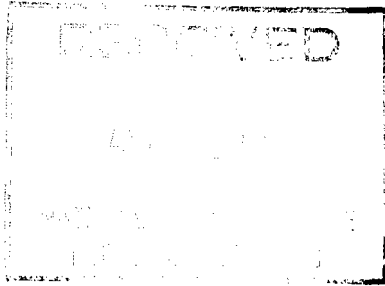


51,119
C
35 p.
1017234



IN THE WOOD COUNTY COURT OF APPEALS

BOWLING GREEN MANOR
LIMITED PARTNERSHIP,
dba Bowling Green Estates,

Case No. 94-WD-117

Appellee,

vs.

MARC t JODY LaCHANCE,

Appellants.

REPLY BRIEF OF APPELLANTS

STEVE ROBINS
Reg. No. 0028397
Attorney at Law
Advocates for Basic Legal Equality
1514 West State Street
Fremont, OH 43420
(419) 33478908
Attorney for Appellant

THOMAS E. TEET
Reg. No. 0040332
Mitchell, Stearns &
Hamner
Attorney at Law
329 N. Main Street
Bowling Green, OH 43402
(419) 352-1581
Attorney for Appellee

TABLE OF CONTENTS

	<u>Page:</u>
TABLE OF AUTHORITIES	ii
ASSIGNMENT OF ERROR I	1,2
:ASSIGNMENT OF ERROR II	1,6
PROOF OF SERVICE	6

TABLE OF AUTHORITIES

CASES:

PAGES:

Alger Green Cooperative v. Rivers, No. 87AP-915 slip
op. at 2 (Ct. App. Franklin Cty. Dec. 23, 1987) 3

Bowling Green Manor v. Kirk, 94-WD-125 4

Crossings Development Ltd. vs. H.O.T. Inc., 96 Ohio
APP* 3rd 475, 68 OBR 475, (Summit Cty. 1994)..... 3

IFranchise Developers, Inc. v. City of Cincinnati,
30 Ohio St. 3rd 28, 505 N.E. 2d 966 (1987) 4

Miami Investment Corp. v. Baker, 109 Ohio App.
334,336, 105 N.E. 2d 690, 692 (Montgomery Cty. 1959)... 3

Portage Metropolitan Housing Authority v. Brown, 66 Ohio
APP. 3rd 737, 586 N.E. 2d 168 (Portage Cty. 1990)..... 4

Sandefur Management Co. v. Minor, #84AP-220, slip
OP. at 3 (Ct. App. Franklin Cty. Apr. 18, 1985) 3,4

Stacy v. Carr, No. CA-519, slip op. -at 3,
(Ct. App. Adams Cty. Feb.20, 1992) 4

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN GRANTING APPELLEE'S EVICTION COMPLAINT WITHOUT DETERMINING THE REQUISITE "GOOD CAUSE" NECESSARY FOR EVICTION FROM LOW-INCOME HOUSING. (JUDGMENT ENTRY 11-27-94).

ASSIGNMENT OF ERROR II

ISSUANCE OF A SUPERSEDEAS BOND OF \$4,250.00 PAYABLE IN A LUMP SUM FOR LOW INCOME TENANTS LIVING IN LOW INCOME HOUSING IS AN ABUSE OF DISCRETION. (JUDGMENT ENTRY 11-29-94).

ASSIGNMENT OF ERROR I

THE TRIAL COURT ERRED IN GRANTING APPELLEE'S EVICTION COMPLAINT WITHOUT DETERMINING THE REQUISITE "GOOD CAUSE" NECESSARY FOR EVICTION FROM LOW-INCOME HOUSING. (JUDGMENT ENTRY 11-27-94).

Appellee argues that they had good cause to evict the LaChances premised upon the alleged failure of the LaChances to re-certify their income and an alleged failure to pay rent. Appellee cannot mean this as a serious argument. Appellee failed to mention the re-certification "issue" in either their notice dated 10-3-94 to leave the premises ("tenant holding over term/lease term expired" was the reason cited) nor did appellee include this "violation" in their complaint filed with the court. In fact, the trial court allowed appellant's objection to appellee's counsel questions as to the re-certification issue. (Tr.p.17-18) In response to the court's ruling, counsel for appellee replied "If I may simply correct the court. I don't think that non-payment was the primary reason. The primary was a holding over." (Tr.p.18)

Appellee also maintains the non-payment of rent was an issue. This "violation" was mentioned in the complaint but not in any notice to vacate. It is also a spurious issue. As appellee's own witnesses stated;

Q. So your testimony is that after August 31st you would not have accepted rent from either the Agency or the LaChances?

A. Correct

Q. Therefore, the non-payment of rent was due to your (in audible) not to accept rent?

A. Correct Tr.p.20

As Mr. Rawlins testified;

Q. So the only reason why you didn't receive payments subsequent to August of 1994, was because your company refused to sign an agreement with Metropolitan?

A. Right

Q. What was the reason for your refusing to sign such an agreement?

A. Because I knew that in the process we were going to terminate the lease. (Tr.p.28)

Putting aside appellee's disingenuous argument of good cause, appellee, with perhaps more substance, maintains that the appeal is moot due to appellant's vacating the premises pursuant to a writ of restitution. The general rule is that a tenant's vacation of the rental property causes an appeal in an eviction to become moot, for example, see Miami Investment Corn. v. Baker, 109 Ohio App. 334,336, 105 N.E. 2d 690, 692 (Montgomery cty: 1959); Crossinss Development Ltd. vs. H.O.T. Inc., 96 Ohio App. 3rd 475, 68 OBR 475, (Summit Cty. 1994).

They are exceptions to this general rule and they apply to the LaChances. For example; wheTe a tenant is involuntarily disposed, the tenant has not permanently relocated to another residence (the LaChances haven't) and where the rental premises remain vacant, an appellate court has held that the issue is not moot. Alcfer Green Coonerative v. Rivers, No. 87AP-915 slip op. at 2 (Ct. App. Franklin Cty. Dec. 23, 1987).

Since the LaChances have been evicted from the premises in which they received a federal subsidy and II . . . an unfavorable court proceeding may affect . . . [the tenant's] continuing eligibility for such [rental assistance] payments^{tt}, the issue is not moot. Sandefur Management Co. v. Minor, #84AP-220, slip op.

at 3 (Ct. App. Franklin Cty. Apr. 18, 1985). If the LaChances are successful in this appeal they should be allowed to re-enter the vacated premises or to lease a comparable unit as soon as available. Further, upon successful appeal, the eviction judgment would be vacated thus could not be used by a future landlord to deny the LaChances federally subsidized housing.

