

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-513

MAY TERM, 2004

	}	APPEALED FROM:
	}	
Bank of New York	}	Windsor Superior Court
	}	
v.	}	
	}	DOCKET No.455-10-01 Wrcv
Constance Lenge and Nicholas	}	
Lenge	}	Trial Judge: Hon. Mary Miles Teachout
	}	
	}	

In the above-entitled cause, the Clerk will enter:

Appellant Nicholas Lenge appeals pro se from the trial court' s denial of his motion to intervene. He argues that the court abused its discretion in denying his motion. We affirm.

The underlying dispute in this matter involves a parcel of real property in Plymouth, Vermont. In April 2003, Constance Lenge entered into agreement with Bank of New York to dismiss the underlying proceedings against her without prejudice in accordance with the terms of a settlement agreement. The trial court approved the stipulation on April 7, 2003. In June 2003, Constance Lenge filed a motion for enforcement and compliance of the settlement agreement. In July 2003, the Bank filed a motion for an order allowing and facilitating the sale of the real property. The court considered these motions at a September 5, 2003 hearing, and granted the Bank' s motion. On the same date, appellant filed a motion to intervene, which the court denied for reasons stated on the record. This appeal followed.

It is difficult to discern appellant' s argument on appeal. He raises numerous issues extraneous to the order from which he appeals, and we do not address these arguments. As to the denial of his motion to intervene, he appears to argue that the court abused its discretion because he had an interest in the property that was the subject of the proceedings below. We find no abuse of discretion in the court' s denial of his motion to intervene. See Ernst v. Rocky Road, Inc., 141 Vt. 637, 639 (1982); Helm v. Helm, 139 Vt. 225, 227 (1981). First, we note that appellant failed to provide a copy of the transcript of the September 5, 2003 hearing, and we therefore do not know the reasons underlying the court' s denial of his motion. See V.R.A.P. 10(b)(2) (appellant must include in the record a transcript of all evidence relevant to the conclusion that the appellant claims is unsupported). It is also unclear whether appellant sought to intervene as a matter of right under V.R.C.P. 24(a), or whether he sought permissive intervention under V.R.C.P. 24(b). The record demonstrates, however, that appellant does not have any interest in the real property that was the subject of the underlying proceedings and he thus had no basis to intervene as a matter of right. See V.R.C.P. 24(a) (A Upon timely application anyone shall be permitted to intervene in an action . . . when the applicant claims an interest relating to the property or transaction which is the subject of the action and the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant' s ability to protect that interest, unless the applicant' s interest is adequately represented by existing parties.@). Lenge does not own the property in question, and as the underlying settlement agreement indicates, he agreed that he had been served with an enforceable writ of possession as to the property. We note that appellant' s request to intervene was also untimely, coming five months after the trial court' s order approving the parties' stipulation and dismissing the underlying proceedings. For the same reasons, to the extent that appellant sought to intervene under V.R.C.P. 24(b), the court did not abuse its discretion in denying him permission to do so.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice