

COURT OF APPEALS
STARK COUNTY, OHIO
FIFTH APPELLATE DISTRICT

AKP PROPERTIES, LLC	:	JUDGES:
	:	Hon. John W. Wise, P.J.
	:	Hon. W. Scott Gwin, J.
Plaintiff-Appellee	:	Hon. Earle E. Wise, J.
	:	
-vs-	:	
	:	Case No. 2018CA00058
SHARONDA RUTLEDGE	:	
	:	
Defendant-Appellant	:	<u>OPINION</u>

CHARACTER OF PROCEEDING: Civil appeal from the Canton Municipal Court, Case No. 2018-CVG-2398

JUDGMENT: Dismissed

DATE OF JUDGMENT ENTRY: December 21, 2018

APPEARANCES:

For Plaintiff-Appellee

EUGENE CAZANTZES
101 Central Plaza S., Ste. 1000
Canton, OH 44702

For Defendant-Appellant

RYAN MAXWELL
401 Market Avenue N., Ste. 103
Canton, OH 44702

Gwin, J.,

{¶1} Appellant appeals the May 15, 2018 and May 16, 2018 judgment entries of the Canton Municipal Court.

{¶2} *Facts & Procedural History*

{¶3} Appellee AKP Properties, LLC filed a complaint in forcible entry and detainer against appellant Sharonda Rutledge on April 17, 2018 for non-payment of rent of the premises located at 1658 10th Street Northeast, in Canton, Ohio. The magistrate issued a report on April 30, 2018 finding: appellee owns the property at 1658 10th Street Northeast in Canton, Ohio; appellant failed to pay rent due on April 1, 2018; on April 9, 2018, appellant was served with a notice in writing as required by law for appellant to vacate the premises; appellant failed to vacate the premises; and appellant was served with summons as required by law. The magistrate ordered a writ of restitution. The trial judge approved and confirmed the magistrate's report on May 1, 2018. A set-out was scheduled for May 16, 2018.

{¶4} On May 14, 2018, appellant filed objections to the magistrate's decision allowing a writ of restitution, arguing the magistrate erred in finding a proper R.C. 1923.04 notice was served upon appellant. Also on May 14, 2018, appellant filed a motion to stay the set-out pending a decision on her objections to the magistrate's decision.

{¶5} The trial court issued a judgment entry on May 15, 2018. The trial court found R.C. 1923.04(A) was properly applied. The trial court overruled appellant's objections and motion to stay, and also approved and confirmed the magistrate's report.

{¶6} Appellant filed a motion for stay of execution pending appeal with the trial court on May 16, 2018. The trial court overruled the motion to stay on May 16, 2018.

{¶7} Also on May 16, 2018, appellant filed a motion to stay with this Court. We issued a judgment entry on May 16, 2018 and stated as follows:

Upon consideration, the motion is granted upon Appellant's posting of May's rent in the amount of \$505.00 with the municipal court clerk of courts by 2:00 p.m. May 16, 2018. Based upon what has been presented to this Court, we cannot determine if Appellant has paid all rent deficiency. Appellant must also pay all rent deficiency on or before May 31, 2018 for the stay to remain in effect. Finally, Appellant is required to deposit her monthly rent with the clerk of courts as it becomes due and payable during the pendency of the appeal. Upon her failure to pay the rent as ordered, Appellee may file notice with this Court indicating Appellant'[s] failure to comply with the terms of the stay. Upon Appellant's failure to meet the terms of the stay, Appellee may seek a new set out date from the municipal court.

{¶8} On June 6, 2018, appellee filed a notice of non-payment of rent, stating appellant failed to timely pay her rent for the month of June 2018. Appellee filed a notice of appellant's failure to comply with the terms of stay and request to lift stay on June 19, 2018. On July 5, 2018, this Court granted appellee's motion and vacated the stay. A set-out occurred on July 19, 2018 and appellant vacated the property.

{¶9} Appellant appeals the May 15, 2018 and May 16, 2018 judgment entries of the Canton Municipal Court and assigns the following as error:

{¶10} “I. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FINDING THAT THE LANGUAGE REQUIRED BY R.C. 1923.04 IS PROPERLY SET FORTH IN APPELLEE’S THREE-DAY NOTICE.

{¶11} “II. THE TRIAL COURT COMMITTED REVERSIBLE ERROR IN HOLDING APPELLEE’S THREE DAY NOTICE REQUIRED BY R.C. 1923.04 WAS SATISFACTORY WHEN THE LANGUAGE UTILIZED BY APPELLEE WAS NOT PRINTED OR WRITTEN IN A CONSPICUOUS MANNER.

{¶12} “III. THE TRIAL COURT COMMITTED REVERSIBLE ERROR BY FINDING THAT IT LACKED SUBJECT MATTER JURISDICTION TO ISSUE A DECISION ON APPELLANT’S MOTION TO STAY.”

Mootness

{¶13} Appellee filed a motion to dismiss and argues in their brief that this appeal is moot because appellant defaulted on her stay and vacated the property. Appellant concedes she vacated the property, but argues the case is not moot because the issue is capable of repetition, yet evading review and/or the issue is of great public importance or will benefit others who are similarly situated.

