

**IN THE SUPERIOR COURT OF THE STATE OF DELAWARE**

RONALD DORSEY, )  
 )  
 Defendant – Below, )  
 Appellant, )  
 ) C.A. No. N23A-03-003 FWW  
 v. )  
 )  
 AKA MANAGEMENT, )  
 )  
 Plaintiff – Below, )  
 Appellee. )

Submitted: July 10, 2023

Decided: July 18, 2023

*Upon Appellant Ronald Dorsey’s Motion to Stay Pending Appeal in Superior Court*

**DENIED.**

**ORDER**

Ronald Dorsey, 569 Homestead Road, Unit 1, Wilmington, DE, 19805, *pro se*, Defendant – Below, Appellant.

Brian T. Murray, Esquire, RHODUNDA, WILLIAMS & KONDRASCHOW, LLC, 1521 Concord Pike, Suite 205, Wilmington, DE, 19803, Attorney for Plaintiff - Below, Appellee.

**WHARTON, J.**

This 18th day of July 2023, upon consideration of Appellant Ronald Dorsey’s (“Dorsey”) Motion to Stay Pending Appeal in Superior Court (“Motion to Stay”),<sup>1</sup> Appellee AKA Management’s (“AKA”) Response,<sup>2</sup> and the record in this case, it appears to the Court that:

1. On March 7, 2023 Dorsey filed his Complaint in *Certiorari*<sup>3</sup> along with a Motion to Proceed *in Forma Pauperis*.<sup>4</sup> Paragraph 13 of the Complaint requested a stay of execution of eviction “until evidence is showed in court of higher authority.”<sup>5</sup> On March 16<sup>th</sup>, the Court granted the Motion to Proceed *in Forma Pauperis*.<sup>6</sup> On June 9<sup>th</sup>, a letter was sent to Dorsey the Prothonotary’s Office advising him that service was lacking, and requesting Dorsey to “deliver service back to the court by June 21<sup>st</sup>.”<sup>7</sup> On June 20<sup>th</sup>, pursuant to a Praecipe, a writ was issued to the New Castle County Sheriff for service on AKA.<sup>8</sup> The Praecipe appears to be the same as the one Dorsey filed with his Complaint.<sup>9</sup> The Sheriff made his return of service on June 26<sup>th</sup>, certifying that service was made on AKA on June

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<sup>1</sup> Appellant’s Mot. to Stay, D.I. 16.

<sup>2</sup> Appellee’s Response, D.I. 21.

<sup>3</sup> D.I. 1.

<sup>4</sup> D.I. 5.

<sup>5</sup> D.I. 1.

<sup>6</sup> D. I. 10.

<sup>7</sup> D.I. 12.

<sup>8</sup> D.I. 13.

<sup>9</sup> D.I. 2.

22nd.<sup>10</sup> On June 27<sup>th</sup>, Dorsey filed this Motion to Stay.<sup>11</sup> AKA filed its response on July 10<sup>th</sup>.<sup>12</sup>

2. Dorsey's Complaint appears to seek *certiorari* review of an adverse decision by the Justice of the Peace Court in a landlord/tenant matter.<sup>13</sup> The Motion to Stay recites that: (1) counsel for AKA was aware of this appeal because counsel and Dorsey were together in the Court of Common Pleas on April 14, 2023; (2) AKA filed for a writ of possession which was granted due to the court being unaware of this appeal; and (3) Dorsey was evicted on June 20, 2023 despite having filed everything he was required to file in a timely manner due to errors on the court's part.<sup>14</sup>

3. AKA's Response provides more detail about the proceedings below. Those proceedings were summary possession actions related to 569A Homestead Road, Wilmington, Delaware.<sup>15</sup> After the initial proceeding was dismissed, two subsequent cases filed on June 14 and July 22, 2022 and were consolidated.<sup>16</sup> The consolidated cases were heard by a three judge panel on January 11, 2023,<sup>17</sup> The

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<sup>10</sup> D.I. 15.

<sup>11</sup> D.I. 16.

<sup>12</sup> D.I. 21.

<sup>13</sup> D.I. 1.

<sup>14</sup> D.I. 16.

<sup>15</sup> D.I. 21.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.*

panel issued an Order of Possession in favor of AKA on February 27, 2023.<sup>18</sup> On June 14, 2023, AKA requested a Writ of Possession in the Justice of the Peace Court.<sup>19</sup> A writ was issued on the 15<sup>th</sup>.<sup>20</sup> Dorsey's Motion to Stay filed in the Justice of the Peace Court was denied on June 23<sup>rd</sup> as untimely and moot.<sup>21</sup>

4. AKA argues that the Motion to Stay here should be denied for several reasons. First, the motion is untimely because despite this appeal being pending since March, Dorsey never requested a stay before he was evicted.<sup>22</sup> Second, the motion is moot because the property was lawfully turned over to AKA before the Motion to Stay was filed.<sup>23</sup> Third, the motion is frivolous because Dorsey cannot demonstrate any likelihood of success on appeal, given the standard of *certiorari* review.<sup>24</sup> Finally, AKA asserts that personal jurisdiction over it has not been perfected because the summons directs it, rather than Dorsey, to obtain and file a certified copy of the record below.<sup>25</sup>

5. AKA is incorrect that Dorsey never sought a stay until after he was evicted. It is also incorrect that Dorsey did not file a Praecipe requesting the issuance

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<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> *Id.*

<sup>23</sup> *Id.*

<sup>24</sup> *Id.*

<sup>25</sup> *Id.*

of a summons until June 30<sup>th</sup>. Paragraph 13 of Dorsey’s Complaint requests a stay.<sup>26</sup> Further, Dorsey did file a Praecipe for service on AKA contemporaneously with his Complaint.<sup>27</sup> Finally, while the Court disagrees with AKA that personal jurisdiction over it has not been perfected,<sup>28</sup> it does agree with it that the summons incorrectly commands it to produce a certified copy of the record below.<sup>29</sup> To date, the record below has not been produced in this Court, preventing the appeal from proceeding. The causes and consequences of that deficiency are not before the Court in this Motion to Stay, however.

6. Nonetheless, the Motion to Stay is **DENIED**. “In any civil action in which an appeal is taken from a lower court to the Superior Court, the Superior Court may, upon motion of the appellant stay execution of the judgment appealed from...”<sup>30</sup> In considering whether to grant a stay, a court must: (1) make a preliminary assessment of the movant’s likelihood of success on appeal; (2) assess whether the movant will suffer irreparable harm if the stay is not granted; (3) assess

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<sup>26</sup> D.I. 1.

<sup>27</sup> D.I. 2.

<sup>28</sup> It has been served with a copy of the Complaint in *Certiorari*, See Sheriff’s Return, D.I. 15.

<sup>29</sup> Ex. C, D.I. 21.

<sup>30</sup> Super. Ct Civ. R. 62(c).

whether any other party will suffer substantial harm if the stay is granted; and (4) consider whether the public interest will be harmed if the stay is not granted.<sup>31</sup>

7. While it is true that Dorsey requested a stay in his Complaint, that request was unsupported by any substantive reason it should be granted. Similarly, although the pending Motion to Stay addresses the timing of its filing, it too fails to present any substantive reason a stay should be granted. In other words, Dorsey did not support his request for a stay with any statement as to any irreparable harm he would suffer if the stay were denied. For its part, AKA did not cite any harm it would suffer if a stay were to be granted. The public interest does not appear to be affected one way or the other.

8. The dispositive issue, therefore, is an assessment of Dorsey's likelihood of success on appeal. Because Dorsey has brought a Complaint in *Certiorari*, the Court must apply the limited scope of review applicable to those actions. The purpose of a writ of *certiorari* is to permit this Court to review the record of a proceeding decided by a lower tribunal.<sup>32</sup> Delaware law is clear that a writ of *certiorari* is not the functional equivalent of appellate review.<sup>33</sup> "*Certiorari* review

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<sup>31</sup> *Kirpat, Inc. v. Delaware Alcoholic Beverage Control Comm'n*, 741 A.2d 356, 357 (Del. 1998).

<sup>32</sup> *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2004 WL 2921830, at \*2 (Del. Dec. 16, 2004).

<sup>33</sup> *Maddrey*, 956 A.2d at 1213.

differs from appellate review in that an appeal ‘brings up the case on its merits,’ while a *writ* brings the matter before the reviewing court to ‘look at the regularity of the proceedings.’”<sup>34</sup> When conducting the review of the lower tribunal, this Court may not “look behind the face of the record” nor may it engage in “combing the transcript for an erroneous evidentiary ruling.”<sup>35</sup> That is because “[i]t is the function of ‘the agency, not the court, to weigh evidence and resolve conflicting testimony and issues of credibility.’”<sup>36</sup> Instead, the Court only “considers the record to determine whether the lower tribunal exceeded its jurisdiction, committed errors of law, or proceeded irregularly.”<sup>37</sup> The Court may not weigh evidence, disturb the lower tribunal’s factual findings or decide the merits of the case.<sup>38</sup> Therefore, the Court shall uphold the decision of the Board unless the Petitioner can demonstrate that the Board’s decision “was arbitrary and unreasonable” on its face.<sup>39</sup>

9. Dorsey’s Complaint in *Certiorari* simply recites his version of the facts in the apparent expectation that this Court will provide him with an opportunity to

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<sup>34</sup> *395 Assocs., LLC v. New Castle Cnty.*, 2006 WL 2021623, at \*3 (Del. Super. July 19, 2006) (quoting *Breasure v. Swartzentruber*, 1988 WL 116422, at \*1 (Del. Super. Oct. 7, 1988)).

<sup>35</sup> *Maddrey*, 956 A.2d at 1215.

<sup>36</sup> *395 Assocs.*, 2006 WL 2021623 at \*3 (quoting *Christiana Town Ctr., LLC v. New Castle Cnty.*, 2004 WL 1551457, at \*2. (Del. Super. July 7, 2004)).

<sup>37</sup> *Christiana Town Ctr.*, 2004 WL 2921830, at \*2.

<sup>38</sup> *Reise v. Bd. of Bldg. Appeals of Newark*, 746 A.2d 271, 274 (Del. 2000).

<sup>39</sup> *domus GCK, JV/LLC v. New Castle Cnty. Dep’t of Land Use*, 2010 WL 1427357, at \*1 (Del. Super. Apr. 7, 2010).

relitigate them.<sup>40</sup> But, retrying the facts is beyond this Court's purview on *certiorari* review. Dorsey has not given the Court any reason to believe that the Justice of the Peace Court exceeded its jurisdiction, committed errors of law, or proceeded irregularly. Thus, the Court preliminarily concludes that Dorsey has little likelihood of success on appeal.<sup>41</sup>

**THEREFORE**, the Defendant Ronald Dorsey's Motion to Stay Pending Appeal in Superior Court is **DENIED**.

**IT IS SO ORDERED.**

/s/ Ferris W. Wharton  
Ferris W. Wharton, J.

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<sup>40</sup> D.I. 1.

<sup>41</sup> The Court also is mindful that the action Dorsey seeks to stay already has occurred.