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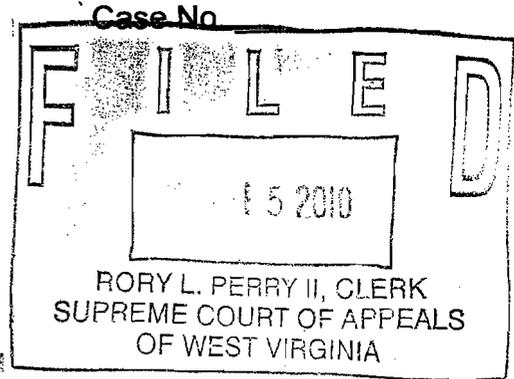
IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State of West Virginia ex rel.
RHONDA BAY,

Petitioner,

vs.

BRENDA K. MARSHALL,
Magistrate of Wood County; and
RACHEL FERGUSON,
Magistrate of Wood County; and
PAULINA YEARAGO,
Clerk of the Magistrate Court
of Wood County; and
ALFRED PRYOR,



Respondents.

PETITION FOR WRITS OF MANDAMUS AND PROHIBITION

I. INTRODUCTION

1. Rhonda Bay brings this Petition to compel the Magistrate Court of Wood County to file her appeal to Circuit Court (1) without requirement of posting bond, and (2) without denial of "automatic stay" provided by WV Code 50-5-12(a).

2. Rhonda Bay's landlord filed an Unlawful Detainer action against her in the Wood County Magistrate Court in September 2010. Ms. Bay filed an Answer denying the Complaint, and was told that she would be notified of the hearing date. Although the court did mail a Notice of Hearing to Ms. Bay, it was returned undelivered and placed in the court file. The Magistrate Court nevertheless conducted the scheduled hearing on October 6, 2010, in the absence of Ms. Bay, and awarded "immediate possession" plus monetary judgment of \$387.22 and costs in favor of the landlord.

3. After learning of the judgment Ms. Bay tried to file an appeal at the

Magistrate Court. Ms. Bay was told mistakenly that (1) although the Financial Affidavit under WV Code § 59-2-1 would waive the Circuit Court filing fee, Ms. Bay would be required to post a bond equal to the amount of judgment; and (2) that the filing of an appeal would not would not stay the possession order of the Magistrate Court.

4. Petitioner brings this matter to the Supreme Court of Appeals because these particular errors arise on a recurring basis in the magistrate courts across the State of West Virginia, and are not limited to the magistrate court of Wood County. Petitioner believes that it is appropriate for this Court to address the issues for the benefit of this litigant and all the magistrate courts of this State.

II. STATEMENT OF FACTS

a) Facts Regarding the Underlying Landlord/Tenant Dispute

5. In or about June 2010 petitioner Rhonda Bay entered into a verbal month-to-month residential rental agreement with Albert Pryor, for occupancy of premises located at 1318 Dillaway Street, Parkersburg, Wood County, WV. The agreed terms of rental called for rent of \$695 per month, to include all utilities. Petitioner's rent has been paid in full for June, July, August and September, 2010.

6. In August a water pipe in the basement broke. The landlord shut off the water. The water company was notified, and came to the premises.

7. Upon information and belief, water company personnel who had been to the premises notified the City of Parkersburg of potential unsafe conditions within the premises. City inspectors thereafter visited the premises 5 times in less than two weeks, and issued numerous citations for violation of health and safety codes.

8. On September 7, 2010 the landlord filed an Unlawful Detainer against Ms. Bay in the Magistrate Court of Wood County. See Exhibit A. Ms. Bay filed an Answer

denying the complaint, and was told she would be notified by mail of a hearing date.

b) Facts Regarding Magistrate Court Proceedings

9. Upon information and belief, the Magistrate Court Clerk's Office mailed out a Notice of Hearing to both landlord and tenant. However, the Notice sent to Ms. Bay was returned to the court by the Post Office as undeliverable.

10. Upon information and belief, the Magistrate Court on October 6, 2010 conducted a hearing on the Unlawful Detainer action, despite the fact that Ms. Bay had not received notice of the hearing and was not present. The Magistrate Court awarded judgement in favor of the landlord for "immediate possession" plus damages of \$387.22 (although no damages had been claimed in the complaint). See Exhibit B.

11. After the hearing the landlord came to the premises and gave Ms. Bay a copy of the Magistrate Court judgment, demanding that she vacate immediately. Ms. Bay then called the Magistrate Court. She was told she could come in to fill out paperwork for an appeal, and was also referred to the local Legal Aid office.

12. Ms. Bay then went to the Magistrate Court to file an appeal. She was given a "Financial Affidavit" form under WV Code § 59-2-1, and told that the Affidavit would waive the normal circuit court filing fee. However, Ms. Bay was instructed that she would have to post a bond for the judgment plus the court costs. When Ms. Bay stated she couldn't afford to post a bond, she was told to contact a bail bondsman.

13. Ms. Bay then asked whether, if she filed an appeal, could she "get back in" to possession of the rental premises. She was told "No," and informed that she could "appeal the money" but "could not appeal the eviction." She was not informed that any appeal would automatically stay the order of possession pursuant to WV Code § 50-5-12(a). She was again referred to the local Legal Aid office.

c) Facts Regarding Possession of Premises

14. After being unable to file her appeal, Ms. Bay returned to the rental premises and began packing her possessions to depart the premises.

15. While Ms. Bay was packing to leave, the landlord came to the premises. He caused sufficient disruption that, upon information and belief, neighbors called 9-1-1 and the police arrived. The police required the landlord to depart the scene, and also required Ms. Bay to vacate the premises without being able to remove all her possessions. Since that time Ms. Bay has not occupied the premises.

III. CLAIMS FOR RELIEF

16. The Magistrate Court had no authority to require posting of a bond if a Financial Affidavit pursuant to WV Code § 59-2-1 were filed and approved. West Virginia Code § 50-5-12(a) states that “[n]o bond shall be required ... of a person who has been permitted to proceed without prepayment in accordance with the provisions of” WV Code § 59-2-1.

17. The Magistrate Court had no authority to fail or refuse to grant an automatic stay of the judgment of possession, as required by WV Code § 50-5-12(a).

18. The actions of the Magistrate Court in mistakenly imposing erroneous conditions and limitations upon the availability of appeal were beyond the authority and jurisdiction of the Magistrate Court.

19. The actions of the Magistrate court are a clear error as a matter of law.

20. The actions of this Magistrate Court are not unusual in the magistrate courts of this state, and are encountered throughout the state in persistent disregard of procedural law.

21. If petitioner is prevented by the magistrate court from filing an appeal, she

will have no other adequate means to obtain relief.

IV. PRAYER

WHEREFORE, petitioner Rhonda Bay asks this Court:

- A. To issue immediate temporary relief, directing the Magistrate Court and Magistrate Clerk of Wood County to permit petitioner to file her appeal within the statutory appeal deadline of 20 days, without posting of bond or limitation of issues;
- B. To issue a Writ of Mandamus directed to the Magistrate Court of Wood County and the Magistrate Clerk of Wood County, mandating those officers to file the appeal petition of Ms. Rhonda Bay;
- C. To issue a Writ of Prohibition directed to the Magistrate Court of Wood County, prohibiting those officers from improperly limiting the scope of issues which litigants could assert upon appeal from that court; and
- D. For such other and further relief as this Court may deem just and appropriate.

RHONDA BAY,
Petitioner,
By counsel.



