

**IN THE JUSTICE OF THE PEACE COURT OF THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY
COURT NO. 17**

**COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947**

CIVIL ACTION NO: JP17-15-004904

CARVEL GARDENS ASSOCIATES VS ANTRELL HORSEY

**SYSTEM ID: @2792950
ANTRELL HORSEY
2401 DANIEL STREET
LAUREL DE 19956**

Appearances: Michael P. Morton, Esquire, represented the plaintiff.
The defendant was self represented.

Before: Sheila G. Blakely, Deputy Chief Magistrate; William P. Wood and J
John C. Martin, Justices of the Peace

Martin for the Court

NOTICE OF JUDGMENT/ORDER

The Court has entered a judgment or order in the following form:

On September 9, 2015 the plaintiff filed this action seeking to recover possession of the rental property located at Carvel Gardens, 2401 Daniel Street, Laurel, Delaware because of lease and rules violations. Trial was held on December 15, 2015 and judgment was entered on December 28, 2015. On January 4, 2016 the defendant filed a timely appeal of this judgment pursuant to 25 *Del.C.* §5717. A trial *de novo* was held on February 8, 2016. This is the decision of the three-Judge Panel hearing the appeal.

HISTORY

The basic facts of this case were not disputed. At about 10:30 am on September 2, 2015 Officers of the Laurel Police Department were dispatched to the defendant's apartment because of a possible stabbing. Shortly after their arrival at the apartment, the Officers entered and found Marcus Wright lying on a couch. The Officers observed dried blood on a blanket Wright was using and on his clothing. Wright told the Officers that he had been stabbed in the back earlier that morning as he was walking outside the apartment building. After being stabbed, he continued walking to the defendant's apartment and was admitted there by the defendant. After a brief police interview, he was transported to a local hospital by medical personnel. The police later identified Wright's girlfriend as the person responsible for the stabbing.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

Wright did not testify at the trial. A warrant was outstanding for his arrest on an unrelated matter. The Officer who investigated this incident testified that he was told by Wright that when he first arrived at the defendant's apartment, he did not want the police or medical personnel contacted about this incident; however, he later asked the defendant several times to call an ambulance and the defendant refused to do so. Based on the Officer's investigation, he obtained a warrant for the defendant's arrest for Reckless Endangering in the First Degree, which was later reduced to the Second Degree at the preliminary hearing. This charge was eventually dismissed because Wright could not be located to testify in the case.

Based on this incident, the plaintiff's counsel sent a letter to the defendant dated September 3, 2015, which was captioned "Notice of Immediate Termination of Rental Agreement". Specifically, the plaintiff alleged that "...Wright requested multiple times that you call 911...However, you refused to call any emergency personnel..." The letter cited various lease and rule violations as well as a violation of 25 Del.C. §5513(b) concerning irreparable harm to a person or property. When the defendant did not vacate his apartment in response to this letter, this action was filed on September 9, 2015.

The defendant testified that on the morning in question, he heard loud and repeated banging on his apartment door at about 5:00 am. In response, he opened the door to find Wright asking to come in. He let him in and Wright told him he had been stabbed but he did not want the defendant to call the police because he was wanted. The defendant observed that Wright was "drunk and high". In a while, Wright left the apartment saying that he was going back to his girlfriend's residence to fight some more with her and he did so.

Wright eventually returned to the defendant's apartment and for several hours walked around the apartment with lots of energy. The defendant said that from Wright's actions "you wouldn't think he had ever been stabbed" and there was little visible blood. Wright went to sleep on the defendant's couch. When he woke up he couldn't move and asked the defendant to call an ambulance. The defendant then handed him his cell phone and Wright called himself. The defendant left his apartment for a short time and when he returned, Wright was being loaded into an ambulance.

The defendant was adamant that Wright was a grown man and from his actions in the apartment, his statement not to call the police, his departure to go back to "fight some more" with his girlfriend, his later return and little visible blood, the defendant was just doing what Wright asked in not calling for assistance. As soon as Wright did request assistance, he gave him his cell phone and Wright called for help himself. Soon after that, the police and an ambulance came to the scene.