A further exception is where II . . . there are other persons similarly situated who would benefit from the resolution of the issue on appeal." Sandefur Management Co. v. Minor, slip op. at 3; Accord Stacy v. Carr, No. CA-519, slip op. at 3, (Ct. App. Adams Cty. Feb. 20, 1992). This is a case of first impression in Ohio, there are other tenants similarly situated, and resolution of this issue would allow other current tenants to know on what basis they can be evicted upon.

Finally, where the issue on appeal is one of great public importance, the appeal is not to be deemed moot. Franchise Develoners, Inc. v. City of Cincinnati, 30 Ohio St. 3rd 28, 505 N.E. 2d 966 (1987); Portase Metronolitan Housing Authority v. Brown, 66 Ohio App. 3rd 737, 586 N.E. 2d 168 (Portage Cty. 1990); Stacy v. Carr, slip op. at 304; Sandefur Manaagement Co. v. Minor, slip op. at 3.

The LaChances have a vital interest in a favorable ruling by this court. They could move back into affordable housing, their credit record would not include a damning eviction and other tenant's at appellee's complex would be protected by a

1. There is a pending appeal involving the same issues before this court; Bowling Green Manor v. Kirk, 94-WD-125.

good cause requirement for eviction. In another pending appeal, before this court, Kirk, the only difference between the cases is that Ms. Kirk was able to provide an appeal bond of approximately \$200.00 while the LaChances could not pay \$4,250.00 for a supersedeas bond. It would be strange justice for Ms. Kirk to prevail but to concomitantly deny the effect of such a ruling on behalf of the LaChances. Counsel for the LaChances urges this court not to find their appeal moot.

ASSIGNMENT OF ERROR II

ISSUANCE OF A SUPERSEDEAS BOND OF \$4,250.00 PAYABLE IN A LUMP SUM FOR LOW INCOME TENANTS LIVING IN LOW INCOME HOUSING IS AN ABUSE OF DISCRETION. (JUDGMENT ENTRY 11-29-94).

Appellee states that this court's prior rulings on the : .supersedeas bond should not be revisited. As noted in appellant's initial brief, this court has issued a decision which is arguably at odds with the decision issued in this case. On virtually the same set of facts, this court in the instant case upheld a bond of \$4250.00 while in a bond of approximately \$200.00 was issued.

For the sake of judicial economy and allowing for more certainty in future eviction cases, it seems reasonable that a decision as to this assignment of error would be in both parties interest.

Respectfully submitted,

Steve Robins
Steve Robins
Attorney for Appellant

PROOF OF SERVICE

This is to certify that a copy of the foregoing was sent by Regular U.S. Mail this 28 day of February, 1995, to Thomas Teet, Attorney at Law, 329 N. Main Street, Bowling Green, OH 43402.

Steve Robins
Steve Robins
Attorney at Law

APPENDIX

Query: OHCASES2:I =6835002ohl

Agler Green Cooperative, Plaintiff-Appellee,
vs.
Carmen Rivers, Defendant-Appellant

No. 87AP-915

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN
COUNTY

Slip Opinion

December 23, 1987, Decided

ON MOTIONS for Reconsideration and for Dismissal.

COUNSEL

MR. FRED THOMAS, for appellee.

MS. DONNA C. MAYER, for appellant.

JUDGES

STRAUSBAUGH, P.J., WHITESIDE and REILLY, JJ., concur.

AUTHOR: STRAUSBAUGH

OPINION

DECISION-:

STRAUSBAUGH, P.J.

This matter is before the court on defendant's motion to reconsider our denial of her motion to stay execution of a judgment of the Franklin County Municipal Court granting plaintiff's claim for forcible entry and detainer. Also before the court is plaintiff's motion to dismiss.

Plaintiff, Agler Green Cooperative, is a federally subsidized housing project. Defendant, Carmen Rivers, is a tenant of plaintiff. As a result of a disturbance on April 16, 1987, plaintiff initiated suit in the municipal court for forcible entry and detainer. The basis for that complaint was an alleged violation of defendant's lease agreement with plaintiff. Following a hearing on the eviction, the court found that

defendant's conduct violated plaintiff's rules and constituted a material breach of the lease. The municipal court then decreed that plaintiff be granted judgment against defendant for restitution of the premises.

Following an unsuccessful motion by defendant to stay execution pending appeal, defendant then sought an order from this court staying execution of the eviction pending appeal. That motion was denied, on October 21, 1987 as being moot, defendant having vacated the subject premises.

Defendant now requests that we consider our decision on that motion for the reason that even though defendant has moved a court may use its equity powers to restore her to an apartment similar to the one from which she was dispossessed. Conversely, plaintiff maintains that because defendant has vacated the premises, the subject matter of this appeal is therefore moot.

Generally, an appellate court will not reconsider a previous decision unless the application calls to the attention of the court an obvious error in the prior decision or raises an issue that was either not considered at all or was not fully considered. *Matthews v. Matthews* (1981), 5 Ohio App. 3d 140, 143. Here, we have previously fully considered the merits of defendant's motion to stay execution pending appeal. The judgment below ordered defendant to vacate the demised premises, and defendant has complied with that order. As such, there is nothing before us upon which to base an order staying execution of the judgment. To the extent that defendant requests original relief in the nature of injunction, this court is without the power to provide the specific relief sought. For these reasons, plaintiff's motion for reconsideration is overruled.

Despite our unwillingness to grant defendant's motion for a stay of execution pending appeal based upon mootness, that same reasoning does not extend to plaintiff's motion to dismiss. While it is generally true that an appeal will not lie from a judgment which has been fully executed because of mootness, that situation is not present.

The record reveals that although defendant has vacated the subject premises, she did not do so voluntarily: that defendant has not permanently relocated to another residence; and, that the subject premises remain vacant. As such, this appeal is not moot. This court can still afford defendant effective relief in that we could reverse the judgment of the court below and place defendant in possession of the apartment should the record warrant. Cf. *Miner v. Witt* (1910), 82 Ohio St. 237. Accordingly, plaintiff's motion to dismiss is overruled.

WHITESIDE and REILLY, JJ., concur.

DISPOSITION

Motion for reconsideration overruled; motion to dismiss overruled .

