

IN THE MUNICIPAL COURT OF STEUBENVILLE, OHIO

HERITAGE PLACE APARTMENTS )

PLAINTIFF )

-vs- )

CHRISTY ELY )

DEFENDANT )

MAGISTRATE'S DECISION

CASE NO: 08 CVG 791

MAGISTRATE ADRIAN V. HERSHEY

JUDGE G. DANIEL SPAHN

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MUNICIPAL COURT  
STEUBENVILLE OHIO

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This matter came on for hearing before the Magistrate on Friday, August 22, 2008.

Plaintiff appeared represented by Attorney Costa D. Mastros and the Defendant appeared represented by Attorney Natasha A. Plumly. At the commencement of the proceedings, the parties stipulated the following facts:

1. Defendant, Christy Ely, resides at Heritage Place Apartments, which is funded through the Department of Housing and Urban Development Section 8 Program. There were no allegations that prior to April of 2008 that the Defendant was in arrears for rent or was an otherwise bad tenant, There appeared to have been no complaints about her.

2. The Defendant was in a dating relationship with John H. Carter, Jr. It does not appear that Mr. Carter co-occupied the premises in question, but the Defendant agrees that she and John H. Carter, Jr. saw each other on a daily basis.

3. On April 12, 2008, the Defendant permitted John H. Carter, Jr. to baby-sit her child, Skylar Ely. John H. Carter, Jr. placed the child into scalding water and caused the child to suffer severe burns.

4. John H. Carter, Jr. was indicted for child endangerment, a felony, and subsequently entered a plea of guilty to the charge. He received a sentence of four (4) years in

prison. The Defendant, Christy Ely, was charged with falsification for lying to investigative officers and she served ten (10) days in jail, paid a fine and received one (1) year of probation from the Steubenville Municipal Court.

5. The parties have stipulated that Christy Ely was not on the premises when the child was injured and there are no allegations that she instigated the violence, participated in the violence or in any manner approved of the actions of John H. Carter, Jr.

6. The Plaintiff is now seeking to evict the Defendant from the apartment upon the grounds that she has breached her lease in the following manners:

(A) The tenant engaged in or permitted unlawful activities in the unit, in the common areas or on the project grounds in violation of 13C of the Lease Agreement;

(B) The tenant or a member of the household, a guest or another person under the tenant's control allowed criminal activity on the premises that threatened the health, safety or right to peaceful enjoyment by the residents in violation of 23(C)6(A) of the Lease Agreement;

(C) The tenant, member of the tenant's household or guest or another person under the tenant's control has engaged in criminal activity, regardless of whether the tenant, any member of the tenant's household, a guest of another personal under the tenant's control, has been arrested or convicted for such activity in violation of 23(C) 10 of the Lease Agreement.

7. The defense argues that this is an act of domestic violence and under Federal Statutes, the Defendant or a member of her family must be considered victims and therefore, cannot be evicted under the clauses mentioned above.

8. It is the Decision of the Magistrate that the Defendant did not violate the Lease under subsection (A) by engaging in or permitting unlawful activities in the unit, in common areas or on the project grounds in violation of the Lease Agreement. The act of violence to her

minor child occurred when she was not on the premises and there is no evidence that she condoned it, approved it, instigated it or in any manner participated in the crime.

9. It is the Decision of the Magistrate that subsection (B) also does not apply. Since the tenant did not have control over John H. Carter, Jr., she cannot be said to have allowed criminal activities on the premises. Furthermore, it is difficult to understand how an act of violence towards an infant can be construed as threatening the health, safety or right of peaceful enjoyment by other residents of the building. This would be different if Mr. Carter was attacking other tenants, engaging in drug activities, having loud and raucous parties, etc. The crime in this case was directed solely towards the minor child and it must be emphasized that Defendant had no control over the activities of John H. Carter, Jr. There was no evidence of any prior acts of domestic violence or that the Defendant had any knowledge of any violent tendencies of John H. Carter, Jr.

10. It is the Decision of the Magistrate that subsection (C) also does not have any applicability. There was no evidence that the Defendant, a member of her household or a guest or another person under the tenant's control had engaged in criminal activity within the meaning of the Statute. The Court is not convinced that Defendant had any control over the actions of John H. Carter, Jr. and it is apparent his acts were without precedent.

11. Under the circumstances, it is the Decision of the Magistrate that the Plaintiff has not sustained its burden of proof. The Defendant has not permitted or engaged in criminal activity on the premises and it is unfair to charge her with control or knowledge of the activities of John H. Carter, Jr. under the circumstances of this case.

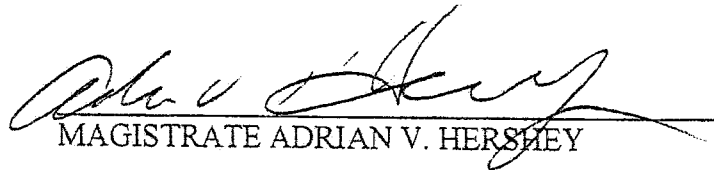
12. The Plaintiff argues that endangering children is not the crime of domestic violence and that this differentiates the statutory law cited by defense counsel. However, it is the

Decision of the Magistrate that the differences are inconsequential and each crime describes an act of violence against a household member in this case. Endangering children under the facts of this case is merely a more serious type of domestic violence and falls under the Federal definitions.

13. It is the finding of the Magistrate, therefore, that the Plaintiff has failed to sustain its burden of proof and the Complaint for Forcible Entry and Detainer must be dismissed at the Plaintiffs cost.

Any Objections to the proposed Decision of the Magistrate must be filed in writing with this Court within fourteen (14) days after the filing date of the Magistrate's Decision. Any such Objections must be served upon all parties to this action, a copy must be provided to the Steubenville Municipal Court. If either party files a pro se Objection without a Certificate of Service, the Clerk of Courts shall provide a copy of the Objection by regular mail to the opposing party. If no Objections are filed, counsel for the Plaintiff shall file a judgment journal entry consistent with this recommendation.

DATE: \_\_\_\_\_

  
MAGISTRATE ADRIAN V. HERSHEY