

IN THE COURT OF APPEALS OF WOOD COUNTY

Bowling Green Manor
Limited Partnership

Court of Appeals No. 94WD125

FILED

Trial Court No. 94CVG01059

Appellee **WOOD COUNTY, OHIO**
COURT OF APPEALS

v.

JAN 12 1995

Debbie Kirk

DECISION AND JUDGMENT ENTRY

Appellant *Debbie E. Kirk* Decided: **JAN 12 1995**

* * * * *

This matter is before the court on appellant's motion to modify the terms of a supersedeas bond set by the Bowling Green Municipal Court and to stay execution of a writ of restitution.

Appellant, Debbie Kirk, is the defendant in the forcible entry and detainer action which is the subject of this appeal. On December 16, 1994, a referee filed his or her report and recommendations. On that same date, an acting judge entered a judgment of eviction.

On December 21, 1994, appellant filed a notice of appeal from that judgment. With her notice of appeal, appellant filed an affidavit of indigency in which she attested to the fact that the sole source of income for her family of three is \$600 per month in child support payments.

Appellant also filed, in the trial court, a motion for a use and occupancy bond and stay of execution of judgment during the pendency of this appeal. On December 23, 1994, the municipal court overruled appellant's motion for a use and occupancy bond. The lower court adopted the report and recommendations of the

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referee but stayed execution of judgment only until December 30, 1994. It ordered appellant to post a \$3,000 cash bond by four o'clock P.M. on that date. Absent the posting of said bond, the stay expired.

Appellant now asks this court to modify the supersedeas bond by conditioning any stay on her continued payment of her monthly rent. Appellant argues that she is indigent and cannot afford a supersedeas bond in the amount of \$3,000 and, therefore, the trial court's order violates her right to due process and equal protection under the law.

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

"Application for a stay of judgment or order of a trial court pending appeal, or for the determination of the amount of and the approval of a supersedeas bond must ordinarily be made in the first instance in the trial court. A motion for such relief or an order suspending, modifying, restoring or granting an injunction during the pendency of an appeal may be made to the court of appeals or to a judge thereof, but, except in cases of injunction pending appeal, the motion shall show that application to the trial court is not practicable, or that the court has by journal entry, denied an application or failed to afford the relief which the applicant requested."

App.R. 7(A) requires the movant to show the reasons for the relief requested and the facts relied upon. If the facts are subject to dispute, the motion must be accompanied by affidavits or other sworn statements. In addition, under App.R. 7(A), relevant parts of the record which are reasonably available must be filed with the motion for a stay or other relief.

In this case, appellant provided this court with a copy of the trial court's order which overruled her motion for a 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 objections to the referee's report and recommendation wherein appellant argued 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. Home S. & L. Co. (1989), 63 Ohio App.3d 751, 752. In reaching this conclusion, we are well aware of the fact that we recently found no abuse of discretion on the part of the same court in a case similar to this one. See Bowling Green Manor v. LaChance (Dec. 7, 1994), Wood App.No. 94WD117, 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.

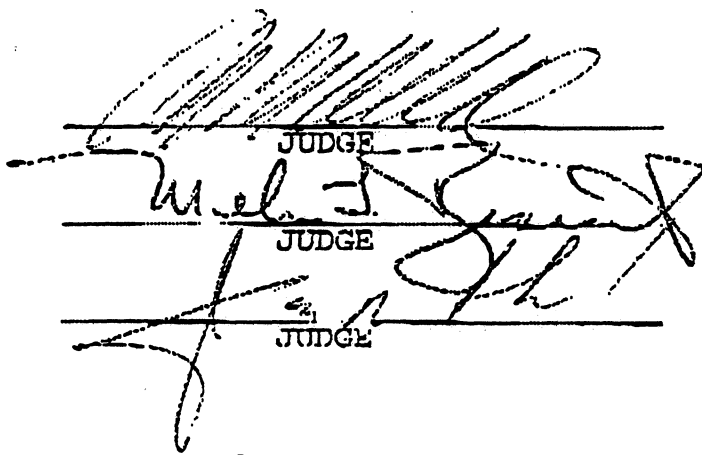
Accordingly, it is hereby ordered that appellant is granted a stay of execution on the judgment for possession of the premises until January 30, 1995. If appellant posts a bond in the amount of two months rent and costs by that date, the stay shall remain in effect during the pendency of this appeal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

will be conditioned only on her compliance with the terms of the lease¹.

Charles D. Abood, P.J.

Melvin L. Resnick, J.

James R. Sherck, J.
CONCUR.



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JUDGE

¹In the event that appellee has already taken possession of the leased premises, we direct the parties' attention to R.C. 1923.14. Pursuant to R.C. 1923.14, a writ of restitution shall be executed by a sheriff, police officer, constable or bailiff within ten days after its receipt. If a notice of appeal is filed from a judgment of restitution and the defendant-appellant obtains a stay of proceedings and files any required bond with the ruling court, the judge must issue an order staying execution of the writ. If the premises have already been restored to the plaintiff-appellee, the sheriff, police officer, constable or bailiff must forthwith place the defendant in possession of them. Id.