Query: OHCASES2:j =0940002ohl

FRANCHISE DEVELOPERS, INC. ET AL., APPELLEES,
CITY OF CINCINNATI^S ET AL., APPELLANTS

No. 86-513

SUPREME COURT OF OHIO

505 N.E.2d 966, 30 Ohio St. 3d 28, 30 Ohio B. Rep. 33

April 8, 1987, Decided

APPEAL from the Court of Appeals for Hamilton County.

HEADNOTE

Appellate procedure -- Mootness as to one of the litigants -- Supreme Court may hear appeal as to other litigants, when -- Zoning -- Aesthetic considerations may be considered, when -- "Overlay"^{f1} zoning and "environmental quality districts," examined.

SYLLABUS

1. Although a case may be moot.. with respect to one of the litigants, this court may hear the appeal where there remain% a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest.

2. There is a legitimate governmental interest in maintaining the aesthetics of the community and, as such, aesthetic considerations may be taken into account by the legislative body in enacting zoning legislation. (Hudson v. Albrecht, Inc. [1984], 9 Ohio St. 3d 69, 9 OBR 273, 458 N.E.2d 852, approved and followed.)

STATEMENT OF THE CASE

Under Chapter 34 of the Cincinnati Municipal Code (¹¹CMC¹), the city council of defendant-appellant city of Cincinnati is empowered to create "environmental quality districts"¹ (I'EQD's~~) to I'* * * assist the development of land and structures to be compatible with the environment and to protect the quality of the urban environment in those locations where the characteristics of the environment are of significant public value and are vulnerable to damage by development permitted under conventional zoning and building regulations.¹ CMC Section 3400.2. Such

additional zoning regulation in this context is more commonly known as "overlay" zoning.

The record indicates that during 1975, the defendant-appellant Clifton Town Meeting [a neighborhood group] successfully opposed the development of a "Burger Chef" restaurant on Ludlow Avenue in the city of Cincinnati on the basis that such a restaurant would have a destabilizing effect on the Ludlow Avenue business district.

On September 27, 1978, Cincinnati City Council adopted Ordinance No. 398-1978 which created an environmental quality-urban design zone district ("EQ-UD") over the existing zone district in the vicinity of Clifton and Ludlow Avenues in the city of Cincinnati. Incorporated within this ordinance was a Development Guidelines Report ("DGR") which provided in guideline III A 2:

*I New businesses should contribute to the desired mix of commercial activities ; franchise type establishments are acceptable provided that they are primarily pedestrian and not automobile oriented." (Emphasis added.)

In 1982, plaintiff-appellee Alvin Lipson purchased a theatre located at 320 Ludlow Avenue within the subject EQ-UD. In 1984, the theatre was leased to plaintiff-appellee Franchise Developers, Inc. ("FDI"). Early in 1984, FDI applied for a building permit to remodel the theatre for use as a Wendy's restaurant.

As part of the building permit application process, defendant-appellant James R. Krusling, Director of Buildings and Inspections for the city of Cincinnati, served as hearing examiner and conducted a hearing with respect to FDI's application. As a result of the hearing, Krusling recommended approval of the application over the strong objections raised by Clifton Town Meeting. Subsequently, Clifton Town Meeting appealed Krusling's decision to Cincinnati City Council pursuant to CMC Section 3405.3.

A hearing was held by city council with respect to FDI's application, whereupon council reversed Krusling's decision and directed that the permit application be denied. In so doing, the council adopted separate findings of fact and conclusions of law.

The matter was then appealed by FDI and Lipson to the court of common pleas, where they sought a declaratory judgment against the city, Krusling and Clifton Town Meeting that Ordinance No. 398-1978 and its incorporated DGR are

(c) 1993, 1994 By The Michie Company, A Division of The Mead Corporati

unconstitutional. Upon motions for summary judgment filed, by all the parties, the trial court granted summary judgment in favor of the defendants, thereby affirming the decision of city council to deny the permit application.

Upon further appeal, the court of appeals reversed and reinstated the decision of the hearing examiner that granted the permit application. The appellate court narrowed the issue to whether DGR III A 2 is a constitutionally acceptable expression of governmental judgment upon which city council was entitled to rely, when it addressed the merits of FDI's application in light of the overlay zoning regulations contained in CMC Chapter 34. The court of appeals opined that the regulation of land use apart from the underlying provisions of the zoning code is clearly prohibited, and that any regulatory action taken in connection with the creation of an environmental quality district is confined to only the physical or aesthetic aspects of property development. The appellate court held that DGR III A 2, standing alone, cannot withstand constitutional scrutiny due to the inherent vagueness of its terms.

The cause is now before this court upon the allowance of a motion to certify the record.

COUNSEL

Graydon, Head & Ritchey, Anthony G. Covatta and David E. Fowler, for appellees.

t

Richard.A. Castellini, city solicitor, Ely M. T. Ryder and Daniel J. Schlueter, for appellants city of Cincinnati and James R. Krusling.

Beckman, Weil, Shepardson & Faller and Sidney Weil, for appellant Clifton Town Meeting.

JUDGES

SWEENEY, J. MOYER, C-J., LOCHER, HOLMES, DOUGLAS and BROGAN, JJ., concur. WRIGHT, J., concurs in part and dissents in part. BROGAN, J., of the Second Appellate District, sitting for H. BROWN, J.

AUTHOR: SWEENEY

OPINION

I*31) Subsequent to the decision rendered by the court of appeals, it was adduced in oral argument that the theatre property which is the subject of this litigation was obtained by

the city of Cincinnati and was then transferred to a non-profit organization which plans to operate the property as a theatre again. Therefore, FDI and Lipson waived oral argument before this court since the issues involved in this cause are moot with respect to their interests. Given this set of circumstances, our first inquiry is whether the instant cause should be dismissed on grounds of mootness.

Upon a careful review of the entire record, we believe that although the instant matter is technically moot with respect to the plaintiffs, there still remains a debatable constitutional question for this court to resolve. See *Wallace v. University Hospitals of Cleveland* (1961), 171 Ohio St. 487, 14 O.O. 2d 383, 172 N.E.2d 459. In addition, we believe that the cause sub judice involves matters of great public interest, thereby vesting this court with jurisdiction to entertain this appeal, even though the controversy is moot with respect to the plaintiffs. See *Wallace, supra*; *In re Popp* (1973), 35 Ohio St. 2d 142, 64 O.O. 2d 84, 298 N.E.2d 529; and *State, ex rel. Rudes, v. Rofkar* (1984), 15 Ohio St. 3d 69, 15 OBR 163, 472 N.E.2d 54. Thus, we proceed to resolve this matter under the standard that although a case may be moot with respect to one of the litigants, this court may hear the appeal where there remains a debatable constitutional question to resolve, or where the matter appealed is one of great public or general interest.

