

JAMES MCCLAIN

NO. 20-C-450

VERSUS

FIFTH CIRCUIT

L.T. TRAPAGNIER

COURT OF APPEAL

STATE OF LOUISIANA

December 11, 2020

Susan Buchholz

First Deputy Clerk

IN RE L.T. TRAPAGNIER

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 170-380

Panel composed of Judges Fredericka Homberg Wicker,
Marc E. Johnson, and John J. Molaison, Jr.

WRIT GRANTED, IN PART, DENIED, IN PART

Relator, L.T. Trapagnier, seeks review of the First Parish Court's December 10, 2020 Order that set a suspensive appeal bond at \$1,300 for appellate review of a judgment of eviction.

The purpose of a bond is to protect the appellee against damages he may sustain as a result of the appeal, and damages typically contemplated in cases of eviction are the potential lost rents to a landlord while an appeal is pending. *Porter v. Grandison*, 20-421(La. App. 5 Cir. 11/30/20)(writ disposition), citing *Windmill Creek N. – 1st Lake v. Gowan*, 20-85 (La. App. 5 Cir. 2/21/20); 2020 WL 875252. The judgment of eviction in this matter does not state a reason for the eviction. Therefore, we are not able to ascertain whether non-payment of rent is an issue in this eviction. However, to the extent that non-payment of rent is an issue, such that the purpose of requiring bond to protect the landlord for lost rent during the pendency of the appeal is pertinent, we note that Relator, in his petition for trial *de novo* and stay of justice of the peace eviction, alleges that he is entitled to protection from eviction pursuant an order from the Center for Disease Control and Prevention ("CDC") concerning evictions and COVID-19.

Along with the petition for a trial *de novo*, Relator attached a copy of his signed declaration in accordance with the CDC's Order for a temporary moratorium on evictions for the purpose of preventing further spread of COVID-19. In the event that Relator is covered and protected by the CDC Order (an issue that is not currently before this Court and upon which we express no opinion), any requirement that he post bond in order to stay his eviction pending appeal would directly subvert the objectives of, and violate the restrictions of, the CDC Order.

Under the unique circumstances presented by the COVID-19 pandemic, and the repercussions to Relator of an eviction potentially in violation of the CDC Order, we find that the trial court should have erred in favor of granting Relator a stay of the judgment of eviction without requiring that a bond be posted. We further find that it was an abuse of discretion not to do so.

Therefore, we vacate the portion of the December 10, 2020 order that sets the bond at \$1,300 pending final judgment. In all other respects, the other requests of Relator are denied.

Accordingly, the writ application is granted, in part, and denied, in part.

Gretna, Louisiana, this 11th day of December, 2020.

MEJ
FHW
JJM

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



FIFTH CIRCUIT

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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

(504) 376-1400

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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 **12/11/2020** 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-450

E-NOTIFIED

First Parish Court (Clerk)
Honorable Rebecca M. Olivier (DISTRICT JUDGE)
No Attorney(s) were ENOTIFIED

MAILED

James McClain (Respondent)
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Alexis Erkert (Relator)
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