DISCUSSION

The trial testimony of the Police Officer who interviewed Wright and related his alleged story was potential hearsay; however, the plaintiff argued that it was not hearsay because the information was covered by an exception to the hearsay Rule because the declarant was not available. The plaintiff did not further explain this argument.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

Rule 804 of Delaware's Uniform Rules of Evidence covers this issue. The definition of unavailability includes five distinct situations and the one applicable to this matter is (a)(5) which states: (The witness) is absent from the hearing and the proponent of the declarant's statement has been unable to procure the declarant's attendance by process or other reasonable means.

At trial, there was no evidence or argument as to why Wright was not present and there was no statement by the plaintiff as to what efforts it made to procure his presence. A determination of whether a witness was "unavailable" rests within the sound discretion of the trial court. *Younger v. State*, 496 A.2d 546 (Del. 1985) Here, considering the critical nature of the exact discourse between the defendant and Wright as to any requests for medical assistance and the absence of any information as to the efforts made by the plaintiff to have him available for trial, the Court finds that Wright was not "unavailable" within the meaning of the Rule and so the Officer's testimony about his alleged statements is hearsay and will not be allowed into evidence.

During the trial, the defendant admitted that Wright told him that he was wanted by the police and that is why he did not want them to be called for assistance. The plaintiff then introduced a new argument into its case by pointing out that hiding someone who is wanted by the police is using an apartment unit for an illegal purpose, which is prohibited by the parties' lease. The plaintiff argued that this act of "harboring" was part of the trial evidence and should be considered by the Court in deciding this case.

Carvel Gardens is a subsidized property and is governed by regulations promulgated by the US Department of Housing and Urban Development. Chapter 8 of HUD's Occupancy Handbook governs the termination of a tenancy in the property. Section 8-13(B)(5)(b) provides:

In any judicial action to evict a tenant, the owner must rely on the grounds cited in the termination notice served to the tenant. However, the owner is not precluded from relying on grounds about which he/she had no knowledge of at the time the notice was sent to the tenant.

The plaintiff's September 3, 2015 termination letter to the defendant narrates its version of the events that occurred involving the defendant and Wright and states that: "The above mentioned conduct constitutes material breaches of your Rental Agreement..." The defendant's act of "harboring" Wright is not mentioned in this narration.

In its case in chief, **the plaintiff introduced into evidence** a copy of the police affidavit dated September 2, 2015 that was used to obtain a warrant for the defendant's arrest on the Reckless Endangering charge. The document clearly contains the statement that a warrant for Wright's arrest existed at the time of the incident in the defendant's apartment. So, as early as the day of the incident itself, more than five months before this trial, the plaintiff may have had access to an official document that provided a basis for a "harboring" count in its allegations of the defendant's conduct; however, this issue was not raised as part of the plaintiff's case before the trial began and there was no evidence that the plaintiff attempted to send an amended Notice of Termination letter to the defendant or to amend its case filing to include this issue.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

Thus, the Court finds that the plaintiff's failure to include the "harboring" allegation in its case prior to the very day of trial precludes this issue from the grounds that may be used by the plaintiff to pursue the termination of the defendant's lease. The plaintiff is bound by HUD's regulation cited above and must rely only on the grounds cited in its notice letter to the defendant.

As the plaintiff stated in its opening statement to the Court at this trial, **the defendant was accused of a "failure to act" by not allowing Wright to get help when he requested it and this constituted an act that threatened irreparable harm to Wright.** The plaintiff bears the burden of proving this allegation by a preponderance of the evidence. Yet, **the only admissible evidence** on this critical issue was from the testimony of the defendant. And this testimony was that he gave Wright his own cell phone to call for help as soon as he requested it and he never denied him access to assistance.

ORDER

Because of this, the Court finds that the plaintiff failed to meet its burden of proof and so judgment must be entered on behalf of the defendant and against the plaintiff. Possession remains with the defendant.