In our view, the decision of the court of appeals is clearly erroneous as a matter of law and, therefore, for the reasons that follow, we reverse the judgment of the appellate court below which held DGR III A 2 to be unconstitutionally vague.

{*32} Our review of the -city of Cincinnati zoning provisions embodied in CMC Chapter 34 reveals that these regulations provide a comprehensive framework over and above the conventional zoning regulations that attempt to preserve and revitalize certain neighborhoods which the city itself deems worthy of special consideration.

In analyzing the constitutionality of the zoning provision in issue, DGR III A 2, we necessarily begin with the strong presumption that the ordinance which incorporated such provision is indeed valid, unless the party attacking the ordinance can overcome the strong presumption of validity. See, e.g., *Leslie v. Toledo* (1981), 66 Ohio St. 2d 488, 20 O.O. 3d 406, 423 N.E.2d 123; *Hudson v. Albrecht, Inc.* (1984), 9 Ohio St. 3d 69, 9 OBR 273, 458 N.E.2d 852. See, also, *Euclid v. Ambler Realty Co.* (1926) 1 272 U.S. 365.

The appellate court below opined that the provision in

I' * * * The power of a municipality to establish zones, to classify property, (*34} to control traffic and to determine land-use policy is a legislative function which will not be interfered with by the courts unless such power is exercised in such an arbitrary, confiscatory or unreasonable manner as to be in violation of constitutional guaranties."

Accordingly, since we find that the DGR III A 2 does not run afoul of either the state or federal Constitutions, the judgment of the court of appeals is hereby reversed.

Judgment reversed.

DISPOSITION

Judgment reversed.

DISSENT

WRIGHT, J., concurring in part and dissenting in part.

In my view this case has little public or general interest since it involves a "one of a kind" situation vis-a-vis the appellees and the city of Cincinnati which effectively resolved the controversy by purchasing appellee Lipson's property. The facts in the case when viewed in toto-as opposed to the precis form presented by the majority negate the possibility that this case can be treated as authority for anything aside from the broad propositions contained in the syllabus which are universally accepted law.

Thus, while I concur in the syllabus law promulgated in the majority opinion, I respectfully suggest that this appeal should have been dismissed as moot when appellees noticed this court that they were withdrawing from this appeal.

STATEMENT OF CASE FOOTNOTES

n1 Some of the conclusions of law adopted by Cincinnati City Council were the following:

"1. The proposed fast food restaurant at 320 Ludlow Avenue would be a valid use of the property under the B-2 Community Business District Regulations, Chapter 21, of the Zoning Code. Pursuant to the provisions of 3 102.5 of the Zoning Code, such property may, however, be subject to additional regulations.

"2. The subject address is part of an Environmental

Quality District, created by Ordinance 398-1978 of the Council of the City of Cincinnati, and thus subject to the provisions of Chapter 34 of the Zoning Code, the provisions of which, pursuant to 5 3401.1, prevail over any conflict with the B-2 underlying zone regulations.

"3. There is a substantial City interest in protecting the stability of neighborhoods and neighborhood business districts -and Ordinance No. 398-1978 is a valid exercise of the legislative authority of the Council of the City of Cincinnati.

"4. The Council may validly provide for land use regulations in ordinances establishing Environmental Quality District Regulations, pursuant to the provisions of Zoning Code 9 3400.2.

"5. The phrase 'fast food restaurant' is not defined in any provision of the Zoning Code. It must be defined in accordance with the ordinary and usual meaning of the phrase as well as by the usage given such phrase by the public and the industry involved.

"6. The provision of the Clifton Community Plan (as approved by the Planning Commission and adopted as part of the Coordinated City Plan) to the effect that fast food restaurants are not appropriate along Ludlow Avenue is a valid expression of the mutual desire of the Clifton neighborhood and the City of Cincinnati.

I

"7. Inasmuch as the proposed use fails to contribute to the desired mix of commercial activity on Ludlow Avenue for the reason set forth above, it fails to comply with the provisions of Ordinance No. 398-1978, and is not a permitted use under the Zoning Code of the City of Cincinnati."

Query: OHCASES1:)*4937102ohI

PORTAGE METROPOLITAN HOUSING AUTHORITY, Appellant,
vs.
BROWN et al., Appellees

No. 89-P-2112

COURT OF APPEALS OF OHIO, ELEVENTH APPELLATE DISTRICT, PORTAGE
COUNTY

586 N.E.2d 168, 66 Ohio App. 3d 737

June 11, 1990, Decided

Character of Proceedings: Civil Appeal from the Portage County
Municipal Court, Ravenna Branch; Case No. R89 CVG 1245.

COUNSEL

Antonios C. Scavdis, for appellant.

Michael E. Edminister, for appellees.

JUDGES

Joseph E. Mahoney, Judge. Christley, P-J., concurs. Ford,
J., dissents.

AUTHOR: MAHONEY

OPINION

(*738} Appellant, Portage Metropolitan Housing Authority
(^{rf}PMHA^{rr}), provides housing for low income individuals. Appellee,
Maryola Brown, is a tenant of a housing project operated by
appellant at 1356 Town Square Drive, Number 1, Brimfield, Ohio.
Appellant filed a forcible entry and detainer action after
appellee failed to vacate the premises despite being served with
a three-day notice to leave the premises. Appellant asked the
trial court for a writ of restitution restoring the premises to
appellant and for an order to remove and dispose of abandoned
personal property.

A hearing was held before a referee in the Ravenna Branch
of the Portage County Municipal Court. The referee made a
recommendation to the trial court to deny appellant a writ of
restitution. The trial court adopted the referee's findings, and

appellant has timely filed a notice of appeal from the trial court's judgment.

It was established that appellee was a recipient of Aid to Dependent Children and had a total income of \$ 263 per month. She paid \$ 5 per month as rent for her unit. Appellee was divorced and lived with her nine-year-old daughter and her brother.

Capt. Robert Burgess of the Brimfield Police Department testified that appellee's apartment unit had been under surveillance for approximately four months during the early part of 1989. During that time period, known criminals with outstanding arrest warrants and felony convictions were observed (*739} frequenting the appellee's apartment at various times throughout the day and night. Additionally, controlled drug buys were made from appellee's apartment in which appellee was involved.

