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19-P-404 Appeals Court

GLENDALE ASSOCIATES, LP vs. KEVIN K. HARRIS.

No. 19-P-404.

Suffolk. January 9, 2020. - May 15, 2020.

Present: Hanlon, Blake, & Hand, JJ.

Handicapped Persons. Landlord and Tenant, Handicapped person, Termination of tenancy. Judgment, Default. Practice, Civil, Default, Notice of appeal, Moot case. Rules of Appellate Procedure.

Civil action commenced in the Eastern Division of the Housing Court Department on May 20, 2016.

Entry of final judgment was ordered by MaryLou Muirhead, J., and a motion for reconsideration was heard by her.

Joshua J. Bone (Andrew S. McDonough also present) for the tenant.
Jeffrey C. Turk for the landlord.
H. Esme Caramello, for Harvard Legal Aid Bureau, amicus curiae, submitted a brief.

BLAKE, J. The defendant, Kevin Harris (tenant or Harris), appeals from a judgment entered in the Housing Court voiding his

lease pursuant to G. L. c. 139, § 19 (§ 19),[1] and awarding possession to the plaintiff, Glendale Associates, LP (landlord). Harris's principal claim on appeal is that the judge failed to conduct a trial and make any findings of fact or conclusions of law to support liability under § 19. He also claims that the judge imposed an unreasonable treatment plan as a reasonable accommodation for his disability, and that it was error to issue

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[1] General Laws c. 139, § 19, provides in relevant part that "if a tenant . . . of federal or state assisted housing commits an act or acts which would constitute a crime involving the use or threatened use of force or violence against the person of an employee . . . of state or federally assisted housing or against any person while such person is legally present on the premises . . . of federal or state assisted housing, such use or conduct shall, at the election of the lessor or owner, annul and make void the lease or other title under which such tenant or occupant holds possession and, without any act of the lessor or owner shall cause the right of possession to revert and vest in him, and the lessor or owner may seek an order requiring the tenant to vacate the premises or may avail himself of the remedy provided in chapter two hundred and thirty-nine. If the lessor or owner is entitled to relief pursuant to this section, such lessor or owner may seek declaratory judgment of his rights hereunder in . . . the housing court, which may grant appropriate equitable relief, including both preliminary and permanent injunctions, including a preliminary injunction granting the lessor or owner possession of the premises, and in connection therewith may order issuance of an execution for possession of any such premises to be levied upon forthwith. No such injunction shall be issued except after notice has been given to the tenant and a hearing has been held with opportunity for the tenant to confront and cross-examine witnesses and to present any legal or equitable defense. A . . . provider of state or federally assisted housing shall not avail itself of the remedies contained herein except after notice, hearing, and decision on the merits by the court."

an execution before Harris could seek a stay. We conclude that the judgment was not consonant with principles of due process, and accordingly we vacate the judgment and remand the case for further proceedings.[2]

1. Background. Harris was the beneficiary of the Section 8 Housing Choice Voucher Program (Section 8) of the United States Department of Housing and Urban Development, as administered locally through the Boston Housing Authority (BHA). See 42 U.S.C. § 1437f (2012) and related regulations. Harris had a "tenant-based" voucher.[3] He is a disabled individual who suffers from mental illness, and he also receives services from the Department of Mental Health (DMH).[4]

Harris entered into a Section 8 lease with the landlord that gave him the right to occupy apartment thirty-three at 422 Columbia Road (apartment or property) in the Dorchester section of Boston. On May 18, 2016, Harris allegedly threw glass

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[2] We acknowledge the amicus brief filed by the Harvard Legal Aid Bureau.

[3] "Section 8 housing assistance may be 'tenant-based' or 'project-based.' . . . With tenant-based assistance, '[f]amilies select and rent units that meet program housing quality standards. If the [BHA] approves a family's unit and tenancy, the [BHA] contracts with the owner to make rent subsidy payments on behalf of the family.'" Figgs v. Boston Hous. Auth., 469 Mass. 354, 355 n.2 (2014), quoting 24 C.F.R. § 982.1(a)(2) (1999).

