

IN THE COURT OF APPEALS OF WOOD COUNTY

FILED

Bowling Green Mayor ^{WOOD COUNTY, OHIO} COURT OF APPEALS Court of Appeals No. 94WD117

Appellee DEC - 7 1994 Trial Court No. 94-CV-G-912

v.

Rebecca E. Shan

Jodi and Marc LaChance

CLERK

DECISION AND JUDGMENT ENTRY

Appellants

Decided: DEC 07 1994

* * * * *

This matter is before the court on appellants' motion for a stay of execution of a judgment of eviction pending appeal. In addition, appellants request that this court allow them to post a supersedeas bond in the form of a use and occupancy bond during the pendency of this appeal.

On November 16, 1994, the Bowling Green Municipal Court entered a judgment of eviction against appellants and ordered a writ of restitution in favor of appellee. Moreover, the court stayed the execution of the judgment until November 24, 1994. Thereafter, appellants filed, in the trial court, a motion for a use and occupancy bond and a stay of execution of judgment pending appeal. The trial court denied the motion. Appellants then filed a subsequent motion for a use and occupancy bond and stay of execution of judgment. On November 29, 1994, the trial court denied the motion but ruled in pertinent part as follows:

"1. The motion is overruled.

"2. The appeal bond is set at \$4,250 = supersedeas bond (R.C. 2505.09).

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"3. The stay of execution (to 11-24-94) set out in the prior order (of 11-17-94) is now expired.

"4. The conditions of the above bond shall be as set out in R.C. 2505.14, and that bond shall be payable to the plaintiff (as appellee) and is subject to other conditions that the court may set, per R.C. 2505.14."

Appellants now ask this court to grant a stay of execution of judgment and reduce the bond to a use and occupancy bond by which they would be required to make their monthly rent payments to appellee during the pendency of this appeal. Appellants contend that they cannot afford to post the \$4,250 bond.

This court has previously stated: "App.R. 7(B) provides that the granting of a stay may be conditioned upon the filing of a bond or other security. Determining the need for the bond and its amount are discretionary matters which will not be overturned by the appellate court absent a showing of an abuse of discretion." Bibb v. Home S. & L. Co. (1989), 63 Ohio App.3d 751, 752. It is apparent from the judgment quoted above that, while the lower court denied the motion for a stay of execution, the court did set a supersedeas bond. Upon review, we cannot say that the bond amount set by the trial court amounted to an abuse of discretion. The trial court derived the bond amount by multiplying appellants' monthly rent by ten. However, we do find that setting a bond without granting a stay does amount to an abuse of discretion.

Accordingly, we find the motion for a stay of execution of the judgment of eviction to be well-taken. The stay is hereby granted upon the performance of the following conditions. Appellants are ordered to post a supersedeas bond payable to appellee in the amount of \$4,250 by December 30, 1994. Upon the posting of the aforesaid bond in the trial court, execution of judgment in case No. 94-CVG-912 is ordered to be stayed until our decision in case No. 94-WD-117 is rendered. A temporary stay is hereby ordered to be in effect until December 30, 1994.

Peter M. Handwork, J.

George M. Glasser, J.

Melvin L. Resnick, J.
CONCUR.

Peter M. Handwork
JUDGE

George M. Glasser
JUDGE

Melvin L. Resnick
JUDGE