On June 1, 1989, the Federal Bureau of Investigation, together with the Brimfield Police Department, forcibly entered and searched appellee's unit and arrested appellee. These actions were performed pursuant to a federal search and arrest warrant. According to the testimony of Capt. Burgess, crack cocaine was found during the search of appellee's unit. Additionally, the officers found two semi-automatic pistols, various documents supportive of drug trafficking activities, documents pertaining to airline flight schedules, an electronic beeper, and \$ 340 cash.

9

There was evidence that appellee drove a Chrysler New Yorker with a car phone, and she also leased a Pontiac Firebird. Appellee claimed, however, that the car phone was owned by her mother, yet could not explain why her mother would need a car phone. Appellee also testified that the beeper was necessary because her mother had been ill and needed to be able to reach her at any time. She further indicated that the weapons were for her protection. When asked who was selling drugs out of her apartment, appellee responded, "I have no knowledge."^{tr}

The director of PMHA testified that the staff had received complaints from some of the residents regarding appellee, and maintenance personnel expressed fear about having to enter appellee's unit alone. Further, one of the residents left the premises and indicated she would not return until appellee was gone.

Appellee was charged by the United States of America with conspiracy to distribute cocaine and to possess cocaine with the intent to distribute in violation of Section 841(A)(1), Title 21, U.S.Code, and with committing an overt act in furtherance of said

conspiracy in violation of Section 846, Title 21, U.S.Code.

On June 2, 1989, appellee was served with a three-day notice to leave the premises pursuant to R.C. Chapter 1923. It alleged, inter alia, that appellee possessed illegal drugs and weapons at subject dwelling which were confiscated by federal agents on June 1, 1989. Appellant's forcible entry and detainer action was filed June 7, 1989. A hearing was held on June 29, 1989, and the referee's findings denying the writ of restitution were adopted by the trial court on July 7, 1989.

According to the lease that appellee signed with appellant, tenants were required to:

(*740} 1(h) Conduct themselves and require other persons on the premises with their consent, to conduct themselves in a manner that will not disturb neighbor's peaceful enjoyment of the premises:

I' * * *

1'(k) Refrain from illegal conduct or actions detrimental to the other residents:

'* * +

1'(m) Use the dwelling unit only for residential purposes (and for no other use) by persons identified in the initial lease or application for continued occupanc?y[.] * * *I¹

Section (h) is nearly identical to R.C. 5321.05(A)(8), which requires a tenant who is-party to a rental agreement to:

r^rConduct himself and require other persons on the premises with his consent to conduct themselves in a manner that will not disturb his neighbors' peaceful enjoyment of the premises."

The trial court ruled that, with respect to section (h), case authority dictates that, where the violation alleged is a violation of both the lease agreement and R.C. 5321.05, as it is in this case, the thirty-day notice provision of R.C. 5321.11 must be complied with. Appellant failed to provide appellee with a thirty-day notice, so the trial court held that violation of section (h) could not be used as grounds for the issuance of a writ of restitution.

With respect to sections (k) and (m), the trial court found that there was insufficient evidence to prove either illegal conduct, actions detrimental to the other residents, or use of the dwelling unit for other than residential purposes. The

trial court did not address the issue of whether thirty-day notice was required when illegal conduct is alleged, as it was in this case, pursuant to section (k).

Appellant filed a timely notice of appeal, setting forth the following assignments of error:

"1. A metropolitan housing authority is not required to deliver a written notice of noncompliance to a tenant under O.R.C. 5321.11 to terminate a rental agreement for the illegal conduct of a tenant in possessing and in participating in the sale and distribution of illegal crack cocaine.

"2. The lower court abused its discretion and its ruling was contrary to the weight of the evidence in denying a writ of restitution."

Subsequent to the filing of this appeal, appellee was .. given a thirty-day notice and has vacated the premises. Ordinarily, under such circumstances, this case would be dismissed as being moot. However, in *Ruprecht v. (*741} Cincinnati* (1979), 64 Ohio App.2d 90, 18 O.O.3d 60, 411 N.E.2d 504, the Court of Appeals for Hamilton County held:

"* * * [A]n appellate court may retain an appeal for a hearing and determination if it involves questions of public interest even though it has become moot so far as the parties of the particular action are concerned. * * * I Id. at 91 18 O.O.3d at 61, 411 N.E.2d at 505. See, also, *bveresch v. Campbell* (1953) 1 95 Ohio App. 317, 53 O.O. 359, 119 N.E.2d 848.

The question that is raised in the instant cause -- whether a landlord is required to give a tenant thirty-day notice before beginning an eviction action when the tenant is conducting illegal activities on the premises -- is a question of public interest that appellant points out may never become ripe because of the length of time involved in an appeal. For that reason, we have decided to address only this narrow issue, which is raised in appellant's first assignment of error.

In the first assignment of error appellant asserts that a thirty-day written notice pursuant to RIG. 5321.11 is not a prerequisite to the maintenance of an eviction action when illegal drug activity is the noncomplying activity. R.C. 5321.11 provides:

I '* * * If the tenant fails to fulfill any obligation imposed upon him by section 5321.05 of the Revised Code that materially affects health and safety, the landlord may deliver a written notice of this fact to the tenant specifying the act and

omission that constitutes noncompliance with such provisions and that the rental agreement will terminate upon a date specified therein not less than thirty days after receipt of the notice. If the tenant fails to remedy the condition contained in the notice, the rental agreement shall then terminate as provided in the notice.^{rr}

Appellant argues that R.C. 5321.11 contemplates a "condition^{rt}" that can be remedied by the tenant within thirty days. Appellant maintains that the operation of an illegal crack cocaine distribution business is not a condition^{rr} of the premises but, rather, a criminal act and, therefore, the notice provision of R.C. 5321.11 is inapplicable to the case sub judice.

Ohio courts have consistently held that, when a tenant breaches an obligation in a written lease which action also constitutes a breach of tenant's duty under R.C. 5321.05, the thirty-day notice provisions of R.C. 5321.11 must be complied with before a forcible entry and detainer action can be brought by the landlord. *Parker v. Fisher* (1984), 17 Ohio App.3d 103, 17 OBR 166, 477 N.E.2d 654; *Sandefur Mgmt. Co. v. Wilson* (1985), 21 Ohio App.3d 160, 21 OBR 170, 486 N.E.2d 1267; *Northland Village Apts. v. Harris* (July 6, 1987), Montgomery App. No. 10156, unreported, 1987 WL 14276.