IT IS SO ORDERED this 16th day of February, 2016

 (SEAL)
Justice of the Peace/John C Martin for the Panel



NOTICE OF APPEAL RIGHTS

Any party has 15 days starting the day after the judgment is signed by the judge to appeal the judgment of the Justice of the Peace Court to the Court of Common Pleas of the above county. If the judgment involves an action for summary possession in a landlord/tenant case, then either party has 5 business days, starting the day after the judgment is signed by the judge, to appeal the judgment to a three judge panel at the Justice of the Peace Court where the judgment was ordered. You must complete all of the appeal requirements within those periods. To prevent dismissal, the appeal must name all of the parties as they were originally named in the Justice of the Peace Court action. (This applies even if the action was dismissed in the Justice of the Peace Court against one or more of the parties.) Additional information on appeal procedures is found in the attached sheet entitled "Justice of the Peace Courts Civil Post-Judgment Procedures". (J.P. Civ. Form No. 14A) If no appeal is filed, parties may remove all exhibits from the Court no sooner than 16 days and no later than 30 days, from the date of this judgment. If not removed, the Court may dispose of the exhibits without further notice to the parties.

Final Date of Appeal of a Civil Case to the Court of Common Pleas is 15 days from the judgment.

Final Date for Appeal of a Landlord/Tenant case to a 3 Judge Panel is 5 days from the judgment.

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

IN THE JUSTICE OF THE PEACE COURT OF
THE STATE OF DELAWARE, IN AND FOR SUSSEX COUNTY
COURT NO. 17

COURT ADDRESS:
23730 SHORTLY ROAD
GEORGETOWN DE 19947

CIVIL ACTION NO: JP17-15-004904

**CARVEL GARDENS ASSOCIATES LLC, PLAINTIFF
VS
ANTRELL HORSEY, DEFENDANT**

Plaintiff Parties:

ATTORNEY FOR PLAINTIFF
SYSTEM ID: 002492
MICHAEL P MORTON
MICHAEL P. MORTON, P.A.
GREENVILLE PROFESSIONAL CENTER
3704 KENNETT PIKE
GREENVILLE, DE 19807

Defendant Parties:

DEFENDANT
SYSTEM ID: @2792950
ANTRELL HORSEY
2401 DANIEL STREET
LAUREL, DE 19956

PLAINTIFF

SYSTEM ID: @2792949
CARVEL GARDENS ASSOCIATES LLC
PO BOX 635
LAUREL, DE 19956

Other Case Parties:

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

**JUSTICE OF THE PEACE COURT
CIVIL POST-JUDGMENT PROCEDURES**

[This information is not legal advice and not a substitute for seeking legal advice from an attorney. This information is not binding on the court if incorrect or misunderstood. It relates to frequently asked questions concerning post-judgment procedures but does not address all of the possible procedures and may not apply in your particular case. Forms for these procedures may be obtained from any Justice of the Peace Civil Court. All motions must include the name of the court, the names of the parties, the case number, the date the motion is filed with the Justice of the Peace Court and a title indicating the reason for the motion. Court costs or fees must accompany the motion, unless the person has requested, and the court determined, that the person may proceed in forma pauperis (without paying costs or fees because they have no money to pay).]

FOR CIVIL ACTIONS IN DEBT, TRESPASS OR REPLEVIN:

DEFAULT JUDGMENTS

Default judgments are normally entered against a defendant who fails to appear in court on the scheduled trial date or to provide a written answer to a complaint as required by the summons. If a default judgment has been entered, the defendant has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion asking that the judgment be vacated and the case be reopened so the defendant may present evidence on the case. If service was made by certified mail, return receipt requested, and the certified mail was returned unclaimed, the defendant has 30 calendar days to file a motion to vacate a default judgment. This motion must be in writing and should briefly state the reason for the request to vacate the judgment as provided by 10 Del. C. § 9538. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) The time allowed to appeal a judgment continues to run even after a motion to vacate the default judgement is filed (see below for additional information on appeal procedures). **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

NON-SUIT JUDGMENTS

Non-suit judgments are entered against a plaintiff who fails to appear in court on the scheduled trial date. Non-suit judgments against the plaintiff are similar to default judgments against the defendant. (See above section.) If a non-suit judgment has been entered, the plaintiff has 15 calendar days, starting the day after the judgment is ordered by the court, to enter a motion requesting that the judgment be vacated and the case reopened so the plaintiff may present evidence on the case. This motion must be in writing and should briefly state the reasons for the request, as provided by 10 Del. C. § 9539. (Copies of the complete Delaware Code, which include this Code section, are available in public libraries throughout the State.) **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

