

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-453

FEBRUARY TERM, 2005

M. Cecile Prior	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Superior Court
	}	
Norman J. Stanislas	}	DOCKET NO. S522-03 Fc
	}	
	}	
	}	Trial Judge: Howard Van BenThuyesen

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

Defendant appeals the superior court's entry of a judgment that is based on a judgment entered nearly eight years earlier. We affirm.

In January 1996, the superior court entered a judgment order awarding plaintiff \$32,294. Defendant did not appeal the judgment. In November 2003, plaintiff filed a complaint seeking to renew the judgment before expiration of the applicable statute of limitations. See 12 V.S.A. § 506 (action for renewal of judgment must be brought within eight years after rendition of judgment). Defendant answered the complaint in February 2004. The following month, plaintiff sought summary judgment on the complaint. Defendant did not respond to the motion until August 2004. On August 12, the superior court granted plaintiff's motion, ruling that defendant's response was both untimely and without merit. The court stated that defendant was seeking to relitigate the merits of the 1996 judgment, from which he had failed to appeal. The court stated further that, even if it construed defendant's response as a motion to vacate the 1996 judgment under V.R.C.P. 60(b)(6), the motion was not filed within a reasonable time. Accordingly, the court entered a new judgment on August 26, 2004.

Defendant appeals that judgment, arguing that he is entitled to dismissal of the renewed judgment because he answered plaintiff's complaint and yet was never given a hearing, just as he was never given a hearing in the 1996 case after filing an answer to the original complaint. This argument has no merit. Both the 1996 and 2004 judgments were entered based upon the court granting plaintiff's motions for summary judgment, which demonstrated that there was no genuine issue of material fact in dispute, and that plaintiff was entitled to judgment as a matter of law. See V.R.C.P. 56(c). Hence, no hearing was necessary.

Defendant also argues that (1) the complaint should have been dismissed because plaintiff's attorney did not reveal that he was actually hired by plaintiff's daughter, to whom plaintiff had given a power of attorney; and (2) the case should have been moved to a different circuit because plaintiff is the niece of a side judge who apparently works in the Franklin Superior Court. Again, we find no merit to these arguments. Defendant has failed to demonstrate any wrongdoing on the part of plaintiff's attorney, and there is no indication that the side judge named by defendant ever participated in this case.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Frederic W. Allen, Chief Justice (Ret.),
Specially Assigned