{*742} In *Parker*, supra, the court accordingly held that, when the written lease is breached but there is no violation of R.C. 5321.05, the landlord need not give a thirty-day notice before commencing a forcible entry and detainer action.

In the present case, appellant has alleged a violation of section (k) of the lease, which prohibits illegal conduct. It is clear that there is no comparable counterpart in R.C. 5321.05. Therefore, under *Parker*, supra, appellant did not need to provide appellee with thirty-day notice prior to commencing its eviction action.

However, appellant's first assignment of error is not demonstrated by the record. The referee's report, which was adopted by the trial court, avoided the issue of notice when illegal conduct is alleged by finding that there was insufficient evidence of illegal conduct. However, since the trial court decided on its merits the issue of whether illegal conduct was occurring in appellee's apartment, we can infer that the trial court did not find it necessary for appellant to provide appellee with thirty-day notice with respect to the illegal conduct allegation. We agree. Thus, the trial court's decision is affirmed as to the single issue this court has addressed.

Appellant's second assignment of error is moot and, will not be addressed.

For the foregoing reasons, the decision of the trial court is affirmed.

Judgment affirmed.

Christley, P.J., concurs.

Ford, J., dissents.

DISPOSITION

Judgment affirmed.

DISSENT

Ford, Judge, dissenting.

I respectfully dissent from the foregoing opinion as I find its reasoning to be somewhat bewildering. I concur with the majority's explication of the requirements of R.C. 5321.05 and 5321.11 and agree that the thirty-day notice provision of R.C. 5321.11 is inapplicable in scenarios where the reasons for eviction are criminal activities which are not included in R.C. 5321.05. Accord, Parker, supra.

However, while I concur in the legal analysis set forth by the majority, I cannot agree with the factual conclusions the opinion sets forth. Examination of the referee's report indicates that the referee, rather than "avoiding" the issue of notice, confronted the issue squarely in his finding that there was insufficient evidence of illegal conduct to reach the question of whether a thirty-day written notice was required by statute when the tenant's behavior included illegal activities. In the referee's view, insufficient evidence existed (*743) of criminal activities by the appellee, and thus the concomitant legal question was irrelevant.

The trial court, in its judgment entry, stated that "having reviewed the finding and recommendations of the referee [it] approve[d] and hereby order[ed], adjudge[d] and decree[d] that the same be entered of record and made an ord& of this court. * * *^f Nowhere can this author discover that the trial court v'inferred^{iv} that it was not necessary for the appellant to provide appellee with a thirty-day notice with respect to an illegal conduct allegation on a proper factual predicate.

Instead, it appears patent that the trial court adopted the referee's findings that there was insufficient evidence of criminal conduct and offered no comment on the question of whether thirty days' notice was required to evict should the appellee have been found to have been engaged in such activities.

The majority rests its decision to affirm solely upon the spectre of this alleged inference in the trial court's laconic judgment entry. However, the judgment of the majority opinion is to affirm the decision of the trial court itself. As a result, the action propounded by the majority is simply to offer an advisory opinion, in the event that this hypothetical situation [not considered by *either* the referee or the trial court) arises again. The majority offers no opinion, other than the fact that the issue is moot, as to whether the trial court's decision is against the manifest weight of the evidence choosing instead to make its legal analysis a gelding in the case sub judice.

I further take exception to the disposal of the appellant's second assignment as moot by the majority. The question of whether a landlord is required to give thirty days' notice under R.C. 5321.11, when a tenant is engaged in activities not covered by R.C. 5321.05, may, in the abstract be of greater public interest than the factual question of whether the eviction action in this case was wrongfully maintained. However, the two questions are, in this case, so intertwined that it seems inexplicable to pronounce solely on the legal question, under *Ruprecht, supra*, and dismiss the factual question as moot.

If this court is to determine that this case considers questions of great public interest, despite their alleged mootness (as the record itself demonstrates no such evidence-of a subsequent eviction), I would suggest that we consider all of the assignments raised by the appellant. Examination of the referee's findings indicates that there was clearly competent credible evidence which would indicate that criminal activity was occurring in appellee's apartment. Therefore appellant was within its rights to forgo the thirty-day R.C. 5321.11 notice when commencing its eviction action.

As I would reverse the trial court on the second assignment as well as address legal issues raised in the first assignment, which I feel were addressed (*744) neither directly or inferentially by the trial court, I would vote to reverse in the case at bar. I cannot, however, agree with the reasoning expressed by the majority and I must, therefore, respectfully dissent.

Query: OHCASES2:I ■ 7612401ohl

Sandefur Management Co., Plaintiff-Appellee,
vs.
Tonya Minor, Defendant-Appellant.

No. 84AP-220

COURT OF APPEALS OF OHIO, TENTH APPELLATE DISTRICT, FRANKLIN
COUNTY

Slip Opinion

April 18, 1985

APPEAL from the Franklin County Municipal Court.

COUNSEL

JAMES M. SCHOTTENSTEIN & ASSOCIATES, MR. JAMES M.
SCHOTTENSTEIN, MS. DEBORAH L. SCHOTTENSTEIN and MR. ALAN CEA, for
appellee.

THE LEGAL AID SOCIETY OF COLUMBUS, and MR. MICHAEL
KIRKMAN, for appellant.

JUDGES

McCORMAC and NORRIS, JJ., concur.

STILLMAN, J., retired, of the Eighth Appellate District,
assigned to active duty under authority of Section 6(C), Article ,
IV, Ohio Constitution.

AUTHOR: STILLMAN

OPINION

This case comes before the court upon the appeal of
defendant from the judgment of the municipal court granting
possession of defendant's apartment to plaintiff in this action
in forcible entry and detainer. Also before the court is
plaintiff's motion to dismiss defendant's appeal on the basis
that it has been rendered moot due to defendant's vacation of the
premises.

Defendant entered into possession of the apartment in
question on March 3, 1983, pursuant to a written lease. This

particular property is classified as substantial rehabilitation property, and is governed by Section 881, Title 24, C.F.R. As a low income tenant, defendant received a monthly federal rent subsidy, based upon her income, which reduced her rent payment to \$33 a month.

There is no transcript of the hearing before the referee. In his findings of fact, the referee found that defendant had been late in her payment of rent in April, May, June and September 1983. The referee also found that, sometime in September or October, defendant informed plaintiff that her income had been reduced. Pursuant to the lease and federal regulation, plaintiff was obligated to verify defendant's income and recompute her rental obligation. The referee found that plaintiff undertook an attempt to verify defendant's income, was unsuccessful in doing so by January 1984, and that, in January 1984, plaintiff informed defendant of its difficulties in obtaining verification of her income, and requested that defendant appear to clarify her status. Defendant failed to respond to the request of plaintiff.

