

**SUPERIOR COURT
OF THE
STATE OF DELAWARE**

T. HENLEY GRAVES
RESIDENT JUDGE

SUSSEX COUNTY COURTHOUSE
ONE THE CIRCLE, SUITE 2
GEORGETOWN, DE 19947

October 14, 2005

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RE: Upshur v. Justice of the Peace Court No. 17 & Del. State Housing Authority
C.A. No. 05A-04-001 THG

Date Submitted: September 8, 2005

Dear Counsel:

This is the decision as to Tasha Upshur's petition for Writ of Certiorari. For the reasons stated herein the petition is denied.

STATEMENT OF FACTS

Tasha Upshur, Petitioner, applied for public housing in early 2003. The Petitioner signed a lease dated July 7, 2004 with the Delaware State Housing Authority, Respondent, to reside at a rental unit at the Hickory Tree Development, located in Selbyville, Delaware. The residence that Upshur leased was Unit #1 in Walnut Court. The residence was a subsidized housing unit with three bedrooms.

The Petitioner has two children and these children moved into the Walnut Creek unit with her in July of 2004. A few days after moving in with their mother, their father enforced a custody order and removed the children from the unit. The children's father lived in Virginia and

the custody order was issued in Virginia. The Petitioner and the children's father have joint custody of the children, but primary placement is with the father.

On August 26, 2004, the Respondent issued a sixty-day termination notice to the Petitioner to take effect on October 31, 2004. The Respondent issued the notice because, without her children, the Petitioner no longer met the eligibility requirements for public housing. The Petitioner also did not report the change in her family composition as required by paragraph 3(a) of the lease.

Also alleged was that since September 1, 2004, there had been multiple complaints about fighting and arguments involving the Defendant and/or the Defendant's guests at the residence. Further, it was alleged that there had been continued illegal activity involving drugs, gambling, and weapons in or directly outside of the residence. Finally, James Toppin, a probationer, lived in the residence without permission and had been involved in criminal activity while in the residence. Toppin's illegal activities were reported to have occurred on September 12, 2004, September 15, 2004, October 13, 2004, October 14, 2004, and October 19, 2004. These incidents led to police complaints being issued on the stated dates.

The Respondent filed an action for possession of the unit where the Petitioner lived. On January 14, 2005, the Justice of Peace Court entered an order granting possession of the unit to the Respondent. On January 18, 2005, the Petitioner filed an appeal requesting that her case be heard by a three-judge panel.

On March 14, 2005, the Justice of the Peace Court's three-judge panel held a trial de novo to determine who should be in possession of the unit. The Petitioner requested that the Justice of Peace proceedings be stayed until her housing discrimination complaints filed with the State Division of Human Relations and HUD were resolved. The court denied this request

because some of the grounds that the action for possession were based had nothing to do with the issues in the discrimination complaints.

The Respondent based this action on three grounds. The first was that the Petitioner falsely represented that she had her two children living with her when primary placement of the children was actually in Virginia with their father. The Petitioner is not qualified for public assistance and placement within her unit without her children residing with her. Further, the Petitioner failed to notify management of the change in her family living situation. The second ground for this action was that the Petitioner married James Toppin, who was not authorized to live in the unit. The final basis for this action was the ongoing criminal activity in and around the unit.

The Petitioner disputed all claims made by the Respondent. She stated that she did not fraudulently claim that her children lived with her, because her children either lived with her or when they did not, she had a pending custody suit in Virginia causing her to believe that her children would reside with her soon. Further, she argued that even though she married Toppin, he never lived with her at the residence. Finally, the Petitioner denies that she caused any criminal activity at her apartment.

The Justice of Peace Court ruled in favor of the Respondent following a trial de novo on March 24, 2005. The court found that the Petitioner did not have custody of her children, so when the father removed them, the Petitioner no longer met the eligibility requirements for the three bedroom unit. Further, the court ruled that the Respondent had the right to terminate the lease because the Petitioner was not eligible to live in the unit without her children. The court also found that Petitioner violated paragraph 3(a) of the lease by failing to update management

on the changes in her family composition. The court found insufficient evidence to support the Respondent's other claims.

On April 1, 2005, the Petitioner filed a complaint for writ of certiorari with this Court. Petitioner also filed motions to proceed *in forma pauperis*, and to stay proceedings. On May 20, 2005, this Court granted the Petitioner's motion to proceed in forma pauperis. This Court denied Petitioner's motion to stay her eviction. Petitioner no longer resides in the apartment but is desirous of pursuing the Writ of Certiorari.

ISSUES PRESENTED

Essentially, the Petitioner wants a Writ of Certiorari granted based on claims that a proper eviction procedure was not followed; specifically that the Respondent did not send out a seven-day notice as required under *25 Del. C. § 5513*.

DISCUSSION

The Delaware Code provides both the Supreme Court and the Superior Court with the power to review lower court decisions upon Writ of Certiorari.¹ Writ of Certiorari review is only available when the judgment below is final and there is no other available means for review or appeal.² Certiorari "[r]eview is generally confined to jurisdictional matter, error of law or irregularity of proceedings, which appear on the face of the record."³

Here, it is undisputed that the Justice of Peace Court trial provided a final judgment when, following a trial de novo, it issued its decision on March 24, 2005. It is also undisputed that there is no right to appeal from a Justice of the Peace Court decision in a summary

¹ 10 *Del. C.* §§ 142, 562.

² *In re Butler*, 609 A.2d 1080, 1081 (Del. 1992).

³ *Id.* citing *Goldstein v. City of Wilmington*, 598 A.2d 149, 152 (Del. 1991); *Shoemaker v. State*, 375 A.2d 431, 437 (Del. 1977).

proceeding for possession.⁴ Therefore here, petitioning for a Writ of Certiorari was the only means to have the decision of the Justice of the Peace Court reviewed for the Petitioner.

25 *Del. C.* § 5513 requires that “[i]f the tenant breaches any rule or covenant which is material to the rental agreement, the landlord shall notify the tenant of such breach in writing, and shall allow at least 7 days after such notice for remedy or correction of the breach.” The Petitioner challenges the Justice of the Peace Court’s ruling because the Respondent did not provide her a seven-day notice to allow her to gain custody of her children. If she could gain custody of her children, she would be eligible to live in the three bedroom unit.

However, this argument fails because it was not raised below. The Petitioner never raised the issue that she was not given proper notice in either of the Justice of the Peace trials.

Generally, an appellate or reviewing court will not consider any question that was not raised in the court below. This rule, in its general application, rests upon sound reason, and upon some considerations of conveniences and necessity, for, if the question had been raised in the lower courts, the objection might have been remedied there; and if an objection raised below may be raised in the reviewing court, there is no assurance of an end to litigation for new objections may be raised continuously on successive appeals.⁵

Therefore, the Petitioner’s argument fails because it is being raised for the first time in this Petition for Writ of Certiorari.

Nevertheless, the Petitioner argues that her case falls into the “question of grave public policy and interest”⁶ exception. She bases this exception on the fact that a right to housing is a fundamental right so it must be of public interest or policy. The basis of her argument arises from the *Becker* decision. The *Becker* court ruled that a statute was unconstitutional because it violated the 14th Amendment of both the United States and Delaware Constitutions.⁷ The *Becker*

⁴ *Bomba’s Restaurant & Cocktail Lounge, Inc. v. Lord De La Warr Hotel*, 389 A.2d 766, 769 (Del. 1978).

⁵ *Becker v. State*, 185 a. 92, 95-96 (Del. Super. 1936).

⁶ *Id.* at 96.

⁷ *Id.* at 100.

case dealt with a statute that affected the public at large, unlike this case, which does not attack the statutes or the process for eviction. This case involves allegations as to whether the statutes were followed in Petitioner's case. Thus, it is personal to her and not a case of "grave public policy or interest." Further, this case does not address a constitutional issue, unlike the *Becker* case. Therefore, the Petitioner does not qualify for the "question of grave public policy and interest"⁸ exception.

The Petitioner's failure to raise the improper notice argument below prevents her from arguing it now in pursuit of a Writ of Certiorari. Therefore, the Petitioner's complaint for Writ of Certiorari is denied and the Justice of the Peace Court's decision is affirmed. The Respondent will continue to have possession of the housing unit in this dispute.

The Petition for Writ of Certiorari is denied for the above stated reasons.

SO ORDERED.

Very truly yours,

T. Henley Graves

cc: Prothonotary

⁸ *Id.* at 96.