

**HAMILTON COUNTY MUNICIPAL COURT
HAMILTON COUNTY, OHIO**



CINCINNATI METROPOLITAN
HOUSING AUTHORITY

Plaintiff,

vs.

CONSTANCE FOSTER

Defendant.

: CASE NO. 97CV06298
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: JUDGE ELIZABETH MATTINGLY
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DECISION

This matter came on for hearing on Plaintiff Cincinnati Metropolitan Housing Authority's (hereinafter "CMHA") Complaint for Forcible Entry and Detainer and for back rent due from Defendant. Defendant Foster defends this action for eviction by asserting that the terms of the lease herein do not permit eviction except for serious or repeated violations of the material terms of the lease which are not present here. Defendant Foster asserts that equity requires that the Court dismiss Plaintiff CMHA's Complaint.

Defendant Constance Foster has lived in federally assisted housing for the past seventeen years. About seven and one-half years ago, Defendant agreed to act as guardian for her seven great-nieces and nephews whose mother was unable to care for them due to a drug addiction problem. The children were listed on Defendant's lease as members of her family. The oldest of these children, Mareco Graves, was seventeen

when, on December 7, 1996, he was arrested for aggravated trafficking in cocaine on CMHA property. Specifically, Officer Fox testified that he personally observed Mareco Graves sell 1 gram of crack cocaine to an undercover police officer. The substance was field tested at the scene and was positive for crack cocaine and laboratory analysis was that it was crack cocaine as well.

Pursuant to Paragraph L of Defendant's lease, Defendant agreed:

To assure that he, any members of his household, a guest, or another person under Tenant's control, shall not engage in any criminal activity that threatens the health, safety, or the right to peaceful enjoyment of the public housing premises by other tenants, or employees of CMHA, or any drug related criminal activity on or near such premises. Any criminal activity in violation of the preceding sentence shall be cause for termination of tenancy, and for eviction from the dwelling unit. The term drug related criminal activity means the illegal manufacture, sale, distribution, use, or possession with intent to manufacture, sell, distribute, or use, of a controlled substance...

In this instance, the Court finds that Defendant Constance Foster had neither knowledge nor reason to know that her great nephew, Mareco Graves, was engaging in drug trafficking. There was no evidence that she herself had any criminal history of any sort nor that she profited in any way from the drug dealing of her great nephew. Officer Fox testified that he had no previous knowledge himself of prior illegal acts committed by Mr. Graves. Further, he had no knowledge of any illegal activity committed by Mr. Graves after December 7, 1996.

When Mr. Graves was arrested, the evidence is undisputed that Ms. Foster was playing piano at a church service outside CMHA property and had instructed Mareco Graves, as the eldest of the children, to remain in her home in charge of the

younger children, until her adult daughter returned to the residence to stay with them. Mr. Graves disobeyed Ms. Foster's orders in this regard. The drug transaction that the Court finds Mr. Graves participated in did not occur at the residence at issue nor even on the same street, although it was within the confines of CMHA property. Moreover, no evidence was presented at trial that Mareco Graves had engaged in past drug sales or been previously arrested for illegal drug activities. There were no prior searches of the premises in question to discover illicit drugs. Moreover, it is undisputed that following the arrest, when Mareco Graves sought to return to live with Ms. Foster, she refused to allow him to reside in her apartment.

One of Ms. Foster's adult sons, Gene Howard, had previously been arrested for engaging in drug transactions on CMHA property. At the time of his arrest on March 24, 1996, he listed his address as 5440 Winneste Avenue. At that time, however, Mr. Howard was not listed as a resident of Ms. Foster's home. Nevertheless, Ms. Foster was given a three day notice of lease termination that was served upon her on April 18, 1996. (Pltf's Exh. D). What happened next is uncertain.

Mr. Freed, Property Manager of Findlater Gardens, in which Ms. Foster resides, indicated at hearing in this matter that he allowed Ms. Foster to continue residing there after Gene Howard was arrested on drug charges because Mr. Freed gave Defendant the benefit of the doubt. Handwritten notes on Plaintiff's Exh. D,

although not specifically mentioned at hearing state "Cleared-See 4/23/96 notes. Notarized Statement also provided."

Ms. Foster testified that Gene Howard was an adult at the time of his arrest on 3/24/96 and not living with her. What is clear is that the matter was resolved in a manner that canceled the termination of lease notice Defendant had received and Ms. Foster remained in her apartment at 5440 Winneste Avenue.

Federal regulations applicable herein provide in relevant part as follows with regard to eviction for criminal activity:

In deciding to evict for criminal activity, the PHA (public housing authority) shall have discretion to consider all the circumstances of the case, including the seriousness of the offense, the extent of participation by family members, and the effects that the eviction would have on family members not involved in the proscribed activity. In appropriate cases, the PHA may permit continued occupancy by remaining family members and may impose a condition that family members who engaged in the proscribed activity will not reside in the unit. 24 C.F.R. 966.4(5).

Mr. Freed testified that because the offense was the serious offense of trafficking and Defendant Foster had already been given the benefit of the doubt when CHMA allowed her to stay in her apartment following the arrest of Gene Howard some nine months earlier, other mitigating factors did not properly apply to this matter.

The Court finds that for this reason he did not consider in his decision the question of whether Ms. Foster had any knowledge of her nephew's illegal conduct nor the effect that the eviction would have on the six other nieces and nephews

residing with Ms. Foster, who might well be required to enter foster care should Ms. Foster be evicted from her large apartment at 5440 Winneste Avenue.

The Court specifically finds that Defendant Foster has been an asset to her community and has participated in positive activities to which enhance the quality of her neighborhood, including Boy Scouting and a community garden.

In assessing whether Defendant Foster should be evicted for the criminal activity of her teenage ward, the Court can properly consider equity. CMHA v. Harris, Case No. C-820540 & C-820541 (Hamilton Cty.Ct. App. June 15, 1983).

In dealing with forfeitures of residences in the similar area of drug activity, Courts generally have been extremely reluctant to order forfeiture of homes in situations where the owner of the property had no knowledge of the drug activity on their premises. See, for example, Sandra Guerra, Note, Family Values?: The Family as an Innocent Victim of Civil Drug Assets Forfeiture, 81 Cornell L. Rev. 343 (1996), p. 382-388. United States v. 12110 S.W. 92nd St., 821 F. Supp. 666, 670 (S.D. Fla. 1993); United States v. 750 E. Shore Dr., 800 F. Supp. 547, 550 (E.D. Mich., 1992); United States v. 121 Nostrand Avenue, 760 F. Supp. 1015, 1033 (E.D. N.Y. 1991).

The Court believes that equity requires here that CMHA may impose the condition that Mareco Graves cannot reside with Defendant Foster at 5440 Winneste Avenue. However, the Court declines to evict Defendant Foster.

The Court further finds for CMHA on its Second Cause of Action for past rent due of \$2,185.00 plus \$207.00 in excess utilities and \$84.50 in maintenance

charges for a total award of \$2,476.50, Defendant to be credited with \$1686.00 already paid into the Court, for a balance due and owing by Defendant to Plaintiff CMHA of \$790.50. Plaintiff CMHA is hereby ordered to prepare an entry reflecting the court's decision herein and present it to the Court within 14 days of the decision.

SO ORDERED, this 18th day of November, 1997.



JUDGE ELIZABETH MATTINGLY

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