APPEALS - Either party has 15 calendar days, starting the day after the judgment is ordered by the court, to appeal the judgment to the Court of Common Pleas for a trial de novo (new trial). 10 Del. C. § 9571. To file an appeal, the appellant (party seeking the appeal) must go to the Court of Common Pleas, fill out the appeal form and comply with other Court of Common Pleas requirements, within 15 days after the judgment is entered. A certified transcript of the Justice of the Peace Court record and the filing fee of \$125.00 plus a \$10.00 court security fee must be filed by the appellant with the Court of Common Pleas within 10 days after the appeal was filed (within 25 days after the Justice of the Peace Court judgment). A certified transcript of Justice of the Peace Court record may be obtained from the Justice of the Peace Court which ordered the judgment at least five (5) days prior to the final date of filing the transcript with the Court of Common Pleas. **A FEE OF \$10.00 MUST ACCOMPANY A CERTIFIED TRANSCRIPT REQUEST.** To prevent execution on the judgment during the time of the appeal, an appellant must apply to the Court of Common Pleas for a bond to stay the execution.

MOTION FOR A NEW TRIAL - Either party has 10 days, starting the day after the judgment is signed by the judge, to file a motion for a new trial as provided under Justice of the Peace Court Civil Rule 59. This motion shall be in writing and shall briefly state the reasons for

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.delaware.gov>

the request. A motion for a new trial will be heard by the Justice of the Peace who originally heard the case. The ability of the Justice of the Peace to grant a motion for a new trial is limited. For example, the reason given for requesting a new trial may be newly discovered evidence. However, for a judge to grant a motion for a new trial based upon newly discovered evidence, the party requesting the new trial must show all of the following: (1) the newly discovered evidence is important enough to change the result in the case; (2) the evidence could not have been discovered prior to the original trial with reasonable investigation; and (3) the evidence does not merely repeat or dispute evidence presented in the original trial. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.**

In civil cases, if a motion for a new trial is filed after 10 days from the date of judgment, the time for filing the appeal continues to run and the 15 days allowed for the appeal may pass before any action is taken by the Court. If that happens, the party may be unable to file an appeal. If the motion is filed within 10 days from the date of judgment, the 15-day time for appeal does not include the days between the filing of the motion for a new trial and the judge's decision on the motion.

FOR LANDLORD/TENANT POSSESSION ACTIONS:

APPEALS

FOR POSSESSION OF RENTAL UNIT - Either party has five (5) business days, starting the day after the judgment is signed by the judge, to appeal the judgment of a Justice of the Peace which relates to the possession of a rental unit and other rental matters (including back rent due) to a special Justice of the Peace court. The special court trial will be a completely new trial before three other Justices of the Peace, unless the original trial was a jury trial. The appellant (seeking to appeal to the three-judge special court) must appear in the originating Justice of the Peace Court and make the appeal in writing. **A FEE OF \$50.00 MUST ACCOMPANY THIS MOTION.** To prevent execution on the judgment during the time of the appeal, the appellant must provide a bond or other assurances, as required by the court, to demonstrate the ability to pay all court costs, money damages, and other payments ordered by the court.

FOR DEBT (Rent Only) - The procedures for appealing or filing a motion for a new trial in a civil debt action explained above apply to an appeal of a landlord/tenant action involving rent or money damages only (and not possession of the rental unit).

DEFAULT OR NON-SUIT JUDGMENTS - If the possession of the rental unit was obtained by default judgment or nonsuit in a landlord/tenant possession action, the motion to vacate the default judgment or nonsuit must be filed within 10 days from the date the judgment was entered. **A FEE OF \$15.00 MUST ACCOMPANY THIS MOTION.** (This applies only to cases filed after July 17, 1996. Motions to vacate a default judgment or nonsuit in cases filed before July 17, 1996 must comply with the same time periods as for default and nonsuit judgments in civil actions in debt, trespass or replevin (see front page).)

VIEW YOUR CASE ONLINE: <http://courtconnect.courts.dclaware.gov>