Bruce Perrone (WVSB 2865)
Legal Aid of West Virginia
Counsel for
922 Quarrier Street, 4th Floor
Charleston, WV 25301
343-4481 ext 27

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

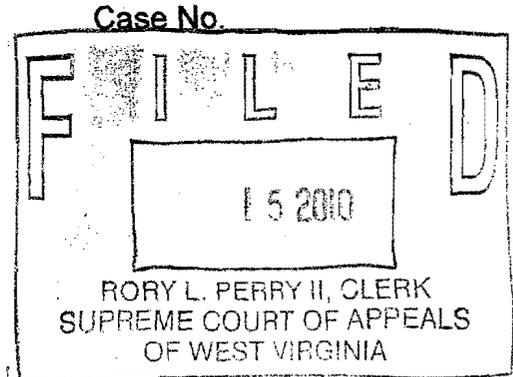
State of West Virginia ex rel.
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BRENDA K. MARSHALL,
Magistrate of Wood County; and
RACHEL FERGUSON,
Magistrate of Wood County; and
PAULINA YEARAGO,
Clerk of the Magistrate Court
of Wood County;

Respondents.



MEMORANDUM OF LAW
IN SUPPORT OF PETITION FOR WRITS OF
MANDAMUS AND PROHIBITION

1. ARGUMENT

1. Standard for Issuance of Extraordinary Writ Relief

This Court's standard for issuing a writ of prohibition was well-established when the Court held that "the writ lies as a matter of right whenever the inferior court (a) has not jurisdiction or (b) has jurisdiction but exceeds its legitimate powers and it matters not if the aggrieved party has some other remedy adequate or inadequate." State ex. rel. Valley Distributors, Inc., v. Oakley, 153 W.Va. 94, 99, 168 S.E.2d 532, 535 (1969).

In State ex. rel. Shepard v. Holland, 633 S.E.2d 255, (2006) the Court quoted syllabus point four of State ex rel. Hoover v. Berger, 199 W.Va. 12, 483 S.E.2d 12 (1996):

In determining whether to entertain and issue the writ of prohibition for cases not involving an absence of jurisdiction but only where it is claimed that the lower tribunal exceeded its legitimate powers, this Court will examine five factors: (1) whether the party seeking the writ has no other adequate means, such as direct appeal, to obtain the desired relief; (2) whether the petitioner will be damaged or prejudiced in a way that is not correctable on appeal; (3) whether the lower tribunal's order is clearly erroneous as a matter of law; (4) whether the lower tribunal's order is an oft repeated error or manifests persistent disregard for either procedural or substantive law; and (5) whether the lower tribunal's order raises new and important problems or issues of law of first impression. These factors are general guidelines that serve as a useful starting point for determining whether a discretionary writ of prohibition should issue. Although all five factors need not be satisfied, it is clear that the third factor, the existence of clear error as a matter of law, should be given substantial weight.

Syllabus point one of Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (1979), also provided the following guidance in the evaluation of a request for a writ of prohibition:

In determining whether to grant a rule to show cause in prohibition when a court is not acting in excess of its jurisdiction, this Court will look to the adequacy of other available remedies such as appeal and to the over-all economy of effort and money among litigants, lawyers and courts; however, this Court will use prohibition in this discretionary way to correct only substantial, clear-cut, legal errors plainly in contravention of a clear statutory, constitutional, or common law mandate which may be resolved independently of any disputed facts and only in cases where there is a high probability that the trial will be completely reversed if the error is not corrected in advance.

Syllabus Pt. 1, Hinkle v. Black, 164 W.Va. 112, 262 S.E.2d 744 (1979).

2. The Magistrate Court Has No Authority to Require Posting of Bond by an Appellant Who Files a Financial Affidavit of Inability to Pay Fees Under WV Code § 59-2-1

The right to file an appeal from a civil case originally heard in Magistrate Court is defined by WV Code § 50-5-12. That code provision requires that ordinarily, the appellant shall be required to post a bond for reasonable costs of appeal, not to exceed the sum of the judgment plus court costs. WV Code § 50-5-12(a). However, the

magistrate appeal statute is explicit in setting forth how that ordinary requirement is to be reconciled with the provisions of the more general fee waiver statute of Chapter 59 of the Code:

No bond shall be required ... of a person who has been permitted to proceed without prepayment in accordance with the provisions of section one, article two, chapter fifty-nine of this code.

West Virginia Code § 59-2-1.

