IN THE SUPERIOR COURT OF THE STATE OF DELAWARE IN AND FOR NEW CASTLE COUNTY

KIM MCMANUS,)
Plaintiff,)
v.) C.A. No. N14A-04-001 FSS
JUSTICE OF THE PEACE COURT #13,))
Defendant.)))

CORRECTED ORDER

In this matter a tenant residing at the East Pointe Apartments seeks to appeal from a ruling of a three judge panel of the Justice of the Peace Court granting the landlord a writ of summary possession because the tenant was arrears in her rent. Alternatively the tenant asks this court to issue a writ of certiorari to the Justice of the Peace Court. Presently before this court is the tenant's emergency application for a stay the execution of the writ of possession pending resolution of the tenant's appeal and petition for a writ of certiorari. This matter was brought to the court's attention today, and Tenant faces eviction early this afternoon.

¹ Tenant also seeks leave to proceed *in forma pauperis*. That application is granted.

This case has today been initially assigned by the Prothonotary to another judge of this court. That judge is currently out of town and is unable to act on the emergency application for a stay. The undersigned judge agrees with the tenant that her application for a stay is an emergency matter. The undersigned, in his capacity as Civil Administrative Judge, will act in the place of the assigned judge on the application for the stay. All further proceedings in this matter will be addressed to the assigned judge.

1. According to the papers submitted by the Tenant, she was a resident at the East Pointe Apartments. Sometime in 2012 she began to fall behind in her rent payments and ultimately ended up owing more than \$4200 to her landlord. The Landlord filed an action for rent and a writ of possession in the Justice of the Peace court in January 2013. Tenant counterclaimed, alleging her apartment was infested by termites. The Justice of the Peace granted a writ of summary possession and also found the counterclaim lacked merit. Tenant apparently appealed and, on de novo appeal, a three judge panel of the Justice of the Peace Court dismissed the petition for the writ, finding the five day notice provision sent by Landlord was defective. The remaining rulings of the single Justice of the Peace were apparently undisturbed by the appellate panel.

2. In October 2013 Landlord filed a second action seeking a writ of possession, and the Tenant asserted the same counterclaim. The Justice of the Peace denied the writ of possession, this time because of a pleading error but dismissed the counterclaim on the basis of res judicata. A three Justice of the Peace appellate panel heard the matter de novo and, on March 12, 2014, also found Landlord's complaint was deficient. The panel also held that Tenant's counterclaim was barred by res judicata. Although the record provided by Tenant is not entirely clear, it appears that on March 27, 2014 the panel ordered a reduction in the back rent due from Tenant in order to account for a \$2400 payment. According to the panel's order, Tenant owed only \$142 in back rent plus per diem rent of \$27 from March 13, 2014.2 Given the small amount due the court wonders why the Landlord has continued to pursue eviction proceedings. In any event, yesterday Tenant was served with an eviction notice requiring her to vacate the apartment by 1:25 p.m. today.

The appeal

3. This court lacks jurisdiction to hear the appeal in this matter. When the General Assembly enacted the summary possession provisions in the Landlord-Tenant Code it did not provide for an appeal to this, or any

² The order recites that per diem rent was due from "March 13, 2013." The remainder of the order makes it clear that this is a typographical order and the per diem rate was to begin March 13, 2014.

other, court. Rather the Tenant's sole right of appeal was to a three judge panel of the Justice of the Peace Court. As the Delaware Supreme Court observed "[t]his Court has long held that no appeal may be taken to Superior Court in summary possession actions." Accordingly, insofar as this action constitutes an appeal from the ruling of the three judge panel, it is dismissed for lack of jurisdiction. It necessarily follows that this court lacks jurisdiction to issue a stay pending an appeal of the summary possession matter.

The writ of certiorari

4. This court has jurisdiction in a proper case to entertain petitions for a writ of certiorari where the Justice of the Peace Court has issued a writ of possession.⁵ In order to invoke this jurisdiction the petitioner must satisfy two threshold requirements: (1) the judgment must be final and (2) there is no other mechanism available to review that judgment.⁶ The court has no doubt as to the finality of the judgment here and, as discussed above, the Tenant has no right to appeal. Accordingly the instant petition satisfies these

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³ Capano Inv. V. Levenberg, 564 A.2d 139,1131 (Del. 1989)

⁴ 10 Del. C. sec. 8803(b)("Upon establishing the amount of **fees** and costs to be paid, the court shall review the complaint. Upon such review, the complaint **shall be dismissed** if the court finds the action is factually **f**rivolous, malicious or, upon a court's finding that the action is legally frivolous")(emphasis added)

⁵ Maddrey v. Justice of the Peace Court 12, 956 A.2d 1204 (Del. 2008)

⁶ In re Butler, 609 A.2d 1080, 81 (Del. 1992)

requirements and this court has jurisdiction to issue a writ of certiorari if the Tenant can make the necessary showing.

- 5. Inherent in this court's jurisdiction to issue writs of certiorari is the power to issue a stay of the judgment below. That power, however, must be used only in the sound exercise of discretion. In particular the court finds that only in very limited circumstances may it stay execution of a writ of summary possession. It is manifest from the statutory scheme creating summary possession proceedings that the scheme's purpose is to provide for a quick judicial determination of the right to occupy a property. General Assembly imposed short deadlines in these proceedings and, as noted above, provided for a limited right of appeal when it enacted these statutes. Indeed the very name--"summary proceedings"-- suggests the scheme's purpose. It goes without saying that a stay of execution of the writ by this court under the guise of considering the merits of a certiorari petition frustrates that purpose. The court will therefore only stay execution of a writ of summary possession upon a showing of (1) reasonable likelihood of success and (2) irreparable harm.⁷
- 6. The court finds that the Tenant has not shown she has a reasonable likelihood of success on the merits. In *Maddrey v. Justice of the Peace*

⁷ See State, Dept. of Transp. v. Keeler, 2010 WL 335920 (Del. Super.).

Court 12⁸--a case arising from the grant of a writ of possession--the Supreme Court summarized the issues this court may review on a petition for a writ of certiorari:

If the petition meets the threshold requirements for the writ of certiorari, the court must determine if the petition raises the type of claim reviewable on certiorari. The reviewing court does not consider the merits of the case. It considers only those issues historically considered at common law; namely, whether the lower tribunal (1) committed errors of law, (2) exceeded its jurisdiction, or (3) proceeded irregularly. Evaluating whether relief from the judgment below would be appropriate on each of these three issues, we explained in Christiana Town Center, LLC v. New Castle County, that "[a] decision will be reversed for an error of law committed by the lower tribunal when the record affirmatively shows that the lower tribunal has 'proceeded illegally or manifestly contrary to law." Reversal on jurisdictional grounds is appropriate "only if the record fails to show that the matter was within the lower tribunal's personal and subject matter jurisdiction." Reversal for irregularities of proceedings occurs "if the lower tribunal failed to create an adequate record for review."9

7. Even when read with the usual degree of latitude accorded to *pro* se litigants, Tenant's allegations here fall far short of showing any, much less a reasonable, likelihood of success on the merits. The only substantive allegations appear in Tenant's Notice of Appeal, which the court will treat as

⁸ 956 A.2d 1204 (Del. 2008)

⁹ *Id.* at 1211-12 (footnotes and citation omitted)

part of her petition for certiorari. In the Notice of Appeal Tenant alleges that

East Pointe acted in retaliation for her complaining of the infestation, that

Landlord "lied about receiving my request in writing," that Landlord

"misrepresented amounts owed in the 5 day letter" and "did not give

[Tenant] a reservation of rights letter for my last 3 payments." These

allegations do not show the Justice of the Peace Court acted without

jurisdiction nor do they show that it "proceeded illegally or manifestly

contrary to law." The court concludes, therefore, that Tenant has little or no

chance of success on the merits and a stay will not issue.

Wherefore, Tenant's application to proceed in forma pauperis is

GRANTED, her appeal is DISMISSED for lack of jurisdiction and her

motion for a stay is **DENIED.** Her petition for a writ of certiorari will be

REFERRED to the assigned judge.

John A. Parkins, Jr. Superior Court Judge

April 22, 2014

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