

IN THE COURT OF APPEALS OF OHIO
SIXTH APPELLATE DISTRICT
LUCAS COUNTY

John T. Hayes

Court of Appeals No. L-14-1153

Appellee

Trial Court No. CVG-14-07339

v.

Angeline Kelly

DECISION AND JUDGMENT

Appellant

Decided: March 6, 2015

* * * * *

Angeline Kelly, pro se.

* * * * *

YARBROUGH, P.J.

I. Introduction

{¶ 1} Appellant, Angeline Kelly, appeals the judgment of the Toledo Municipal Court, granting forcible entry and detainer to appellee, John Hayes. Because appellant's possessory interest in the subject premises was protected by the automatic stay under 11 U.S.C. 362, we reverse.

A. Facts and Procedural Background

{¶ 2} On June 1, 2011, appellant entered into a lease agreement with appellee, in which appellee agreed to lease his property to appellant for \$375 per month, to be paid on the 1st of each month. The agreement contained a twelve-month term, after which time the agreement would “continue on a month-to-month basis with all other covenants and conditions of this agreement.”

{¶ 3} Throughout the duration of the agreement, appellant consistently failed to make her payments in a timely fashion. Thus, appellant would routinely be forced to pay appellee a \$50 late fee in addition to her monthly lease payment. This continued until May 2014, when appellee refused to accept appellant’s late payment, and provided appellant with a three-day notice to leave the premises in accordance with R.C. 1923.04, indicating that the reason for the eviction notice was appellant’s nonpayment of rent. Three weeks later, on June 3, 2014, appellee filed this forcible entry and detainer action with the trial court. A hearing was scheduled for June 17, 2014, but was subsequently continued to June 25, 2014 at appellant’s request.

{¶ 4} On June 24, 2014, appellant filed for Chapter 7 bankruptcy, listing appellee as a creditor of the bankruptcy estate. The next day, appellant appeared pro se before a magistrate for the hearing on appellee’s forcible entry and detainer action. At the hearing, appellant notified the magistrate of her pending bankruptcy action. Further, she filed a written “Notice of Bankruptcy Case Filing” issued by the United States Bankruptcy Court for the Northern District of Ohio, evidencing the pending bankruptcy

case and the fact that it was filed on June 24, 2014. At the conclusion of the hearing, the magistrate found that appellant was in default of the lease and entered judgment in favor of appellee.

{¶ 5} Immediately following the conclusion of the hearing, appellant filed handwritten objections to the magistrate's findings, and moved the trial court for a stay of the proceedings pending resolution of the bankruptcy action. Thereafter, on July 1, 2014, the trial court issued its decision denying appellant's request for a stay of the proceedings. In its entirety, the trial court's decision states: "07/01/14: Defendant's Motion to Stay denied. Bankruptcy Stay does not apply to FED Action."

{¶ 6} In addition to its denial of appellant's motion to stay the proceedings, the trial court, on July 11, 2014, adopted the magistrate's decision granting appellee possession of the subject premises and ordering the issuance of a writ of restitution. Appellant's timely appeal followed.

B. Assignments of Error

{¶ 7} On appeal, appellant assigns the following errors for our review:

[I.] The trial court erred by accepting an expired written lease as an exhibit.

[II.] The trial court erred by ignoring the fact that the tenant had filed bankruptcy and allowing a writ of possession to the landlord.

[III.] The trial court erred by denying Defendant/Appellants [sic] Motion for Stay based upon "Bankruptcy Stay does not apply to FED Action."

{¶ 8} Because our resolution of appellant's second and third assignments of error is dispositive in this case, we will not address appellant's first assignment of error.

II. Analysis

{¶ 9} In appellant’s second assignment of error, she argues that the trial court erred when it proceeded to award judgment in favor of appellee despite the pendency of the bankruptcy action. In her third assignment of error, she contends that the trial court erroneously concluded that the bankruptcy action did not apply to the forcible entry and detainer action. As these assignments of error are interrelated, we will address them simultaneously.

