

IN THE COURT OF APPEALS

FILED
February 29, 1996
Cecil Crowson, Jr.
Appellate Court Clerk

ROBERT P. MASON,)	GREENE CIRCUIT
)	C. A. NO. 03A01-9508-CV-00262
)	
Plaintiff - Appellee)	
)	
)	
)	
)	
vs.)	HON. JOHN K. WILSON
)	JUDGE
)	
)	
)	
)	
RICK WYKLE and wife CHERYL)	JUDGMENT OF THE TRIAL COURT
WYKLE,)	VACATED AND CASE REMANDED
)	
Defendants - Appellants)	

DEBORAH A. YEOMANS, Johnson City, for appellants.

SANDRA LEE STANBERY, Greenville, for appellee.

O P I N I O N

McMurray, J.

This case arose from a Detainer Warrant filed in the general sessions court by the plaintiff, Robert Mason, against the defendants, Rick and Cheryl Wykle. The Wykles answered the

warrant, denying that they owed the amount sued for by the plaintiff. In addition, they filed a counter complaint alleging, breach of contract, outrageous conduct, property damage and violation of the Tennessee Consumer Protection Act, T. C. A. § 47-18-101.

The general sessions court entered a judgment against the defendants in the amount of \$750.00. The court also awarded the plaintiff possession of the property.

The defendants vacated the premises and appealed that portion of the judgment of the general sessions court regarding their damages. The plaintiff, Mr. Mason, filed a motion in the circuit court to dismiss the appeal based on the defendants' failure to post a bond in an amount required to satisfy the provisions of T. C. A. § 29-18-130. The trial court sustained the motion and dismissed the case. From this action of the circuit court, the defendants have appealed. We vacate the judgment of the circuit court.

The defendants filed a pauper's oath in lieu of bond. The defendants filed in the circuit court a "statement of facts and issues on appeal from the general sessions court." It is clear that the only issues appealed from the general sessions court are those relating to damages sought in their counterclaim

The defendants have appealed to this court raising a single issue for our review. "Whether a party has the right to appeal a judgment in an unlawful detainer action, without posting bond pursuant to T. C. A. § 29-18-130, on a pauper's oath, if the party surrenders possession of the premises pending the appeal in Circuit Court?"

Tennessee Code Annotated § 29-18-130 provides in pertinent part as follows:

29-18-130. Immediate execution of writ of possession - Bond pending appeal. —(a) When judgment is rendered in favor of the plaintiff, in any action of forcible entry and detainer, forcible detainer, or unlawful detainer, brought before a judge of the court of general sessions, and a writ of possession is awarded, the same shall be executed and the plaintiff restored to the possession immediately.

(b)(1) ...

(2) In cases where the action has been brought by a landlord to recover possession of leased premises from a tenant on the grounds that the tenant has breached the contract by failing to pay the rent, and a judgment has been entered against the tenant, the provisions of subsection (b)(1) of this section shall not apply. In that case, if the defendant prays an appeal, the defendant shall execute bond, or post either a cash deposit or irrevocable letter of credit from a regulated financial institution, or provide two (2) good personal sureties with good and sufficient security in the amount of one (1) year's rent of the premises, conditioned to pay all costs and damages accruing from the failure of the appeal, including rent and interest on the judgment as provided for herein, and to abide by and perform whatever judgment may be rendered by the appellate court in the final hearing of the cause. The plaintiff shall not be required to post a bond to obtain possession in the event the defendant appeals without complying with this

section. The plaintiff shall be entitled to interest on the judgment, which shall accrue from the date of the judgment in the event the defendant's appeal shall fail.

Implicitly this statutory bond is not required when the tenant has surrendered possession of the premises. Clearly the bond provision of T.C.A. § 29-18-130(b)(2) is intended to protect the landlord or plaintiff and to provide a source from which rents and damages which accrue during the pendency of the appeal and while the defendant is still in possession of the premises can be collected. It has no application where possession of the premises is immediately surrendered after judgment in the court from which an appeal is taken.

In Newport Housing Authority v. Ballard, 839 S.W2d 86, 90 (1992), the Tennessee supreme court stated:

The appeal bond requirements of T.C.A. 29-18-128 through 29-18-130 do not impose any unreasonable or irrational burdens upon parties seeking to appeal an adverse decision from the general sessions court. Moreover, the right to appeal and the concomitant right to a trial by jury is preserved even for those litigants without financial resources. As this Court has long recognized, if a party "is willing to surrender possession pending the litigation in the higher courts, there is a remedy by appeal which may be obtained on the pauper oath. (citing Ammons v. Coker, 124 Tenn 676, 681, 139 S.W 732, 733 (1911)).

We vacate the judgment of the trial court and remand the case to the trial court for a trial on the merits. In so doing, we do

not express any opinion on the merits of any issue, other than to hold that the defendant is not entitled to judgment as a matter of law. Costs are taxed to the appellee.

Don T. McMuray, J.

CONCUR:

Houston M Goddard, Presiding Judge

Charles D. Susano, Jr., J.

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ORDER

This appeal came on to be heard upon the record from the Circuit Court of Greene County, and a brief filed on behalf of the appellant. Upon consideration thereof, this Court is of the opinion that there was reversible error in the trial court.

We vacate the judgment of the trial court and remand the case to the trial court for a trial on the merits. Costs are taxed to the appellee.

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