[4] The landlord does not dispute that Harris is disabled on the basis of a mental illness.

bottles from his apartment window intending to injure the landlord's employees standing in the common area below. The police were summoned and entered the apartment accompanied by the property manager.[5] On the same day, the landlord served Harris with a notice voiding his tenancy pursuant to § 19, and ordering him to vacate the property and to remove all his belongings within two days.[6] On May 20, 2016, the landlord, represented by counsel, filed this § 19 action in the Housing Court, seeking injunctive and declaratory relief. A judge issued an ex parte temporary restraining order prohibiting Harris from entering or trespassing on the property and authorizing the landlord to change the locks. After a hearing, the order was continued "until further order of the court."[7] The

[5] At that time, the property manager allegedly observed padlocks installed on Harris's entrance and bedroom doors and personal belongings hanging from a sprinkler head, all in violation of the terms of the lease. The following day Harris allegedly again threw glass bottles at the landlord's staff. The police removed Harris from the apartment at that time.

[6] The notice advised Harris that if he was disabled, he had the right to a reasonable accommodation to resolve the lease violations if they resulted from his disability. See Boston Hous. Auth. v. Bridgewaters, 452 Mass. 833, 845-846 (2009).

[7] As a result of the temporary restraining order and the preliminary injunction, Harris, a pro se litigant, was effectively rendered homeless for the remainder of the proceedings. The judge issued the preliminary injunction without explanation or findings. See New Bedford Hous. Auth. v. Olan, 435 Mass. 364, 375-376 (2001) (Sosman, J., concurring) (discussing landlord's burden to obtain preliminary injunctive relief in § 19 cases).

same judge, who retained jurisdiction over the case, referred Harris to the tenancy preservation program (TPP) for assessment.[8] Although Harris declined to participate in TPP, he agreed to develop a treatment plan in conjunction with his DMH case worker that "would allow him to reside in the subject premises and comply fully with the terms of his lease." Thereafter, the matter was continued on several occasions due to Harris's inpatient hospitalizations.

On August 9, 2016, a status hearing was held to discuss a treatment plan that would serve as a reasonable accommodation for Harris's disability and allow him to stay in the apartment. See 42 U.S.C. § 3604(f)(3)(B). At the hearing, Harris's DMH case worker described the proposed plan, which involved inpatient stabilization programs and treatment, daily receipt of medication from visiting nurses, treatment with a new psychiatrist at Boston Medical Center, and participation in a

[8] TPP is a special program available in the Housing Court Department that "aims to prevent homelessness by serving as a resource for tenants whose disabilities were directly related to the reason for their eviction. TPP, in the role of a neutral party, collaborates with landlords and tenants to investigate whether a tenancy can be preserved through reasonable accommodations for a tenant's disability. TPP may also help the parties create a plan for maintaining the tenancy, monitor the case, and create progress reports for the landlord, the tenant, and the court. If a tenancy cannot be preserved, TPP may help to coordinate the tenant's transition to a different home." Adjartey v. Central Div. of the Hous. Court Dep't, 481 Mass. 830, 847 n.23 (2019).

drop-in day program. The judge did not, however, believe that the DMH plan went far enough; she wanted Harris to either work or attend a day program for eight hours per day.