Defendant failed to pay her December rent and, on December 20, 1983, plaintiff served defendant with a notice to leave. This action was subsequently filed on January 6, 1984. On February 13, 1984, the referee submitted his report and recommendation, and, on the same day, the trial court entered judgment for plaintiff.

Defendant appeals, raising the following three assignments of error:

"I. The trial court erred by concluding that defendant's duty to pay rent was not contingent on plaintiff's duty to recalculate and reduce the amount to be paid.

"II. The trial court erred in granting judgment to plaintiff because of late payments of rent.

"III. The trial court erred by approving the referee's report and granting judgment without providing any opportunity to the parties to object to the referee's report."

Upon defendant's motion, the trial court stayed execution of the writ of restitution contingent upon defendant's payment of a \$200 supersedeas bond. Defendant was unable to post bond, and, accordingly, she vacated the premises. Thereafter, plaintiff moved for the dismissal of this appeal, arguing that the only relief which was granted to plaintiff was restitution, and that, therefore, this appeal had been rendered moot by defendant's vacation of the premises.

As a general proposition, an appeal from a judgment which has been voluntarily complied with by the appellant will be dismissed as moot. *Kelm v. Hess* (1983), 8 Ohio App. 3d 448. There are exceptions to the rule, however, for instance, where the appellant retains an ongoing interest in the subject on appeal, where there are other persons similarly situated who would benefit from the resolution of the issue on appeal, or where the question appealed is one of great public importance. See, e.g., *Harshaw v. Farrell* (1977), 55 Ohio App. 2d 246.

In the present case, defendant has a continuing interest in the outcome of the appeal. She was once eligible for federal housing assistance payments, and an unfavorable court proceeding may affect her continuing eligibility for such payments. Moreover, other tenants are similarly situated and would benefit from this court's resolution of the issue which is raised in this appeal.

Accordingly, plaintiff's motion to dismiss is not well taken and is overruled.

As to defendant's first assignment of error, there is no applicable federal provision which makes the payment of rent conditioned upon the landlord's prompt recalculation of the tenant's share of rent. The applicable regulation, Section 881.603(d), Title 24, C.F.R., merely requires the prompt adjustment of the family contribution upon receipt of verification of the income information provided by the tenant. There is no time limitation imposed by the regulation, and there is no provision which allows the tenant to curtail payments of rent until adjustment is made. To hold otherwise would permit a tenant to toll his or her obligation to pay rent merely by informing the landlord that his or her income had been reduced.

In the present case, plaintiff presented evidence to the trial court that it sought verification of defendant's income, and, failing this, sought defendant's assistance in obtaining clarification. Defendant failed to respond to plaintiff's inquiries. Absent such verification of defendant's income, plaintiff was not obligated to adjust defendant's rent, and, thus, it was not error for the trial court to conclude that defendant was not excused from the obligation to pay her rent until adjustment in her contribution was made.

Therefore, the first assignment of error is not well taken and is overruled.

Defendant's second assignment of error appears to raise, for the first time, the issue of plaintiff's waiver of late payment of rent by the repeated acceptance of late payments. It

is a well-established rule of appellate procedure that issues not raised in the trial court will not be considered for the first time by a court of appeals. *Szymanski v. Halle's* (1980), 63 Ohio St. 2d 195. There is no transcript of the proceedings filed herein, and there is no indication elsewhere in the record that defendant raised this issue of waiver of timely payment of rent. Had the issue been raised, plaintiff could have presented opposing evidence, and the trial court, as thier of the facts, could have determined if, in fact, a waiver had occurred.

Moreover, considering that there is no evidence or allegation that the December rent was ever tendered, there was a sufficient basis for the eviction independent of the ground of continued late payments. Indeed, the referee found that there were two independent bases upon which to evict defendant for material noncompliance, nonpayment of rent and continued late payments.

Thus, the second assignment of error is not well taken, and is overruled.

Lastly, the third assignment of error is overruled on the authority of *Housing Authority v. Jackson* (1982), 67 Ohio St. 2d 129. In that case, the Supreme Court stated in the syllabus:

^fCiv. R. 53(E) and 54(B) by their nature are clearly inapplicable to proceedings in forcible entry and detainer, on the authority of Civ. R. 1(C)."

T

With regard to Civ. R. 53(E), *Jackson* is factually indistinguishable from the present case, and stands for the proposition that the trial court need not receive objections to the report of the referee so long as it is the trial judge, and not the referee, who enters judgment. The judgment entered herein ,I was signed by the trial judge, and, hence, complies with the requirements of the forcible entry and detainer statute, as construed by the court in *Jackson*.

Accordingly, for the foregoing reasons, the motion to dismiss is not well taken and is overruled. The assignments of error are also overruled, and the judgment of the trial court is affirmed.

DISPOSITION

Motion to dismiss overruled; Judgment affirmed.

Query: OHCASEWI =3051402ohI

GLENN STACY, Plaintiff-Appellee,
vs.
TAMMY CARR, Defendant-Appellant.

No. 519

COURT OF APPEALS OF OHIO, FOURTH APPELLATE DISTRICT, ADAMS COUNTY

1992 Ohio App. LEXIS 862

February 20, 1992, Released

COUNSEL

APPEARANCES:

COUNSEL FOR APPELLANT: Robert R. Romaker and Deborah Gilbert,
27-29 Sixth St., Suite B, Zanesville, Ohio 43701.

COUNSEL FOR APPELLEE: Elliott C. Bucher, P-0. Box 169, Seaman,
Ohio 45679.

JUDGES

ABELE, Grey, Harsha

AUTHOR: ABELE

OPINION

DECISION AND JUDGMENT ENTRY

ABELE, J.:

This is an appeal from a judgment entered by the Adams County Court in a forcible entry and detainer action against Tammy Carr, defendant below and appellant herein, and in favor of Glenn Stacy, plaintiff below and appellee herein.

Appellant assigns the following errors:

FIRST ASSIGNMENT OF ERROR

"THE TRIAL COURT ERRED IN DENYING TENANT A JURY TRIAL ON LANDLORD'S FORCIBLE ENTRY AND DETAINER COMPLAINT."

SECOND ASSIGNMENT OF ERROR

'THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION TO DISMISS LANDLORD'S COMPLAINT.'

