appellant is unable to fulfill the conditions imposed on her stay. Appellant asks this court to order appellee to accept the two months rent from the housing authority.

Upon due consideration, this court finds that appellant, by posting her share of the monthly rent plus court costs, has complied with this court's order regarding the posting of a bond. Appellant's motion for a stay is granted during the pendency of this appeal conditioned only upon her continued compliance with the terms of her lease. Accordingly, appellant's motion for an injunction is rendered moot and we need not consider the merits of her arguments at this point in time.

Appellee's request for the escrow of rent is denied. Appellee is ordered to accept total monthly rental payments during the pendency of this appeal without prejudice to his legal right to refuse to enter into a contractual relationship with
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appellant.

Peter M. Handwork, J.

Malvin L. Resnick, J.
CONCUR.


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