On August 11, 2016, the judge entered an order allowing Harris to return to the apartment as of September 1, 2016, if he was in compliance with the treatment plan that she drafted and incorporated into her order (August order).[9] As part of that

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[9] The judge's treatment plan required Harris to take the following actions:

> "1. On or before Monday, August 22, 2016, the [tenant], working together with his DMH case worker, must identify the agency and the nurse(s) who will administer the medications as well as all medical personnel who provide treatment, counseling or therapy to the [tenant] and the nature of the treatment provided. Identification of the agency, visiting nurses and medical personnel must include contact information (address and telephone number) and state the nature of the treatment provided (such as administration of medications, therapist, physician, etc.) and when the [tenant] meets with each person. Such information is to be in writing and delivered to the court, with a copy to [the landlord's] counsel. Also within that time frame, the [tenant] must execute releases to allow the agency and the nurse(s) who will administer the medications as well as all medical personnel identified to the court to submit a weekly record of their visits to the [tenant]. Copies of the releases must also be filed with the court on or before Monday August 22, 2016. Failure to comply with this provision will result in a delay in the [tenant's] return to the [property].
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> "2. The [tenant] must continue to meet with a visiting nurse(s) at [the property] on a daily basis for the purposes of taking the medications prescribed for him by his treating medical personnel. He must meet with all other health care providers as recommended. If the [tenant] fails to comply with this provision, the [landlord] may seek further relief from the court.

order, the judge also prohibited Harris from filing any more pleadings or documents in the case (or commencing any further actions against the landlord) without prior authorization of the court (gatekeeper order). Following a status conference on November 9, 2016, the judge found that Harris had not complied with her August order. She listed the deficiencies and ordered him to provide all the missing information and documents no later than the end of the month (November order). Although Harris subsequently submitted additional materials, the judge remained unsatisfied.[10]

While Harris continued his efforts to comply with the judge's August and November orders and to gain lawful reentry to the apartment, on December 4, 2016, the landlord moved for a

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> "3. The [tenant] must work with his DMH case worker to find an appropriate program for him to attend during the day and identify that program in writing to the court on or before Thursday, September 15, 2016. Identification of the program must include the name of the program, the time during which the [tenant] will be required to attend the program and the name and contact information of someone with whom the [tenant] must meet with to confirm his attendance. The [tenant] must also execute releases to allow the leaders of the program identified to the court to submit a weekly record the [tenant's] attendance at the program to the court and counsel for the [landlord]. Copies of the releases must also be filed with the court on or before Thursday September 15, 2016. If the [tenant] fails to comply with this provision, the [landlord] may seek further relief from the court."

[10] Harris reports that the recordings of two November hearings were lost.

default, pursuant to Mass. R. Civ. P. 55 (a), 365 Mass. 822 (1974), on the basis that Harris had "failed to serve or file an answer or otherwise defend as to the Complaint." The clerk entered a default on December 20, 2016. On January 19, 2017, the landlord moved, pursuant to Mass. R. Civ. P. 55 (b) (2), as amended, 463 Mass. 1401 (2012), for the entry of a final judgment and the issuance of execution for possession on the same basis.[11] In response, Harris filed an "update" written by his rehabilitation specialist at the South End Community Health Center, explaining the efforts to bring Harris into full compliance with the treatment plan ordered by the judge. The specialist maintained that Harris's recent switch to a new community-based flexible support system, which offered "more regular" services and personalized monitoring, would allow Harris to meet the court-ordered plan requirements. He requested that Harris's engagement with these services "act in place of some of the time structuring elements" of the judge's treatment plan. The specialist confirmed that Harris was "appropriately and regularly" engaged with services, and actively seeking to meet the requirements and objectives of the treatment plan. Harris also filed a motion to reenter the apartment. The judge took no action because Harris "failed to

[11] The judge took no action on Harris's subsequent motion to set aside the default "judgment."

obtain written permission of the court for filing [the] document" and Harris "was defaulted on 12/20/16." Harris's written request to file a motion, docketed on February 14, 2017, was not acted upon.

At a review hearing on February 15, 2017, the judge appointed a guardian ad litem (GAL) to assist Harris in achieving compliance with the treatment plan and stayed a decision on the landlord's motion for the entry of a default judgment. The GAL initially was unable to get the file from the Housing Court clerk's office and did not receive the order of appointment until February 23, 2017, notwithstanding that his report was due three days later. The GAL's mandate did not include assisting Harris with his defense. The GAL diligently undertook his assignment and filed two reports along with the documents and information he was able to secure on short notice.[12]

On April 18, 2017, the landlord filed a renewed motion for the entry of a final judgment and the issuance of the execution for possession, again citing Harris's default for "failure to plead or otherwise defend."[13] Harris sought permission to file a

[12] The first report was filed on February 27, 2017, and the second report was filed on March 8, 2017.

