

IN THE SUPREME COURT OF OHIO

PAMELA LEMASTERS	:	CASE NO. 2015-2102
	:	
Relator	:	IN MANDAMUS AND PROHIBITION
	:	
v.	:	
	:	
THE CELINA MUNICIPAL COURT, et al	:	
	:	
Respondents.	:	

RESPONDENTS' RESPONSE TO RELATOR'S REQUEST FOR ORAL ARGUMENT

Respondents, the Celina Municipal Court¹ and the Honorable Judge James J. Scheer, hereby submit their response to Relator's Request for Oral Argument. The grounds for this response are set forth in the attached memorandum.

Respectfully submitted,

s/Lynnette Dinkler

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¹ Ms. LeMasters admits she pleads no viable claim against the Celina Municipal Court as it is non-sui juris.

MEMORANDUM

Supreme Court Practice Rule 17.02 (A) states that, in the case of an original action, the Court may order oral argument in response to a request by any party. In considering the request, the court considers whether the case involves a matter of great public importance, complex issues of law or fact, a substantial constitutional issue or a conflict between courts of appeals. *State ex rel. United Auto., Aerospace & Agric. Implement Workers of Am. v. Ohio Bureau of Workers' Comp.*, 108 Ohio St. 3d 432, 436-437, 2006-Ohio-1327, (2006).

Relator, Ms. LeMasters, argues that this case involves a matter of great public importance. This argument is based on Ms. LeMasters' claim that the current action raises the question of whether an appellant is entitled to a stay pursuant to Civ. R. 62 (B) as a matter of right. As basis for this argument Ms. LeMasters cites *State ex Rel State Fire Marshal v. Curl* (2000), 87 Ohio St.3d 568, 2000-Ohio-248 and *Ocasek v. Riley* (1978), 54 Ohio St.2d 488, 377 N.E.2d 792. Those cases are decided based on Civil Rule 62 (C), which allows a stay to be granted to government agencies with no bond being required. Ms. LeMasters is not a government agent, rather a private citizen renting an apartment, and therefore Rule 62 (C) does not apply to this case.

Generally, requests for oral argument are denied when the case involves a narrow issue of law. This case involves a non-government employee seeking a stay in the trial court without the requirement of posting of a supersedeas bond. In her Response to Respondents' Motion for Judgment on the Pleadings, Ms. LeMasters claims that nearly all Ohio Appellate Courts follow *Curl* and *Ocasek* and apply those holdings to appellants who are non-governmental officials. (p.6). In that same Response, Ms. LeMasters cites multiple cases in an attempt to prove her claim that she has a clear right to the requested relief.

Although each referenced case involves Civ. R. 62, the cases do not involve the issue of a non-governmental appellant being granted a stay without the requirement of posting a supersedeas bond. In *Fifth Third Bank v. Wallace Group Inc.*, 1994 Ohio App. LEXIS 4915 (Ct. App., Hamilton County); and *Francis David Corp. v. MAC Auto Mart, Inc.*, 2010-Ohio-1215 (Ct. App., Cuyahoga County), the court notes that appellant could have obtained stay a trial court's judgment, but that appellant would have had to pay an adequate bond in order for the stay to be granted. In *Board of Educ. v. Dayton Educ. Ass'n*, 80 Ohio App. 3d 758, 610 N.E.2d 615, (Ct. App., Montgomery County, 1992), and *Sand Beach Conservancy Dist. v. Abood*, 2007-Ohio-6521 (Ct. App., Ottawa County), a government agent was involved and therefore no supersedeas bond was required as established by Civ. R. 62 (C).

Ms. Lemasters also referenced *Peoples Bank of Point Pleasant v. Yeager*, 1993 Ohio App. LEXIS 1364 (Ct. App., Gallia County), which does state that an appellant is ordinarily entitled to a stay as a matter of right because the lone requirement is the giving of an adequate supersedeas bond. The court reasoned there is a right to a stay and that the trial court is required in almost all instances to grant a stay and set the supersedeas bond if required. *Id.* The court in *Yeager* goes on to state that determining the need for the bond and its amount are discretionary matters which will not be overturned by an appellate court absent a showing of abuse of discretion. This reasoning would have allowed the appellate court in the present case to find an abuse of discretion if the appellate court felt that the trial court had acted inappropriately. The appellate court in this case did not rule that the trial court abused its discretion in denying Ms. LeMasters' request for stay, but instead chose to deny the request for stay without the requirement of a supersedeas bond. Relator's cited authority did not involve the specific issue of a non-governmental appellant requesting a stay without being required to post a supersedeas

bond. Instead, Relator's cited authority more broadly addressed the general provisions of Civ. R. 62 (B) and (C).

Ms. LeMasters believes that a decision on this case will not only impact herself but also any non-governmental appellant. In truth, a decision on the matter at hand would only apply to a non-governmental appellant who specifically requests a stay in trial court demanding a \$0 supersedeas bond be set. This is a fact specific case, not one of great public importance. Both the trial court and the court of appeals here ruled that granting the requested \$0 supersedeas bond would not protect the status quo for the landlord, and no law cited by Ms. LeMasters suggests otherwise.

And, Ms. LeMasters will be afforded process to express and argue all of her concerns to the Third Appellate Court of Appeals on March 1, 2016. That oral argument on the merits of her appeal, the underlying case in controversy at issue here, was set by the Appellate Court on February 9, 2016.

Ms. LeMasters also claims that the question before this Court will impact the forcible entry and detainer process in the State of Ohio. However, tenants in Ms. LeMasters' position, as well as Ms. LeMasters herself have an adequate remedy that does not require petitioning this Court for a writ of mandamus or a writ of prohibition. Once her request for stay without supersedeas bond was denied, Ms. LeMasters had the option to appeal that decision, which she did, and that appeal was denied. In her appeal to the 3rd District Court of Appeals, Relator again requested that the stay be granted with no supersedeas bond requirement. There is a system in place that will generally result in a stay being granted if a supersedeas bond is posted. Relator chose to request that no bond be required at the trial court and again in the appellate court. Both stays were denied. There are ways to resolve this issue through the current forcible entry and

detainer process in the State of Ohio and, therefore, the decision on this case would not have the impact Ms. LeMasters' claims.

For the above mentioned reasons an oral argument is not appropriate for this matter.

Respectfully submitted,

s/Lynnette Dinkler

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of February, 2016, I served a copy of the foregoing, via electronic mail, upon the following:

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