Moreover, the provisions of W.Va. Code § 59-2-1 also are explicit that a person who is financially unable to pay the fees or costs "of any civil action or proceeding, or an appeal therein," is permitted to proceed without prepayment. W.Va. Code § 59-2-1(a).

In the present case the magistrates who interacted with Ms. Bay appear to have been unaware of this statutory directive. Magistrate staff did provide Ms. Bay with a Financial Affidavit to fill out, and apparently were prepared to accept that Affidavit to waive the circuit court filing fee normally required under WV Code § 50-5-12(a). Nonetheless, the magistrates believed that the fee waiver statute did not apply to the bond requirements, and insisted to Ms. Bay that she would have to post some form of bond.

Petitioner emphasizes that she does not believe the magistrates were acting in bad faith or ill will. The magistrates would not have repeatedly urged Ms. Bay to contact Legal Aid if they were attempting in some fashion to deliberately obstruct Ms. Bay's effort to appeal. That their mistaken understanding was held in good faith, however, does not change the fact that it is mistaken. The provisions of WV Code §

50-5-12(a) could not be more clear in this regard.¹

3. The Magistrate Court Has No Authority to Refuse to Grant the Automatic Stay Set Forth in WV Code § 50-5-12(a) upon Appeal of a Civil Case in Magistrate Court.

In this particular case, Ms. Bay asked if filing an appeal would allow her to remain in possession of the premises. She was told it would not, in direct violation of WV Code § 50-5-12(a), last sentence, which states that “the filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment.” The Magistrate Court Rules of Civil Procedure contain the same command: “Upon timely filing of an appeal or a motion to set aside the judgment, execution of the judgment shall be stayed until the appeal or motion has been decided.” Rule 18A, Rules of Civil Procedure for Magistrate Courts.

More specifically, Ms. Bay says she was told she “could appeal the money” but she “could not appeal the eviction.” This particular misunderstanding of law by magistrates is neither new nor unique to Wood County. See, e.g., “Memorandum Opinion and Order,” Sines, v. Hale, Civil Action 96-C-AP-155, Kanawha Circuit Court (Oct. 25, 1996), attached as Exhibit 2 (magistrate wrote “no appeal of possession” on judgment order; Circuit Court found the restriction to be beyond the jurisdiction and authority of the magistrate); *or, eleven years later, Daniels v. Halloran*, WV S.Ct. No.

¹ Undersigned counsel has experienced a variation of this error in other counties in West Virginia, under which the Magistrate Court will require the execution of a “Civil Appeal Bond” by the magistrate who issued the original judgment, but with a bond amount set at zero dollars, before the appeal will be filed. See Exhibit 1 attached, Civil Appeal Bond in Abdalla v. Daniels, magistrate Court of Kanawha County #07C-3369.. If that particular magistrate is off duty when the litigant seeks to file the appeal, needless delays and problems can result. This ‘bond-of-zero-dollars’ requirement also would appear to violate the command of WV Code § 50-5-12(a) that “no bond shall be required....”

072987 (2007) (magistrate wrote “No appeal of eviction appeal of dollar amt. only” on judgment; matter ultimately resolved without this Court addressing the merits).

In the two example cases cited above, the eviction cases were filed under the Wrongful Occupation statute, WV Code 55-3A-1 et.seq. Admittedly, the provision found at WV Code 55-3a-3(g) regarding possession of rental premises on appeal of a Wrongful Occupation case is poorly written and difficult to understand, and has led many a magistrate and judge to misunderstanding.² In Ms. Bay’s case, however, the underlying action was an Unlawful Detainer action pursuant to WV Code 55-3-1, jurisdiction of which is granted to magistrate courts by WV Code 50-2-1. Those statutory provisions have no language which could conceivably give rise to the misunderstanding held by the magistrate court in Ms. Bay’s case.

4. Conclusion

It is absolutely clear that the actions and instructions of the Magistrate Court of Wood County in this matter were erroneous. Section 50-5-12(a) is forthright in declaring that “no bond shall be required” of a person submitting a Financial Affidavit under WV Code § 59-2-1, and that the filing of an appeal “shall automatically stay further proceedings to enforce the judgment.”