[13] We note that although the landlord had Harris barred from the apartment as of May 2016, it sought an order holding Harris responsible for monthly use and occupancy payments until the

response in accordance with the gatekeeper order.[14] The judge denied Harris's motion, stating that he could respond at the oral argument. At a hearing on May 3, 2017, the judge determined that the information provided by the GAL was insufficient, ordered the GAL to prepare a proposal for a new treatment plan, and scheduled a hearing for May 10, 2017. The GAL submitted a proposed treatment plan as ordered.

On the same day that the judge took the GAL's proposed plan under advisement, she allowed the landlord's renewed motion for judgment. No hearing or argument on the landlord's renewed motion was ever held, thus denying Harris the ability to respond to the motion, either orally or in writing. Following the entry of judgment on May 16, 2017, Harris filed a timely "motion to reconsider judgment," which was denied after a hearing. An execution for possession to the landlord issued on June 28, 2017.[15] Two days later, the landlord levied on it, dispossessing Harris of all rights in the apartment. On July 7, 2017, the judge allowed Harris's motion to stay the levy of execution

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final adjudication of the matter. Harris continued to make monthly use and occupancy until December 2016.

[14] The pleading was titled "[m]otion for leave to file motion to deny plaintiff['s] motion for judgment."

[15] Section 19 permits the judge to "order issuance of an execution for possession of any such premises to be levied forthwith."

pending appeal. However, she subsequently reversed herself because the levy had already occurred. On July 11, 2017, Harris filed a notice of appeal.

2. Discussion. a. Timeliness of appeal. Relying on Rule 12 of the Uniform Summary Process Rules (2004) (rule 12), the landlord contends that Harris's notice of appeal was untimely because it was filed more than ten days after the judgment entered.[16] We disagree. First, Harris's timely postjudgment motion stayed the commencement of the appeal period until June 26, 2017, the date that the judge's order denying Harris's motion was entered on the docket. See Youghal, LLC v. Entwistle, 484 Mass. 1019, 1020-1021 (2020); Adjartey v. Central Div. of the Hous. Court Dep't, 481 Mass. 830, 857-858 & n.20 (2019); Manzaro v. McCann, 401 Mass. 880, 881-882 (1988); Mass. R. A. P. 4 (a) (2), as appearing in 481 Mass. 1606 (2019). Second, the only specific timeframe provided in rule 12 relates to an appeal bond hearing. The ten-day period is instead fixed by the summary process statute, G. L. c. 239, § 5, a statute that is not the basis for the landlord's action. See Youghal,

[16] If the Massachusetts Uniform Summary Process Rules were applicable, the short limitation period would be jurisdictional and not amenable to enlargement. See Adjartey, 481 Mass. at 857; U.S. Bank Trust, N.A. v. Johnson, 96 Mass. App. Ct. 291, 294 (2019). Because the timeliness of an appeal may be raised at any time, the landlord was entitled to raise it for the first time on appeal.

LLC, supra at 1020 n.5 (noting that G. L. c. 239, § 5 [a] provides ten-day period for filing notice of appeal "in an action under this chapter").

Section 19, in contrast, does not contain a timeframe for filing a notice of appeal. We conclude that for the plaintiff, who elected to proceed under § 19, and not § 5, the longer, thirty-day appeal period of the Massachusetts Rules of Appellate Procedure applies. See Mass. R. A. P. 4 (a) (1), as appearing in 481 Mass. 1606 (2019) ("In a civil case, unless otherwise provided by statute, the notice of appeal required by Rule 3 shall be filed with the clerk of the lower court within 30 days of the date of the entry of the judgment, decree, appealable order, or adjudication appealed from"). Here, the appeal period was stayed until the judge's decision on Harris's postjudgment motion. Harris's notice of appeal, filed fifteen days after the entry of the order denying relief, was timely.

The landlord's timeliness argument overlooks the fact that it selected the vehicle by which to regain possession of the apartment. In filing an action pursuant to § 19, a lessor or owner has two forms of available relief. It may either seek an order requiring the tenant to vacate, as the landlord did here, or avail itself of the remedies provided in the summary process statute. See New Bedford Hous. Auth. v. Olan, 435 Mass. 364, 371 (2001) (in § 19 action, "a lessor or owner may obtain relief

against a tenant who commits any of the acts proscribed therein either through an action for declaratory or equitable relief, or through an action under G. L. c. 239, summary process"). The landlord chose the former. In so doing, it benefited from the swift remedy afforded pursuant to § 19. Having elected its remedy, the landlord may not avoid the appellate consequences of filing a civil action (i.e., the longer appeals period) rather than a summary process action.[17]

b. Mootness. Next, the landlord argues that the case is moot because the landlord has taken possession of the apartment, and Harris did not move to stay the proceedings or to prevent the levy. We are not persuaded. Although Harris was evicted, he retains a personal stake in the outcome of this appeal since he has the right to be returned to comparable housing if he

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[17] At all times, the case was prosecuted by the landlord and treated by the Housing Court as a civil action. After the landlord filed a "complaint pursuant to . . . § 19," the case was docketed as, and bore a docket number of, a civil action. It followed a civil fast track from the outset. The case did not proceed by the timelines established by the Massachusetts Uniform Summary Process Rules. For example, the landlord did not serve a summary process summons and complaint at least seven days prior to filing the case in court as required by rule 2 (b) of the Massachusetts Uniform Summary Process Rules (1993). Instead, the landlord served Harris with a notice voiding his tenancy pursuant to § 19. Finally, the landlord sought the entry of default and a default judgment not under rule 10 of the Massachusetts Uniform Summary Process Rules (2004), but under Mass. R. Civ. P. 55, as amended, 477 Mass. 1401 (2017). If rule 12 applied in this context, as the landlord contends, Harris would have no right of appeal here. See infra at . The landlord does not make this argument, however.

prevails. See New Bedford Hous. Auth. v. Olan, 50 Mass. App. Ct. 188, 194 n.11 (2000), S.C., 435 Mass. at 370 n.9. Accord Brockton Hous. Auth. v. Mello, 92 Mass. App. Ct. 682, 684 (2018) (rejecting BHA's mootness argument because tenant retained "protectable property interest in his public housing tenancy"). Moreover, Harris's eligibility for future Section 8 benefits may be negatively impacted by the judgment. We reject the landlord's attempt to distinguish these cases based on the type of housing assistance Harris receives. Harris has just as much of a constitutionally protected property interest in his housing subsidy as a tenant receiving project-based assistance. See Rivas v. Chelsea Hous. Auth., 464 Mass. 329, 339-340 (2013).[18] And, because an action filed pursuant to § 19 is a declaratory action from which the parties may request injunctive relief, the case is not moot.

c. Reasonable accommodations under § 19. The judge bypassed the question of Harris's liability under § 19 and proceeded directly to the remedial phase of the litigation. We begin our analysis there. Where a disabled tenant potentially poses a threat to others, a provider of assisted housing must

[18] Even were the issue of possession considered moot, we would exercise our discretion to reach the merits of Harris's appeal under the "capable of repetition, yet evading review" exception to the mootness doctrine. See Olan, 50 Mass. App. Ct. at 194 n.11.

perform "an individualized assessment, based on reasonable judgment that relies on current medical knowledge or on the best available objective evidence" as to whether the risk may be eliminated or acceptably minimized by reasonable accommodation (citation omitted). Boston Hous. Auth. v. Bridgewaters, 452 Mass. 833, 850 (2009). Under the BHA's reasonable accommodation policy, if an accommodation can eliminate or sufficiently reduce the risk through the modification of policies, or by the provision of aids and services, it must be provided. See id. at 843. We conclude that the judge abused her discretion by rejecting the treatment plan proposed by the GAL and crafting an unreasonable plan as an accommodation of Harris's disability.

Harris had little chance of meeting the unduly burdensome treatment plan imposed by the judge. The record establishes that Harris made several good-faith attempts to comply with it. However, through no fault of his own, he was unable to comply with some aspects of it. For example, Harris was unable to meet with a visiting nurse daily at the apartment as required by paragraph two of the judge's treatment plan.[19] See note 9,

[19] In the May 10, 2017 treatment plan proposal, Harris reminded the judge that visiting nurses could not administer daily medications to a homeless individual lacking a recommendation from a prescriber and a permanent place of residence or coordinated meeting space to receive the medications. Harris supported this claim with a signed statement from a visiting nurse. As the GAL reported, Harris's nurses terminated all services until Harris could secure a more

supra. In addition, Harris's psychiatrist refused to comply with the plan's reporting requirements, as he did not consider them to be part of his job.[20] Harris's primary care physician submitted a letter to the judge explaining that Harris's court-ordered homelessness was hampering his ability to receive mental health treatment. Moreover, the limitations of the mental health system may have interfered with Harris's ability to comply. Asked what else he believed might help Harris keep "compliant," the DMH case worker said that he had suggested "everything that [DMH] ha[d] available." As the DMH case worker warned the judge, structured day programs of the type the judge envisioned may not have been the right fit for someone with Harris's clinical diagnosis. The judge's insistence that Harris leave his apartment for at least five hours per day was not

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stable residence. The judge nevertheless refused to modify this aspect of the treatment plan.

[20] The landlord's attorney acknowledged to the judge that although Harris had complied with the order to provide releases, his medical providers had not provided any information. Informed of the psychiatrist's lack of cooperation, the judge stated to Harris that it was not her job to call the psychiatrist, but rather it was Harris's duty to "jump through these hoops" if he wanted to return to the property. Harris had no ability to force his medical providers to comply with the judge's treatment plan.

medically appropriate for his specific needs and contributed to his inability to comply with the onerous treatment plan.[21]

Reasonable accommodation contemplates an interactive process between the parties and takes time. As explained by the GAL, the personalized services recommended by Harris's health care professionals, to be overseen by Harris's rehabilitation specialist, were all in place as part of the GAL's alternative plan. The specialist stood ready to assist Harris with all court-ordered compliance requirements. However, the judge rejected the detailed proposed plan without explanation. Where the burden was on the landlord (and not Harris) to demonstrate that no reasonable accommodation was feasible, this amounted to legal error.[22] See Bridgewaters, 452 Mass. at 842-843. See also Adjartey, 481 Mass. at 849 (judge considering tenant's request for reasonable accommodation to allow equal access to courts must make findings sufficient to permit appellate review).

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[21] The judge suggested that full-time employment would be an acceptable substitute to a day program. However, this overlooks the fact that the requirement that Harris stay away from his apartment for five hours a day had no nexus to his medical needs. Indeed, although Harris's case worker indicated to the judge that employment was a "goal," DMH found that Harris was not able to work. At the May 10, 2017 hearing, Harris rejected the judge's offer to allow him to work out of his storage unit as long as he stayed out the apartment from 9 A.M. to noon and from 2 P.M. to 5 P.M.

