

State of New Hampshire
Supreme Court

NO. 05-_____

TOWN OF CANDIA

v.

CLARENCE BLEVENS, JR.

NOTICE OF MANDATORY APPEAL OF CLARENCE BLEVENS, JR.
Pursuant to Supreme Court Rule 7(1)(A)

By: Joshua L. Gordon, Esq.
Law Office of Joshua Gordon
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State of New Hampshire Supreme Court

NOTICE OF MANDATORY APPEAL

This form should be used for an appeal from a final decision on the merits issued by a superior court, district court, probate court or family division court except for a decision from: (1) a post-conviction review proceeding; (2) a proceeding involving the collateral challenge to a conviction or sentence; (3) a sentence modification or suspension proceeding; (4) an imposition of sentence proceeding; (5) a parole revocation proceeding; or (6) a probation revocation proceeding.

1. COMPLETE CASE TITLE AND DOCKET NUMBERS IN TRIAL COURT

Town of Candia
v.
Clarence Blevens, Jr.

Rock. Cnty. Super. Ct. No. 03-E-0586

2. COURT APPEALED FROM AND NAME OF JUDGE(S) WHO ISSUED DECISION(S)

Rockingham County Superior Court

Kenneth R. McHugh, J. (Oct. 30, 2003 Temporary Order)

Patricia C. Coffey, J. (Mar. 17, 2004 Default order)

Robert E.K. Morrill, J. (Jan. 18, 2005 Order denying reconsideration)

3A. NAME & ADDRESS OF APPEALING PARTY

BK qnbd Blevens, Jr.
6 Blevins Dr.
Candia, NH 03034

3B. NAME, FIRM, ADDRESS & TELEPHONE
NUMBER OF APPELLANT'S COUNSEL

Joshua L. Gordon
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26 S. Main St., #175
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4A. NAME & ADDRESS OF OPPOSING PARTY

Town of Candia, New Hampshire
74 High St.
Candia, N.H. 03034
(603) 483-8101

4B. NAME, FIRM, ADDRESS, & TELEPHONE
NUMBER OF OPPOSING COUNSEL

Matthew R. Serge, Esq.
Upton & Hatfield, LLP
10 Centre St., PO Box 1090
Concord, N.H. 03302
(603) 224-7791

5. NAMES OF ALL OTHER PARTIES AND COUNSEL IN TRIAL COURT

Representing Mr. Blevens in some stages of proceeding below:
Joseph Kelly Levasseur
119 W. Merrimack St.
Manchester, N.H. 03101
(603) 622-7575

6. DATE OF CLERK'S NOTICE OF DECISION
OR SENTENCING

Relief denied: Oct. 25, 2004

DATE OF CLERK'S NOTICE OF DECISION
ON POST-TRIAL MOTION

Motion to Reconsider denied: Jan. 18, 2005
Clerk's Notice: Jan. 28, 2005

7. CRIMINAL CASES: DEFENDANT'S
SENTENCE AND BAIL STATUS

n/a

8. APPELLATE DEFENDER REQUESTED?

No.

9. IS ANY PART OF CASE CONFIDENTIAL? IDENTIFY WHICH PART AND CITE AUTHORITY

There no known basis for confidentiality.

10. IF ANY PARTY IS A CORPORATION, NAMES OF PARENTS, SUBSIDIARIES & AFFILIATES

n/a

11. DO YOU KNOW ANY REASON WHY ONE OR MORE SUPREME COURT JUSTICE WOULD BE DISQUALIFIED FROM THIS CASE?

There is no known basis for recusal.

IF YES, FILE MOTION FOR RECUSAL, SUPREME COURT RULE 21A

12. IS A TRANSCRIPT OF TRIAL COURT PROCEEDINGS NECESSARY?

Yes.

IF YES, COMPLETE TRANSCRIPT ORDER FORM

A transcript order form is not attached because counsel does not yet have the information necessary to complete it. Counsel has written to the trial court seeking the information, and will soon forward a completed transcript order form to the court and parties.

13. LIST SPECIFIC QUESTIONS TO BE RAISED ON APPEAL, EXPRESSED IN TERMS AND CIRCUMSTANCES OF THE CASE, BUT WITHOUT UNNECESSARY DETAIL. STATE EACH QUESTION IN A SEPARATELY NUMBERED PARAGRAPH.

- I. Does an interlocutory order which ensures that a party is entitled to a hearing “[i]f there is a disagreement as to what constitutes ‘junk’ under the Town Ordinance,” get extinguished by a default judgment?
- II. When an interlocutory order explicitly recognizes the parties’ right to a hearing regarding the adequacy of the ordered remedy, are the parties bound by principles of res judicata and collateral estoppel because those matters were not fully litigated?
- III. Pursuant to both the federal and state constitutions, does Mr. Blevens have a due process right to a hearing and a determination by a judicial officer regarding whether there remains any “junk” on his property when he and the town have been unable to agree?
- IV. Does Mr. Blevens have a right, pursuant to federal and state constitutions and statutes (due process, accountability of magistrates, right to know), to copies of photographs, inventory lists, auctioneer’s reports, and other materials upon which the town purports to have based its opinion of what constitutes “junk”?
- V. What is “junk”?
- VI. Did Mr. Blevens sufficiently clean up his land?

14. CERTIFICATIONS

I hereby certify that, upon information and belief, every issue specifically raised has been presented to the court below and has been properly preserved for appellate review by a contemporaneous objection or, where appropriate, by a properly filed pleading.

Joshua L. Gordon, Esq.

I hereby certify that on or before the date below copies of this notice of appeal were served on all parties to the case and were filed with the clerk of the court from which the appeal is taken in accordance with Rule 26(2).

February 25, 2005

Joshua L. Gordon, Esq.

ATTACHMENTS

(1)	DEFAULT ORDER (Mar. 17, 2004)	5
(2)	TEMPORARY ORDER (Oct. 30, 2003)	6
(3)	ORDER (denying motion for hearing) (Oct. 25, 2004)	7A
(4)	CLERK’S NOTICE OF DECISION (denying motion to reconsider) (Jan. 28, 2005)	8