

WINDMILL CREEK NORTH - 1ST LAKE

NO. 20-C-85

VERSUS

FIFTH CIRCUIT

MALAKIA GOWAN

COURT OF APPEAL

STATE OF LOUISIANA

February 21, 2020

Susan Buchholz

First Deputy Clerk

IN RE MALAKIA GOWAN

APPLYING FOR SUPERVISORY WRIT FROM THE FIRST PARISH COURT, PARISH OF JEFFERSON, STATE OF LOUISIANA, DIRECTED TO THE HONORABLE REBECCA M. OLIVIER, DIVISION "A", NUMBER 168-904

Panel composed of Judges Fredericka Homberg Wicker,
Robert A. Chaisson, and Hans J. Liljeberg

WRIT GRANTED

Relator filed a petition for trial *de novo* after the Fifth Justice of the Peace Court issued a judgment of eviction on February 11, 2020. The petition for trial *de novo* was filed with the First Parish Court for the Parish of Jefferson on February 18, 2020, prior to execution of a writ of possession and within the fifteen day period for seeking trial *de novo* from a justice of the peace ruling. La. C.C.P. art. 4925(A). Relator's application to proceed *in forma pauperis* was granted by the First Parish Court. Relator now seeks review of the First Parish Court's requirement that a bond in the amount of \$764 dollars be paid in order to stay the eviction prior to the new trial, which is currently set for March 3, 2020.

Relator's February rent was paid prior to the eviction proceedings. Relator's landlord sought to evict her based on an alleged occupant in violation of the lease agreement. In her petition for trial *de novo*, Relator requested that the eviction be stayed and the new trial granted "conditioned upon petitioner posting her \$764 rent into the court registry on a monthly basis to be exclusively used as rent payment, beginning March, 2020."

Because the purpose of a bond is to protect the appellee against damages he may sustain as a result of the appeal, and because we recognize that the damages typically contemplated in cases of eviction are the potential lost rents to the landlord while an appeal is pending, *429 Bourbon St., LLC v. RMDR Investments, Inc.*, 16-800 (La. App. 4 Cir. 11/15/17), 230 So.3d 256, 270, *writ denied*, 17-2054 (La. 2/2/18), 235 So.3d 1106, we find that, in light of Relator's pauper status, to the extent that the trial court ordered Relator to post \$764 immediately into the court registry as bond, we find that the trial court abused its discretion. The

landlord is unlikely to sustain any monetary damages while awaiting trial *de novo* in this case because the February rent has been paid, and the Relator has agreed to place the March rent into the court registry prior to the trial scheduled on March 3, 2020. We find this to be an acceptable alternative.

Therefore, we vacate the lower court's ruling, which conditioned the stay of the judgement of eviction upon the immediate posting of \$764 rent into the registry of court, and instead order Relator to pay her rent into the registry of the court when it becomes due in March 2020.

Gretna, Louisiana, this 21st day of February, 2020.

FHW
RAC
HJL

SUSAN M. CHEHARDY
CHIEF JUDGE

FREDERICKA H. WICKER
JUDE G. GRAVOIS
MARC E. JOHNSON
ROBERT A. CHAISSON
STEPHEN J. WINDHORST
HANS J. LILJEBERG
JOHN J. MOLAISSON, JR.

JUDGES



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CURTIS B. PURSELL
CLERK OF COURT
MARY E. LEGNON
CHIEF DEPUTY CLERK

SUSAN BUCHHOLZ
FIRST DEPUTY CLERK

MELISSA C. LEDET
DIRECTOR OF CENTRAL STAFF

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NOTICE OF DISPOSITION CERTIFICATE OF DELIVERY

I CERTIFY THAT A COPY OF THE DISPOSITION IN THE FOREGOING MATTER HAS BEEN TRANSMITTED IN ACCORDANCE WITH **UNIFORM RULES - COURT OF APPEAL, RULE 4-6** THIS DAY **02/21/2020** TO THE TRIAL JUDGE, THE TRIAL COURT CLERK OF COURT, AND AT LEAST ONE OF THE COUNSEL OF RECORD FOR EACH PARTY, AND TO EACH PARTY NOT REPRESENTED BY COUNSEL, AS LISTED BELOW:

CURTIS B. PURSELL
CLERK OF COURT

20-C-85

E-NOTIFIED

James C. Rather, Jr. (Respondent)

MAILED

Hannah Adams (Relator)
Attorney at Law
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New Orleans, LA 70112