[22] We note that on appeal, the landlord did not rebut Harris's claim that the judge's treatment plan was unreasonable.

d. Liability. Section 19 is a powerful private remedy that permits a landlord, in certain limited circumstances, to recover possession of an apartment in an expeditious fashion. See Olan, 435 Mass. at 368-369. The criminal acts allegedly committed by Harris, if proved, would allow the landlord to evict Harris under § 19. Here, however, the allegations were never tried before a judge or jury.[23] Harris claims that the allegations are false, and that he never intended to harm anyone. He was never charged with any crime. Harris, a pro se litigant in the trial court, was not given the opportunity to present a defense, and to confront and cross-examine the witnesses against him. See Carter v. Lynn Hous. Auth., 450 Mass. 626, 637 n.17 (2008) (recognizing right of self-represented litigants to meaningful presentation of cases). In fact, the record shows that on several occasions, the judge cut off Harris's efforts, both in writing and orally, to deny liability. Under the plain language of § 19 and principles of due process, Harris was entitled, at a minimum, to an evidentiary hearing. See note 1, supra.

The landlord argues that findings and rulings were unnecessary in light of Harris's "default." Indeed, as we

[23] A tenant has a constitutional right to a jury trial in a § 19 proceeding. See Olan, 435 Mass. at 366.

construe the record, the judge appears to have entered a default judgment of possession in favor of the landlord.[24] In these circumstances, a default judgment is disfavored, especially where fundamental interests like housing are at stake. Regardless of whether the default judgment was entered pursuant to Mass. R. Civ. P. 55, as the landlord claims, or as a sanction for noncompliance with the court-ordered treatment plan, we conclude that it was an abuse of discretion to enter it. Although Harris had not formally answered the complaint at the time the judge allowed the landlord's renewed motion, he had denied the allegations and had been actively participating in the litigation for almost a year. In fact, the judge had issued a gatekeeper's order designed to minimize Harris's court filings. Such an order was entirely inconsistent with a "default." The judge, moreover, had appointed a GAL to assist Harris with crafting a treatment plan. This combination of circumstances amounted to "otherwise defend[ing]" within the

[24] To the extent that the parties disagree about the nature of the judgment, the matter is not free from doubt. The form of the judgment for the landlord suggests it was on the merits, indicating that the issues were "duly tried or heard, and a finding or verdict [was] duly rendered." If the judge rendered a judgment after a "trial" without making findings of fact and rulings of law, she erred. See Mass. R. Civ. P. 52 (a), as amended, 423 Mass. 1402 (1996); Mello, 92 Mass. App. Ct. at 682-683. The judge's May 15, 2017 and June 26, 2017 orders, however, suggest that she rendered a judgment by default.

meaning of Mass. R. Civ. P. 55 (a). Compare Riley v. Davison Constr. Co., 381 Mass. 432, 441-442 (1980).

Rule 10 (a) of the Uniform Summary Process Rules (2004), even if not directly applicable in a § 19 proceeding, a question we need not reach, is instructive on this point.[25] Under that rule, a tenant like Harris who timely appears and defends an eviction proceeding may not be defaulted solely for failing to answer the complaint. See Adjartey, 481 Mass. at 856. And, if the default judgment entered as a sanction for Harris's failure to comply with the unreasonable treatment plan, this is error as it is too Draconian of a punishment. See Gos v. Brownstein, 403 Mass. 252, 257 (1988) ("due process requirements may limit the sanction of dismissal" for noncompliance with judge's orders); CMJ Mgt. Co. v. Wilkerson, 91 Mass. App. Ct. 276, 284 (2017) (judge's discretion in choice of sanctions is limited by due process principles, and sanction must be "just").

Finally, while we recognize the extraordinary demands of the Housing Court docket, the proceedings leading up to entry of the default judgment were fundamentally unfair to Harris. Not only did the judge fail to rule on Harris's motion to set aside the default, she did not give Harris the opportunity to present

[25] We note that the Supreme Judicial Court has authorized the application of the Uniform Summary Process Rules to civil actions under § 19. See Olan, 435 Mass. at 372.

argument in opposition to the landlord's renewed motion, as she had promised to do. Entry of a default judgment under these circumstances was error.

Conclusion. The judgment is vacated, and the case is remanded to the Housing Court for further proceedings consistent with this opinion.

So ordered.