Unfortunately, that clarity has not prevented a frequent misunderstanding among magistrate courts in this state regarding the handling of landlord/tenant residential rental

² West Virginia Code § 55-3A-3(g) states that on appeal a tenant cannot remain in possession if the tenancy has “otherwise expired,” unless there is an issue of title, retaliation, or breach of warranty. Many magistrates do not understand that “otherwise expired” refers to causes other than those asserted in the litigation and simply conclude that the tenant cannot remain in possession on appeal.

cases. These errors continue to arise throughout the state. While they can be addressed from time to time in the localities in which they arise, history has shown that the errors will recur even in those same localities. Petitioner therefore asks this Court to address the issues in this case, in order to provide direct guidance to the judicial system for the handling of appeals from magistrate court in landlord/tenant disputes.

RHONDA BAY,
Petitioner,
By Counsel.



Bruce Perrone (WVSB 2865)
Legal Aid of West Virginia
Counsel for
922 Quarrier Street, 4th Floor
Charleston, WV 25301
343-4481 ext 27

Tect Abdalla

Case No. 07C-3369

Plaintiff

Lloyd Daniels

Defendant

NOTICE OF APPEAL

The Plaintiff Defendant, as a matter of right, appeals final judgment to the circuit court.

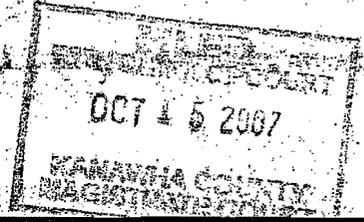
10/12/07

Date

Signature

[Handwritten Signature]

Counsel (if applicable)



CIVIL APPEAL BOND

The party wishing to exercise their right to appeal the judgment in this case rendered on

9/26/07 + 10/5/07

(date)

herewith commits the sum of \$

with security

in the form of

(description of security)

upon the condition that the person filing the

appeal (appellant) will satisfy the judgment and any court costs that may be rendered against the appellant

in the circuit court. This sum is not less than the reasonable court costs of the appeal nor more than the sum

of the judgment and the reasonable court costs of the appeal.

Upon satisfaction of any judgment and payment of any costs taxed in the circuit court against the appellant, this bond will be released; otherwise, as directed by the court, all or part of this bond will be forfeited and applied to any amounts due from the appellant for judgment or costs.

The undersigned appellant and/or other depositor(s) or surety, if any, understand(s) and agree(s) to the foregoing.

Signature of Appellant

Susana Walter

Signature(s) of Depositor(s) or Surety

922 Quarrier St, 4th floor

Charleston, WV 25301

Address

Address

Acknowledged before me.

[Handwritten Signature]

Date

[Handwritten Signature]

Magistrate

IN THE CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

F. ALFRED SINES, JR.

Plaintiff/Appellee,

vs.

Civil No. 96-C-AP-155

CURTIS HALE,

Defendant/Appellant.

FILED
96 OCT 25 PM 5:31
KATHY S. GIBBS
CLERK
CIRCUIT COURT

MEMORANDUM OPINION AND ORDER

This matter came upon the motion of Defendant/Appellant Curtis Hale for a stay of the order entered October 1, 1996 by the magistrate below, granting possession of rental premises on or before October 10, 1996 with the proviso "NO APPEAL OF POSSESSION." Defendant asserts that the magistrate has no lawful authority to restrict a party's right to appeal, and asks that this Court invalidate that portion of the magistrate's order on its face.

This Court on October 11, 1996 issued a temporary stay of proceedings pending further order, and set the matter down for hearing on October 21, 1996 at 11:45 a.m. Plaintiff F. Alfred Sines, Jr. was served by the Sheriff of Kanawha County with a copy of the October 11 order staying proceedings and setting the October 21 hearing. However, plaintiff Sines did not appear either in person or by counsel for the hearing on October 21, 1996. Defendant Hale did appear by counsel on that date.

