

**COURT OF COMMON PLEAS
FOR THE STATE OF DELAWARE**
KENT COUNTY COURTHOUSE
38 THE GREEN
DOVER, DELAWARE 19901
PHONE: (302) 735-3910

CHARLES W. WELCH, III
JUDGE

April 20, 2016

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Attorney for Appellant, *Defendant Below*

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Dover, DE 19901

Attorney for Appellee, *Plaintiff Below*

RE: Brandi Butler v. Abigail Jane Davis
C.A. No.: CPU5-15-001209
(Appeal from the Justice of the Peace Court)

Decision on Appellee's Rule 60(b) Motion for Relief from Order

Dear Ms. Chasanov and Mr. Layton:

The Court has reviewed the appellee's Motion for Relief that was filed pursuant to Court of Common Pleas Civil Rule 60(b). In her motion, the appellee moved the Court to vacate its October 8, 2015, Order granting the appellant's Motion to Stay execution of the judgment appealed from the Justice of the Peace Court. After careful consideration by the Court, the appellee's motion is denied for the reasons provided below.

On or about September 23, 2015, the Justice of the Peace Court entered judgment in favor of Ms. Abigail Jane Davis, the appellee/plaintiff-below, holding that she was the lawful owner of a pet Chihuahua dog named Chapito. Thereafter, on or about October 7, 2015, the appellant/defendant-below, Ms. Brandi Butler, filed a timely appeal in this Court and a motion to stay execution of the judgment below pending the appeal. The appellant's Motion to Stay was filed pursuant to Court of Common Pleas Civil Rule 62(c).

On October 8, 2015, the Court granted the motion and ordered the appellant to post a \$100.00 cash supersedeas bond. The bond was posted on or about October 19, 2015, and per the

Order of this Court, the Justice of the Peace Court stayed the Writ of Replevin for the return of the dog to the appellee.

In the appellee's Motion to Dismiss, which was denied by this Court on March 10, 2016, the appellee informed the Court that she had been denied an opportunity to oppose the appellant's Motion to Stay because she had not received a copy of the motion before it was granted. On January 29, 2016, the appellee filed this instant motion to vacate the stay of execution pursuant to Rule 60(b)(5) and Rule 60(b)(6).

The appellee contends that the unique nature of the property at issue in this case, a living animal, warrants relief under either Rule 60(b)(5) or Rule 60(b)(6). In opposition, the appellant contends that the motion should be denied because there was unreasonable delay in the filing of the motion and that any hardship or injustice raised by the appellee is equally faced by the appellant.

DISCUSSION

In applying Rule 60(b), this Court is guided by two countervailing values it implicates: "the integrity of the judicial process and the finality of judgments." *In re MCA, Inc. v. Matsushita Elec. Indus. Co., Ltd.*, 785 A.2d 625, 634 (Del. 2001). "The rule exists to serve the first; its administration must acknowledge the second." *High River Ltd. P'ship v. Forest Laboratories, Inc.*, 2013 WL 492555, at *6 (Del. Ch. 2013). Rule 60(b) motions are within the sound discretion of the trial court, and they are not to be taken lightly or easily granted. *In re MCA, Inc.*, 785 A.2d at 633, 635.

A party moving to vacate a final judgment or order must show that they are entitled to relief under Rule 60(b) by a preponderance of the evidence. The Court under Rule 60(b), in relevant part, may relieve a party from a final judgment or order for the following reasons:

Relief from judgment or order.

(1) Mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment.

In the instant matter, the Court finds that there are no grounds under Rule 60(b) that warrants relief from the stay of execution. A primary purpose of a stay of execution pending an appeal is to maintain the status quo between the parties until the Court makes a final

determination of the issues on appeal. Furthermore, the hardship raised by the appellee under Rules 60(b)(5) and 60(b)(6) is de minimis as the stay of execution is temporary.

The Court understands the urgency and sensitivity of this matter. Therefore, the Court will schedule this case for an expedited trial so that the dog, Chapito, may be placed in his rightful home.

CONCLUSION

The appellee failed to present sufficient evidence showing that she is entitled to relief under Rule 60(b). Therefore, the appellee's Motion for Relief from the Court's October 8, 2015, Order staying the execution of the judgment appealed from in the Justice of the Peace Court is DENIED. The Court will schedule this case for an expedited trial.

IT IS SO ORDERED this 20th day of April, 2016.

Sincerely,

A handwritten signature in black ink, appearing to read "Charles W. Welch, III". The signature is fluid and cursive, with the first name "Charles" being the most prominent.

Charles W. Welch, III

CWW: mek