{¶14} A case is moot when it involves no actual, genuine controversy, the decision of which can definitely affect existing legal relations. *State ex rel. Cincinnati Enquirer v. Hunter*, 141 Ohio St.3d 419, 2014-Ohio-5457, 24 N.E.3d 1170. When a case becomes moot, dismissal of the case is appropriate because the case no longer presents a justiciable controversy. *Id.*

{¶15} The Ohio Supreme Court has stated that actions in forcible entry and detainer determine the right to immediate possession of the property “and nothing else.”

Seventh Urban, Inc. v. University Circle, 67 Ohio St.2d 19, 423 N.E.2d 1070 (1981). A forcible entry and detainer action is intended to serve as an expedited mechanism by which an aggrieved landlord may recover possession of real property. *Miele v. Ribovich*, 90 Ohio St.3d 439, 739 N.E.2d 333 (2000). Once a landlord has been restored to the property, the forcible entry and detainer action becomes moot because, having been restored to the premises, no further relief can be granted. *Hmeidan v. Muheisen*, 5th Dist. Stark No. 2017CA00069, 2017-Ohio-7670, citing *Miami Valley Housing v. Jackson*, 2nd Dist. Montgomery No. 25020, 2012-Ohio-5103.

{¶16} The only method by which a defendant appealing a judgment of forcible entry and detainer may prevent the cause from becoming moot is stated in R.C. 1923.14. *Id.* The statute provides a means by which the defendant may maintain, or even recover, possession of the disputed premises during the course of his or her appeal by filing a timely notice of appeal, seeking a stay of execution, and posting a supersedeas bond. *Id.* If the defendant fails to avail himself of this remedy, all issues relating to the action are rendered moot by his or her eviction from the premises. *Id.*

{¶17} Though appellant requested a stay of the trial court's order, appellant failed to comply with this Court's order granting the stay which required her to pay monthly rent. Thus, we vacated the stay and appellant vacated the property.

{¶18} Appellant contends the case is not moot because it is capable of repetition, yet evading review because the challenged action is too short in its duration to be fully litigated before its expiration and there is a reasonable expectation that the same complaining party will be subject to the same action again.

{¶19} A moot issue may be addressed if it is capable of repetition, yet evades review. *State ex rel. Plain Dealer Pub. Co. v. Barnes*, 38 Ohio St.3d 165, 527 N.E.2d 807 (1998). However, this exception only applies in exceptional circumstances in which the following two factors are present: (1) the challenged action is too short in its duration to be fully litigated before its cessation or expiration and (2) there is a reasonable expectation that the same complaining party will be subject to the same action again. *State ex rel. Calvary v. Upper Arlington*, 89 Ohio St.3d 229, 729 N.E.2d 1182 (2000). The procedures detailed in R.C. Chapter 1923 ensure that forcible entry and detainer actions move quickly. *Rithy Properties, Inc. v. Chesseman*, 10th Dist. Franklin No. 15AP-641, 2016-Ohio-1602. “However, R.C. 1923.14(A) stops, and even reverses, execution of a judgment of restitution so that a losing defendant may appeal that judgment.” *Id.* Appellant had the ability to suspend the execution of the judgment of restitution pursuant to R.C. 1923.14(A); thus, the forcible entry and detainer action is not too short in duration to be fully litigated through appeal. *Id.* Additionally, the record contains no indication that appellant will be subject to a forcible entry and detainer action again. Thus, we find the first exception to the mootness doctrine does not apply.

{¶20} Appellant also argues the issue is of great public importance or general interest. A moot issue may be addressed if there remains a constitutional issue to resolve or where the matter is one of great public or general interest. *Franchise Developers, Inc. v. Cincinnati*, 30 Ohio St.3d 28, 505 N.E.2d 966 (1987). This exception “should be used with caution and only on rare occasions.” *State ex rel. Lancaster School Dist. Support Assn. v. Lancaster City School Dist. Bd. of Edn.*, 10th Dist. Franklin No. 06AP-305, 2006-Ohio-5520. The issues in this case are fact-specific claims about the sufficiency of the

three-day notice given to appellant by appellee and this narrow issue is not of such great public interest that the second exception to the mootness doctrine applies. *Coshocton Metro. Housing Auth. v. Dockery*, 5th Dist. Coshocton No. 99CA24, 2000 WL 968691 (July 5, 2000); *Schwab v. Lattimore*, 1st Dist. Hamilton No. C-050874, 2006-Ohio-1372.

{¶21} Accordingly, the instant appeal is moot. Since appellant's appeal is moot, we do not reach the merits of her assigned errors; therefore, appellant's appeal of the May 15, 2018 and May 16, 2018 judgment entries of the Canton Municipal Court is dismissed.

By Gwin, J.,

Wise, John, P.J.

Wise, Earle, J., concur

HON. W. SCOTT GWIN

HON. JOHN W. WISE

HON. EARLE E. WISE, JR.