Procedural History

Review of the pleadings below indicate that the plaintiff first filed this action on September 13, 1996, on a complaint of Wrongful Occupation of Residential Rental Property, pursuant to WV Code §55-3A-1 et. seq. The Complaint alleged that defendant "has no

contract of rental HUD certificate has expired 8.31.96; tenant refuses to vacate." Defendant filed an Answer September 24, 1996 alleging that "the reason why the HUD certificate was denied was 1) my gas was not connected; 2) landlord failed to paint kitchen and chipping paint in two other bedroom. My cross complaint is Ms. Sines made a verbal contract for me to paint and I paid her the rent money we could get HUD to reinspect [remainder illegible]."

Hearing was held on October 1, 1996, at which both parties appeared. The magistrate issued judgement in favor of the plaintiff on October 1, 1996 with the notation: "ON OR BEFORE OCT. 10, 1996 @ 12:00 NOON NO APPEAL OF POSS."

Defendant Curtis Hale filed a timely Notice of Appeal with the Circuit Clerk of Kanawha County on October 9, 1996.

On the same day Defendant filed a Motion to Stay Enforcement of Magistrate Court Order. That Motion alleged that Deputy Dick Bruner, of the Civil Process office of the Kanawha County Sheriff's Office, believed that because of the magistrate's notation of "NO APPEAL OF POSSESSION" then Bruner would be obligated to enforce a Writ of Possession regardless of his actual notice of defendant's Notice of Appeal.

Applicable Law

West Virginia Code §50-5-12(a), regarding appeals from magistrate court to circuit court, states that "The filing or granting of an appeal shall automatically stay further proceedings to enforce the judgment." [Emphasis added.]

Rule 18A of the West Virginia Rules of Civil Procedure for magistrate Courts provides "Upon timely filing of an appeal or

motion to set aside the judgment, execution of the judgment shall be stayed until the appeal or motion has been decided."

West Virginia Code §55-3A-3(g) addresses the relief which may be granted by an appellate court in a "Wrongful Occupation" case such as the instant action. It states:

(g) Absent an issue of title, retaliation, or breach of warranty, and in the event of an appeal wherein the tenant prevails, if the term of the lease has expired the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession. During the pendency of any such appeal no tenant shall be entitled to remain in possession of the leasehold if the period of the tenancy has otherwise expired.

WV Code §55-3A-3(g).

Discussion of Law

Both the statute (WV Code §50-5-12(a) adopted by the Legislature) and the Rule (Rule 18A of the Rules of Civil Procedure for Magistrate Courts adopted by the Supreme Court of Appeals) are clear that mere filing of an appeal is an automatic stay of the order issued by the magistrate. It is not necessary for an appellant to file a specific motion for stay and have a hearing by the circuit court. The stay of the magistrate court order which is appealed is both absolute and automatic. Neither the statute nor the Rule contains any exception, either for Wrongful Occupation cases or any other type of case.

The Wrongful Occupation statute, WV Code §55-3A-1 et. seq., does not contain any provision limiting the right of appeal from magistrate court to circuit court. There is no explicit statement whatsoever in the Wrongful Occupation statute which would authorize a magistrate to summarily eliminate a litigant's otherwise absolute

right to appeal and seek circuit review of the decision.

Moreover there is a specific sub-section of the Wrongful Occupation statute which addresses the relief which may be granted by an appellate court in a Wrongful Occupation case. See WV Code §55-3A-3(g). The only rational inference which can be drawn from this section is that the statute's drafters understood and intended that the right of appeal would continue to be available to all litigants. There is nothing in the express wording of sub-section 55-3A-3(g) which would support a grant of authority to a magistrate to summarily eliminate a litigant's otherwise absolute right to appeal and seek circuit review of the decision.

Sub-section 55-3A-3(g) contains two sentences. The first sentence restricts the relief which an appellate court may grant "if the term of the lease has expired." The second sentence states that a tenant may not remain in possession during the appeal "if the period of the tenancy has otherwise expired." Neither sentence restricts the right to appeal. There can be no question but that appeal is contemplated and authorized under the statute. There is nothing in the intended purpose of sub-section 55-3A-3(g) which would support a grant of authority to a magistrate to summarily eliminate a litigant's otherwise absolute right to appeal and seek circuit review of the decision.

