

COURT OF APPEALS
FOURTH APPELLATE DISTRICT
SCIOTO COUNTY

FOREST CITY MANAGEMENT INC
DBA BUCKEYE TOWERS

APPELLEE

VS

GAYLE LAUDERBACK

APPELLANT

CASE NO. CA 1972

ENTRY

SCIOTO COUNTY
OHIO
FILED
MAR 15 2 07 PM '91

CLERK OF COURTS

Upon consideration of the motion of the appellant for a reduction of the supersedeas bond set by the trial court the court finds said motion to be well taken.

It is therefore ordered that the writ of restitution ordered by the trial court be stayed upon the payment of all rent now due and the payment of all future rent as it comes due. The stay is further conditioned upon the appellant refraining from conduct which violates the lease or disturbing other tenants and any future occurrence of such conduct will terminate this stay.

Grey, J. Concurs

Abele, J. Concurs

Harsha, J. Not participating

Earl E. Stephenson

Earl E. Stephenson
Presiding Judge

IN THE COURT OF APPEALS, SCIOTO COUNTY, OHIO
FOURTH APPELLATE DISTRICT

SCIOTO COUNTY
OHIO
FILED

91 MAR -8 AM 11:01

FOREST CITY MANAGEMENT, INC.
dba BUCKEYE TOWERS,

Plaintiff-Appellee
vs.

Case No. 91-CA-1972 OF COURTS

GAYLE LAUDERBACK,

Defendant-Appellant

MOTION TO MODIFY TERMS
OF SUPERSEDEAS BOND
AND TO STAY EXECUTION OF
THE WRIT OF RESTITUTION

Now comes the Defendant-Appellant, Gayle Lauderback, by and through counsel, pursuant to Rule 7 of the Ohio Rules of Appellate Procedure, to modify the terms of the supersedeas bond and to stay execution of the writ of restitution which was ordered by the Portsmouth Municipal Court. On Thursday, March 7, 1991, as reflected in the attached entry, the Portsmouth Municipal Court ordered Appellant to post bond in the amount of Two Thousand Dollars (\$2,000.00), in order to avoid being dispossessed on Friday, March 8, 1991. The grounds for this motion are that the bond ordered by the trial court is unreasonable, punitive and deprives Appellant of her right to equal protection and due process of law.

Exigent circumstances exist to justify this motion being heard by a single appellate judge, as stated in Appellate Rule 7, in that appellant is to be dispossessed on Friday, March 8, 1991, unless the stay is granted. These circumstances also exist to justify the Court's hearing this motion ex parte if the attendance of counsel for appellee cannot be arranged.

Counsel for appellant notified counsel for Appellee's office of this filing and that a modification of the supersedeas bond would be sought. This notification occurred by telephone on March 7, 1991.

MEMORANDUM

Appellant was the defendant in the eviction action which is the subject of this appeal, and Appellee sought to evict Appellant for grounds other than nonpayment of rent. Appellant duly sought a supersedeas bond in the first instance from the trial court pursuant to Civil Rule 62(B) and argued that the bond should be equivalent to the rent and should be paid on a monthly basis as the rent comes due. The trial court decided Two Thousand Dollars (\$2,000.00), should be deposited on or before March 8, 1991, notwithstanding Appellant's argument that for a person such as herself with low income, such a requirement would deprive her of any ability to effectively appeal the eviction, in violation of her right to due process of law and to equal protection of the laws.

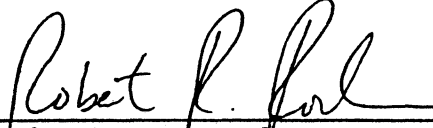
The purpose of a supersedeas bond is to ensure that the prevailing party at the trial level will not be injured by a stay of the judgment pending appeal. The purpose of the bond is not to punish the appellant for making the decision to pursue an appeal. Tuteur v. Enterprises, 21 Ohio App. 2d 122 (1970).

In the present case, Appellant is a seventy year old woman whose sole income is SSI benefits. Appellant is current in her rent through March, 1991. It is unreasonable and a violation of the equal protection clause to require an indigent person to deposit \$2,000.00, in order to avoid being evicted. That is, this order is discriminatory against the poor, heavily burdens the tenant's right of appeal, and only allows the affluent to obtain a stay of execution

pending appeal. Appellant submits to the Court that the purpose of the supersedeas bond would be fully satisfied by her paying her monthly rent as it becomes due, beginning on April 1, 1991.

Respectfully submitted:

**SOUTHEASTERN OHIO
LEGAL SERVICES PROGRAM**



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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Motion was served upon Jack Young, Attorney for Plaintiff-Appellee, 622 6th Street, Portsmouth, Ohio 45662 by hand delivering a copy to his office, this 8th day of March 1991.



Robert R. Romaker
Attorney for Defendant