{¶ 10} A petition in bankruptcy creates an automatic stay pursuant to 11 U.S.C. 362. The bankruptcy stay bars any action by a creditor listed in the petition to enforce or collect a claim against the petitioner’s estate. The stay protects any asset of the estate, including a possessory interest in property. *Dr. Sunder L. Goel & Assocs. Profit Sharing Plan v. Weiler*, 2d Dist. Montgomery No. 15260, 1996 WL 132186, *1 (Mar. 15, 1996), citing *In re Atlantic Business and Community Corp.*, 901 F.2d 325 (3d Cir.1990); see also *In re Convenient Food Mart No. 144, Inc.*, 968 F.2d 592, 594 (6th Cir.1992) (Finding that a holdover tenant has a “possessory interest in real property within the scope of the estate in bankruptcy”); *In re Nasir*, 217 B.R. 995, 997 (Bankr.E.D.Virginia 1997) (Indicating that, “where the former lease has been terminated prepetition and the tenant filing bankruptcy retains possession of the premises under a tenancy at will or at sufferance, the debtor’s possessory right is subject to the automatic stay”). The automatic stay under 11 U.S.C. 362 bars a landlord from initiating or pursuing state eviction proceedings. *Id.*, citing *Robinson v. Chicago Housing Authority*, 54 F.3d 316 (7th Cir.1995).

{¶ 11} Despite the broad protections afforded a debtor under the automatic stay, a landlord is not left without a remedy, as he may evict a debtor tenant whose lease has been terminated prepetition by seeking relief from the automatic stay under 11 U.S.C. 362(d)(1). Further, the automatic stay is subject to certain exceptions. Relevant here, 11 U.S.C. 362(b)(22) provides an exception to the automatic stay for

the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained *before the date of the filing of the bankruptcy petition*, a judgment for possession of such property against the debtor. (Emphasis added.)

{¶ 12} In the case sub judice, the trial court concluded, without providing its reasoning, that the automatic stay did not apply to this action. Appellant disagrees, arguing that the stay is applicable because the trial court did not issue its order granting appellee possession of the subject premises until *after* appellant filed for bankruptcy. Having examined the record, we must agree with appellant that the trial court erred in failing to stay the proceedings pending further orders from the bankruptcy court.

{¶ 13} As indicated above, tenancy interests are generally included in a debtor's bankruptcy estate and, thus, protected by the automatic stay. However, that protection is not available where either the bankruptcy court grants the landlord relief from the stay under 11 U.S.C. 362(d)(1), or the landlord receives a judgment granting possession to the

creditor before the tenant files her bankruptcy petition. Neither of these exceptions are applicable in this case as it is clear from the record that appellant's bankruptcy petition was filed before the trial court issued its decision granting possession of the subject premises to appellee. Further, the record contains no evidence that the bankruptcy court relieved appellee from the automatic stay. Thus, we find that the trial court erred in refusing to stay the proceedings.

{¶ 14} Accordingly, appellant's second and third assignments of error are well-taken.

III. Conclusion

{¶ 15} On consideration, the judgment of the Toledo Municipal Court is reversed. This matter is remanded and ordered stayed pending the termination of the automatic bankruptcy stay or further order of the bankruptcy court. Appellee is ordered to pay the costs of this appeal pursuant to App.R. 24.

Judgment reversed.

A certified copy of this entry shall constitute the mandate pursuant to App.R. 27. See also 6th Dist.Loc.App.R. 4.

Mark L. Pietrykowski, J.

JUDGE

Stephen A. Yarbrough, P.J.

JUDGE

James D. Jensen, J.
CONCUR.

JUDGE

This decision is subject to further editing by the Supreme Court of Ohio's Reporter of Decisions. Parties interested in viewing the final reported version are advised to visit the Ohio Supreme Court's web site at:
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