Conclusion of Law

Therefore, the Court concludes as a matter of law that the notation "NO APPEAL OF POSSESSION" added by the magistrate to the Order of October 1, 1996 is beyond the jurisdiction and authority of the magistrate, and is totally unsupported by the law. It is

void on its face, and will not be enforced by this Court.

WHEREFORE, it is hereby ORDERED that all proceedings to enforce the Order issued October 1, 1996 in Sines v. Hale, Magistrate Court Case Number 96-C-5139, whether by issuance of a Writ of Possession or by enforcement by the sheriff of a Writ of Possession or by any other means, is stayed pending final resolution of this matter on appeal to this Court.

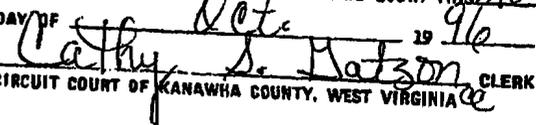
It is FURTHER ORDERED that the Circuit Clerk shall immediately send a certified copy of this Order to the plaintiff F. Alfred Sines, Jr; to the defendant's counsel listed below; to Deputy Dick Bruner of the Kanawha County Sheriff's Office of Civil Process; to the Clerk of the Magistrate Court; and to the magistrate issuing the judgment order below.

ENTERED: October 25, 1996


Honorable Tod J. Kaufman
Circuit Judge

Prepared and Presented By:


Bruce G. Perrone
Counsel for Defendant
Legal Aid Society of Charleston
922 Quarrier Street, 4th Floor
Charleston, WV 25301
343-4481

STATE OF WEST VIRGINIA
COUNTY OF KANAWHA, SS.
I, CATHY S. GATSON CLERK OF CIRCUIT COURT OF SAID COUNTY
AND IN SAID STATE DO HEREBY CERTIFY THAT THE FOREGOING
IS A TRUE COPY FROM THE RECORDS OF SAID COURT.
GIVEN UNDER MY HAND AND SEAL OF SAID COURT; THIS 28th
DAY OF Oct 19 96

Cathy S. Gatson CLERK
CIRCUIT COURT OF KANAWHA COUNTY, WEST VIRGINIA

IN THE SUPREME COURT OF APPEALS
OF WEST VIRGINIA

State of West Virginia ex rel.
RHONDA BAY,

Petitioner,

vs.

Case No. _____

BRENDA K. MARSHALL,
Magistrate of Wood County; and
RACHEL FERGUSON,
Magistrate of Wood County; and
PAULINA YEAREGO,
Clerk of the Magistrate Court
of Wood County; and
ALFRED PRYOR

Respondents.

MEMORANDUM OF PERSONS UPON WHOM
RULE TO SHOW CAUSE WOULD BE SERVED

Honorable Brenda K. Marshall
Magistrate of Wood County
208 Avery Street
Parkersburg, WV 26101

Honorable Rachel Ferguson
Magistrate of Wood County
208 Avery Street
Parkersburg, WV 26101

Paulina Yearego
Clerk of the Magistrate Court of Wood County
Magistrate of Wood County
208 Avery Street
Parkersburg, WV 26101

Name, Address & Phone Number of Plaintiff:

Albert Pryor
2667 Progress Ridge Rd
Walker WV 26180

Case No. 10-C-1561
(Marshall)

Name, Address & Phone Number of Defendant

Rhonda Marie Bay
1318 Dellaway St
Parkersburg WV 26104
ph: 304-494-2914

Kennith Bay
Vonda Bay
(304-494-8843)

--- fold here ---

Unlawful Detainer

--- fold here ---

CIVIL COMPLAINT

The above-named plaintiff or Albert Pryor, on behalf of the plaintiff acting in the capacity of _____, alleges the following as true and accurate (give a clear and simple statement of the claim against the defendant(s):

