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PAUL F. WILLIAMS
By Barbara Hammonds

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COMMONWEALTH OF KENTUCKY
26th JUDICIAL DISTRICT
HARLAN CIRCUIT COURT
87-X-002

HOUSING AUTHORITY OF HARLAN APPELLANT,

VS ORDER AFFIRMING DISTRICT COURT JUDGMENT

HARVEY SIMPSON AND TAMMY SIMPSON APPELLEES.

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This case is in this court on Appeal from the Harlan District Court, the Honorable Phillip Hamm sitting. On cross motion for Summary Judgment by the parties, the District Court, after having considered affidavit and written memorandum supporting motions and after having heard oral argument of counsel, rendered Summary Judgment in favor of the Appellee/Defendant. Both parties, having moved for Summary Judgment, stipulated that there was no material fact in dispute.

The Appellant now presents the following issues in support of the appeal:

1. The decision was arbitrary and capricious and was not supported by statute or by case law advanced by either side in the case.

2. The court erred by considering the motion for Summary Judgment strickly against the non-movant and by resolving about the meaning of the applicable law in favor of the Appellee.

3. The decision, made in consideration of the circumstances of the individuals "hard case" would have unfortunate consequences if extended to apply to other situations involving other tenants and Public Housing Authorities.

In Appellant's claim that the decision was arbritary and capricious and not supported by statute or by case law, the Housing Authority receives funding from the U.S. Department of Housing and Urban Development for its operation, therefore, is subject to federal law and regulations. As set forth in Chapter 8 of Title 42 of the United States Code "Low-Income Housing", Subsection "L" of 42 U.S.C. 1437d (4), a requirement that the public housing agency may not terminate the tenancy except for serious or repeated violations of terms or conditions of the lease for for other "good causes" is specified. While failure to pay rent on a timely basis is a serious violation, it is advisable, if not an obligation, for the court to give consideration to circumstances causing the delinquency. In Goldberg v. Kelly, 397 U.S. 254, 90 S Ct. 1011, 1017, 25 L. Ed. 2d 285 (1970), the court stated "the government cannot deprive a private citizen of his continued tenancy without affording him adequate procedural safeguards even if public housing could be deemed to be a privledge." Affording adequate procedural safeguards include the tenant's opportunity to reveal any extenuating circumstances causing the delinquency. Goldberg v. Kelly supra, further stated "the minimum procedural safeguards required by due process in each situation depend on the nature of the go ernmental function involved and the substance of the private interest which is affected by the governmental action." (Emphasis added)

Since there is no prevailing authority in Kentucky case law dealing with the issue at hand, it is necessary for the court to decide the issue based on the evidence introduced. While this court is not bound by decisions of other states on similar questions, "it is eminently proper for the court of one state to consider the decisions of the courts of other states on similar questions as aids on arriving at a correct decision and to follow such decision if satisfied on the soundness of the reasoning by which they are supported." C.J.S., "Courts of Other States", Section 204, p. 354-356.

The Appellee/Defendant brings the court's attention to Maxon Housing Authority v. McLean, 328 SE 2d 290 (NC 1985), a case which is remarkably similar to the case instant. The Supreme Court of North Carolina found that failure to pay rent, due to lack of fault on the part of the tenant, did not meet the standard of "good cause" as defined in the Code of Federal Regulations. Appellant argues that Alppellee/Defendant, has failed to show lack of fault on her part. On this point, the court disagrees. Appellee/Defendant, through her affidavit, clearly shows that the delinquency resulted in desertion by her husband and the lack of immediate relief from the Department for Human Resources. This situation can hardly be the fault of Ms. Simpson. Maxon, supra, cites Carrie Hines v. New York City Housing Authority, 67 A.D.

2d 1000, 413 N.Y.S. 2d 733 (1979) which held:

> "It would be shocking to one's sense of fairness to terminate the tenancy of persons who have not committed nondesirable acts and have not controled those who have committed such acts" (Baldwin v. New York City Housing Authority, 65 A.D. 2d 546, 408 N.Y.S. 2d 948 (2d Dep. 1978).

Appellants claim that the District Court erred by entering Summary Judgment for Appellee/Defendant and application of the law is erroneous under Federal Rules of Civil Procedure Rule 56. The Court properly moved since the parties were in agreement regarding the material facts of the case and prior interpretations of federal law and available case law supports the judgment.

Appellant further raises the issue of future unfortunate consequences involving other tenants in Public Housing if the ruling of the District Court stands. On the contrary, by overruling the District Courts, rise would be given to a potentially devastating precedent. No tenant in Public Housing could have a sense of security. Since Goldberg v. Kelly, supra, the courts have consistently held that "tenants of convential public housing...have a property interest in continued occupancy." Escalera v. New York City Housing Authority, 425 F. 2d. 853 (2d Cir. 1969), cert.denied 400 US 853 (1970). If landlords, in general, have the option of evicting their tenants without the guarantees of due process, no tenant would be exempt in severe financial crisis. It is an established fact that citizens relying on public assistance are a

disadvantaged group. To impose further sanctions upon them by literal application of rules and regulations as supported by Appellant, would only further the miseries of this oppressed group.

THE DECISION OF THE HARLAN DISTRICT COURT IS AFFIRMED.

Entered this 7 day of June, 1988.

Hon. Clarence A. Cornelius, Judge
Harlan Circuit Court

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