A review of the record reveals the following facts pertinent to this appeal. On June 14, 1991, appellee served appellant a notice to leave certain rental premises. Appellee alleged appellant failed to pay rent in accordance with their rental agreement. On July 1, 1991, appellee filed a forcible entry and detainer complaint seeking: (1) possession of the rental premises, (2) money damages for the unpaid rent, (3) money damages for damage to the premises, (4) court costs, and (5) attorney fees. The trial court scheduled a trial for July 8, 1990. The court stated that the possession of the rental premises would be the only issue the court would consider at the July 8, 1990 trial.

On July 5, 1991, appellant filed a jury demand requesting that a jury consider all the contested issues. Appellant also filed an affidavit of indigency. The trial court denied appellant's request for a jury trial. The trial court stated:

"The hearing that we are going to have today will be concerning the forcible entry detainer action only. * * * Anything concerning rentals or damages or whatever will be heard at a later date. Towards this end, this will not be heard to a jury. If the Court feels that it is necessary after hearing the evidence today concerning rentals or damages or whatever, that matter can, if the Court sees fit * * * be tried to a jury, but this matter concerning the forcible entry and detainer will not be heard to a jury, will be heard before the Court at this time."

On July 12, 1991, the court conducted a bench trial with respect to the forcible entry and detainer issue. On July 22, 1991, the trial court entered judgment in favor of appellee for possession of the premises. Although the court found appellant failed to pay rent and water expenses, the court ordered that "all other matters including the question of damages and rentals be assigned for trial." Appellant filed her notice of appeal on July 24, 1991. 11

Five days after appellant filed her notice of appeal, she filed an answer and counterclaim. The counterclaim requested money damages for appellee's alleged violations of various R.C. Chapter 5321 provisions. The record transmitted on appeal does not reveal whether the trial court has yet resolved the money damage claims the parties set forth in the complaint and the counterclaim.

On August 5, 1991, appellant withdrew her motion for a stay of execution of the trial court's judgment granting appellee possession of the premises. Appellant explained that because she had vacated the premises, the stay issue was moot.

Appellee contends that appellant's vacation of the premises also renders the entire appeal moot. We agree that as a general rule, a tenant's voluntary vacation of the premises renders a forcible entry and detainer action moot. See, *Allison v. Braunlin* (1961), 113 Ohio App. 511. In *Sandefur Management co. v. Minor* (April 18, 1985), Cuyahoga App. No. 84AP-220, unreported, the court listed three exceptions to the general rule:

'IAS a general proposition, an appeal from a judgment which has been voluntarily complied with by the appellant will be dismissed as moot. *Kelm v. Hess* (1983), 8 Ohio App. 3d 448. There are exceptions to the rule, however, for instance, where.. the appellant retains an ongoing interest in the subject on appeal, where there are other persons similarly situated who would benefit from the resolution of the issue on appeal, or where the question appealed is one of great public importance. See, e.g., *Harshaw v. Farrell* (1977), 55 Ohio App. 2d 246.'

In her reply memorandum, appellant asserts: (1) she retains an ongoing interest in the litigation, (2) there are other persons similarly situated who would benefit from a resolution of the jury trial issue raised in this appeal,, and (3) the jury trial issue is one of great public importance.

We disagree with appellant's assertion that because the court has not yet resolved the -money order claim, appellant retains an ongoing interest in this appeal. Although the second assignment of error mentions the money order, this appeal does not involve any claim to the money order. The court only determined the issue of possession of the premises. The court below specifically reserved ruling upon all money claims until a later date.

We do, however, find that there are other persons who would benefit from a ruling on appellant's first assignment of error concerning the right to a jury trial in forcible entry and detainer actions. We similarly find that the jury trial issue is of great public importance. Accordingly, we decline to hold that the appeal in the case sub judice is moot. We will now proceed to discuss the merits of appellant's assignments of error.

I

Both appellant and appellee agree the trial court erred by

denying appellant a jury trial. R.C. 1923.10 grants litigants the right to a trial by jury in forcible entry and detainer actions:

If a jury is demanded by either party in an action under this chapter, until the impaneling of the jury, the proceedings shall be in all respects as in other cases. * * *

ⁱ Accordingly, based upon the foregoing reasons, appellant's first assignment of error is sustained.

II

Appellant asserts the trial court erred by overruling her motion to dismiss the complaint. Appellant notes appellee gave her the three day eviction notice on June 14, 1991, but retained a money order she labeled 'Ifor July rentI^f' and sent on July 1, 1991. Appellant argues appellee's retention of the money order constitutes an acceptance of the July rent and, therefore, constitutes a bar to this forcible entry and detainer action.

We agree with appellant that acceptance of a rental payment for future occupancy constitutes a bar to a forcible entry and detainer action. See, National Corporation for Housing v. Chapman (1984), 18 Ohio App. 3d 104; Graham v. Pavarini (1983), 9 Ohio App. 3d 89. The critical question in this appeal is whether by retaining the money order, appellee accepted the money order. nl

Appellant cites Pace v. Buck (1949), 86 Ohio App. 25 where the court held:

"We are of the opinion that where the landlord retains -a money order received from the tenant in payment of rent and the landlord fails to notify the tenant that the money order was not accepted in payment of rent, or that it was retained for evidentiary purposes, and fails to tender the money order to the tenant on or before the day of trial, the retention of the money order constitutes an acceptance in payment of the rent."

(emphasis added)

Appellant contends appellee failed to give notice that he would not accept the money order in payment of rent.

While we agree appellee failed to give appellant notice prior to trial, we find the trial in this case occurred only six days after appellee received the money order in the mail on July 2, 1991. At the beginning of the trial, appellees counsel gave the required notice to appellant:

(c) 1993, 1994 By The Michie Company, A Division of The Mead Corporati

For the Court

By: Peter B. Abele, Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 11, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.

DISPOSITION

JUDGMENT REVERSED

DISSENT

Harsha, J., Concurring in Part and Dissenting in Part:

I concur with the implicit conclusion of the majority opinion that under Cuyahoga Metro Hous. Auth. in Jackson (1981), 67 Ohio St. 2d 129, we are presented with a final appealable order. I further agree with the resolution of the second assignment of error. However, in light of appellant's failure to seek a stay of the trial court's order, I would dismiss the first assignment of error as being moot. *

OPINION FOOTNOTES

nl We need not address the question of whether the money order was for past or future rent. We leave that question for the trial court's consideration on remand.