This lady has been put off where she has been staying. She ask if I would keep her until end of the 50 I said yes. Now she want more until and requests the following relief from the court: she get a eviction notice

This lady is abusing this to me. She has done it for others I would like to have a court order to have her move from my Resedent 1318 Dellaway St Parkersburg WV
Plus Court Cost

Albert Pryor
Signature

Sept 7 2010
Date

NOTICE: Any party in a civil action seeking over \$20.00 or possession of real estate has the right to elect that the case be tried by a jury. You must give written notice to the magistrate court either 20 days from when the first timely answer to the complaint is made or 5 days from when service of the summons and complaint is made for unlawful entry and detainer actions. If you do not notify the magistrate court within the appropriate time period, you give up your right to a jury trial. The jury fee will be assessed against the losing party if the case is tried by a jury or may be prorated between the parties if the case is settled before trial.

(OPTIONAL) NOTICE OF ELECTION:

As plaintiff in the above action, I wish to have a jury trial.

Signature

Date

NOTICE: Any person involved in court proceedings who has a disability and needs special accommodations should inform the court sufficiently in advance so that arrangements can be made if possible.

- Return
- Defendant
- File
- Plaintiff

IN THE MAGISTRATE COURT OF WOOD COUNTY, WEST VIRGINIA

Name and Address of Petitioner(s) or Petitioner's Attorney if applicable:

ALBERT PRYOR
2667 PROGRESS RIDGE RD
WALKER, WV 26180

v.

Case No. 10-C-1561 (MARSHALL)

Name and Address of Respondent(s) or Respondent's Attorney if applicable:

Rhonda Bay, Kenneth Bay, Vonda Bay
1318 DILLAWAY ST
PARKERSBURG, WV 26101

**ORDER OF POSSESSION/REMOVAL:
WRONGFUL OCCUPATION OF RESIDENTIAL RENTAL PROPERTY**

On the 6TH day of OCTOBER 2010, the above-named petitioner(s) as the (check one) owner

agent of the owner of residential rental property located at 1318 DILLAWAY ST

Street or Road Address

PARKERSBURG

WOOD

appeared on a petition for summary relief

City

County

Apt./Lot No.

for wrongful occupation of said residential rental property by the respondent(s).

After hearing the evidence in the case, judgment is rendered for the: (check one)

Respondent(s) to retain possession of the above-described residential rental property and for damages in the amount of \$ _____ plus costs in the amount of \$ _____ and interest from the date of judgment.

Petitioner(s) for possession of the above-described residential rental property and for arrearage in the payment of rent for said property for the months of _____ in the amount of \$ _____ plus damages in the amount of \$ 387.22 and costs in the amount of \$ 125.00 and interest from the date of judgment.

It is further ordered that the petitioner(s) be granted possession of the above-described residential rental property and that the respondent(s) shall vacate and remove himself or herself from the property no later than IMMEDIATE POSSESSION *(date and time)*

It is further ordered that if the respondent(s) remains on the premises or otherwise occupies the above-described property after Immediate Possession, the petitioner(s) shall notify the sheriff who shall forthwith remove the respondent(s) taking such precautions as necessary to guard against damage to the property of the petitioner(s) and the respondent(s) and shall return possession of the property to the petitioner(s) upon notice from the petitioner(s).

10/06/10

Date

Brenda Marshall

Magistrate Signature

NOTICE TO PETITIONER: It is your responsibility to notify the sheriff if his or her services are needed to remove the respondent when the respondent remains on or otherwise occupies the property past the date specified in this order.

VERIFICATION

STATE OF WEST VIRGINIA,
COUNTY OF WOOD, TO-WIT:

I, RHONDA BAY, Petitioner named in the foregoing *Petition for Writs of Mandamus and Prohibition*, being first duly sworn, say that the facts and allegations therein contained are true, except so far as they are therein stated to be on information and belief, and as to those, I believe them to be true.

Rhonda Bay
RHONDA BAY

Taken, subscribed and sworn to before me this 14th day of October, 2010.

Kathleen Y. Carpenter
NOTARY PUBLIC

My Commission Expires:

