

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-476

OCTOBER TERM, 2006

Anna St. Clair	}	APPEALED FROM:
	}	
v.	}	Windham Superior Court
	}	
Vermont Human Rights Commission,	}	
Intervenor, and	}	DOCKET NOS. 343-7-04, 481-11-04 &
Lisbeth Arbour and Christopher Tanner	}	352-8-05 Wm cv

Trial Judge: John P. Wesley

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

Landlord Anna St. Clair appeals pro se from the superior court=s judgment in favor of intervenor Vermont Human Rights Commission and defendant-tenants Lisbeth Arbour and Christopher Tanner. She raises numerous claims of error. We affirm.

The record indicates the following procedural history. In July 2004, landlord brought an eviction action against tenant Tanner. Tanner filed a counterclaim, which included an allegation that landlord violated the Vermont Fair Housing and Public Accommodations Act (VFHA), 9 V.S.A. " 4500 et seq. In November 2004, landlord brought an eviction against tenant Arbour. Arbour also filed a counterclaim that included a fair housing allegation. Tenants also

filed discrimination complaints with the Vermont Human Rights Commission. In February 2005, the Commission found reasonable grounds to believe that landlord had discriminated against both tenants. In August 2005, the Commission filed a complaint against landlord on behalf of Arbour, alleging violations of VFHA, and moved to intervene in the fair housing counterclaims brought by Arbour in the eviction proceeding. The Commission also filed a motion for a writ of attachment.

The court denied the Commission's request for an ex parte writ of attachment but set the matter for an evidentiary hearing on September 9, 2005. The court rescheduled the hearing date to September 7 and provided notice of the hearing date to the parties on September 1. On September 2, landlord called the court and asked to participate at the September 7 hearing by telephone. The request was given to the trial judge. Landlord did not appear at the September 7 evidentiary hearing, nor did she call. After the hearing, the court issued an order approving a writ of attachment on landlord's property in the amount of \$25,000. It also granted the Commission's request to intervene. Landlord moved to reopen the attachment proceedings, but the court denied her request. In a written order, the court explained that notice of the hearing had been faxed to landlord at a number that landlord had provided. While she had notified the clerk that she sought leave to participate at the hearing by telephone, she did not call at the time of the hearing. The court stated that it had proceeded with the hearing, despite some concern over whether landlord had received actual notice, because Arbour, the Commission, and other witnesses were present. After hearing the evidence, it had concluded that the Commission would be entitled to a writ of attachment, and it therefore granted the Commission's request. The court then consolidated the actions involving Arbour and Tanner, and the parties were notified that the matter was set for a jury draw on October 17, 2005. Landlord filed a request to stay the trial on October 3 in light of an interlocutory appeal that she filed with this Court. She again requested a stay on October 14 in light of her claimed inability to return from England to prosecute or defend the actions due to the illness of her father.

Landlord failed to appear at the jury draw on October 17. The court denied her motions to continue the trial on the record. It explained that landlord's interlocutory appeal had been denied by this Court. Additionally, landlord failed to provide any verified support for her claim that she could not return from England, and she had been on notice for many months that her presence or that of a legal representative was necessary to the orderly resolution of the cases, which had a lengthy and contentious procedural history. The court granted Tanner and Arbour's motion to dismiss landlord's claims against them for want of prosecution pursuant to V.R.C.P. 41(b)(2)&(3). The court also vacated its previous order requiring defendants Tanner and Arbour to pay rent into court based on landlord's failure to appear and prosecute her eviction claims on the merits. Tanner, Arbour, and the Commission then waived their right to a jury trial

and asked the court to consider the matter at the earliest date possible. The court set the remaining matters for a court trial on October 19. It also issued an order entering default judgments against landlord on behalf of Tanner, Arbour, and the Commission. The Commission moved to vacate this default judgment, and the court granted its request.

A court trial was held on October 19. Landlord did not appear. Tanner and Arbour were present and proceeded pro se; the Commission also appeared. After a trial, the court issued a lengthy decision, setting forth numerous findings of fact and conclusions of law. The court first noted that the parties had been provided written notice that jury selection would occur on October 17, 2005, with the trial to follow on October 18-20. As indicated above, landlord failed to appear either personally or through a legal representative for trial on the merits of her claims. Based on the findings of fact set forth below, the court concluded that landlord violated the VFHA, and awarded Arbour \$20,000 in compensatory damages and \$5,000 in punitive damages; it awarded Tanner \$15,000 in compensatory damages. The court also granted the Commission's request for an injunction against further violations. In a later entry order, the court granted the Commission's request for attorney's fees and costs. It provided landlord an opportunity to contest the fee award, but landlord failed to appear at the evidentiary hearing. Thus, in a February 2006 entry order, the court ordered landlord to pay VHRC \$31,185.69 in fees and costs; it also granted the Commission's request to increase the attachment on landlord's property to \$60,000.

In reaching its conclusion, the trial court made the following findings of fact. Landlord owns a Victorian home in Brattleboro, Vermont, which has been converted into a six-unit apartment building. The assessed value of the property is \$342,100. Tenant Tanner is a man who is gay and HIV positive. He moved into tenant's property in February 2004; at that time, he had been diagnosed with Afull-blown AIDS.@ He receives housing assistance through the State of Vermont as well as Supplemental Security Income (SSI). Tenant Arbour moved into the building in August 2004 with her minor child. She vacated the premises in September 2005 pursuant to an order granting landlord a writ of possession due to Arbour's failure to pay rent into court as directed. Arbour has multiple disabilities, including multiple chemical sensitivity (MCS), fibromyalgia, depression, and post-traumatic stress disorder. She was deemed disabled by the Social Security Administration as of 1995, and she receives Social Security disability payments and housing assistance from the state.

The court explained that the Commission was charged with enforcing the VFHA. Pursuant to its investigatory authority, it had conducted a factual examination of complaints filed by Tanner and Arbour and issued written findings

as to the charges. It concluded in each case that the claims of discriminatory behavior by landlord in violation of the tenants' rights to fair treatment were well founded. Pursuant to its statutory authority, VHRC authorized its executive director to intervene in the proceedings to enforce its findings with respect to Arbour's claims. It did not seek to intervene with respect to Tanner's claims. The court found that the evidence in the proceedings supported the administrative findings made by the Commission.

The court found that Tanner informed landlord about his sexual orientation and his HIV status during his interview for the apartment. When Tanner moved in, landlord's property was in disarray. He and other tenants frequently encountered frozen plumbing due to inadequate heat. A dispute arose over Tanner's use of Christmas lights in his apartment window. Landlord informed others that Tanner was gay and that he was using the lights to attract his gay friends. Landlord made numerous slanderous accusations about Tanner to others. Tanner received an anonymous hate letter, which alleged that he solicited male sex partners through the flashing lights, that he was a male prostitute and drug addict, and that he screws fifteen year old boys. Landlord left a message on Tanner's voicemail, which was played at trial, which indicated her knowledge of the anonymous hate letter. The court found sufficient direct and circumstantial evidence to support the conclusion that landlord was responsible for the letter. Landlord also mentioned Tanner's HIV status to numerous other individuals and made homophobic comments. Landlord told Arbour that Tanner was a pedophile, male prostitute, and had AIDS. She also stated that Tanner had sworn to infect as many people as possible before he died, and landlord warned Arbour's young daughter not to take any food or drink from Tanner.

Based on these and numerous other findings, the court found that through her actions and those of her agents, landlord had engaged in a concerted, intentional, and repugnant scheme to slander Tanner and exploit his known disabilities in order to deprive him of the quiet enjoyment of his dwelling unit in violation of the VFHA. As a proximate result of landlord's discriminatory behavior, Tanner suffered significant emotional distress, as established by his own testimony and that of a social worker. The court found that Tanner's previous history rendered him particularly vulnerable to acts of discrimination and slander. The court also found that, despite notice provided to landlord, tenant had been at times deprived of the reasonable use of a habitable apartment dwelling due to landlord's failure to make repairs.

Turning to the claims involving Arbour, the court found that Arbour had informed landlord of her multiple chemical sensitivity diagnosis and her need for reasonable accommodation for her disabilities. Landlord expressed sympathy and

a willingness to make reasonable accommodations. During the month before Arbour moved in, she and landlord enjoyed a brief friendship. During that time, landlord made derogatory comments attacking other tenants. The attacks were personal and sometimes discriminatory, including homophobic and AIDS-phobic remarks about Tanner. Landlord asked Arbour to testify against Tanner in the pending eviction proceeding, but Arbour refused to do so. In August 2004, landlord decided that she did not want Arbour to move in and, despite the executed lease agreement, changed the locks on the apartment and put Arbour=s belongings outside. Arbour called the police and was able to move back in. Landlord was charged with felony trespass, and eventually pled guilty to an amended charge of disorderly conduct. Landlord provided Arbour a thirty-day notice to quit in August 2004. In October 2004, the Brattleboro Housing Authority notified landlord that Arbour=s dwelling unit failed to meet minimum Housing Quality Standards, and it gave her thirty days to remedy the problems. That same month, landlord served Arbour with formal eviction papers. Landlord then engaged in a series of harassing actions against Arbour, most of which were designed to exacerbate Arbour=s MCS disability. Both Arbour=s primary care physician and her primary mental health provider testified about the negative effects of landlord=s actions on Arbour=s health.

The court found that clear and convincing evidence presented at trial supported tenants= claims of discrimination. It concluded that landlord discriminated against Arbour based on her disability and her receipt of public assistance, and that landlord retaliated against her for filing a discrimination charge with the Commission and for refusing to support landlord=s unlawful actions to evict Tanner in violation of the VFHA. It also concluded that landlord discriminated against Tanner, including repeated slanderous statements, based on his AIDS condition and because of his support of Arbour in resisting landlord=s illegal attempt at self-help eviction and in retaliation for filing a discrimination charge with the Commission. Turning to damages, the court explained that tenants= claims were based almost exclusively on the emotional impact of landlord=s persistent discriminatory actions, and the law clearly afforded relief for emotional anguish in the context of housing discrimination and wrongful eviction. Based on the sustained insult endured by these tenants, whose disabilities rendered them particularly vulnerable to the tactics prohibited by the VFHA, the court awarded \$15,000 in damages for physical and emotional distress to Tanner and \$20,000 in physical and emotional distress to Arbour.

The court also considered tenants= request for punitive damages. It explained that through its significant compensatory award, it had acknowledged the injustice and distress that followed from landlord=s deliberate and illegal acts. It awarded an additional \$5,000 in punitive damages to Arbour, however, for landlord=s criminal behavior that resulted in her being temporarily locked out of her home by illegal self-help to punish the wrongdoing and conceivably

deter landlord and others from such vigilante tactics. The court declined to award the additional punitive damages requested by tenants and the Commission. As indicated above, the court later granted the Commission's request for attorney's fees and costs. Landlord appealed.

Landlord has filed a lengthy brief challenging the findings of fact made by the trial court. In the brief, she sets forth her version of the facts, relying on evidence that was not presented at trial. She also challenges the admissibility of particular evidence. Landlord waived her right to raise these arguments by failing to attend the trial and by failing to present any evidence on her own behalf at that time. We will not consider evidence presented for the first time on appeal, nor will we consider arguments not raised before the trial court. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence presented at trial); see also In re White, 172 Vt. 335, 343 (2001) (to preserve an issue for appeal, party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it) (citation omitted). Landlord could have contested any and all of this evidence had she attended the trial; she cannot challenge it for the first time in this appeal.

There is no support for landlord's assertion that her right to testify and bring supporting witnesses was disregarded. The record shows that landlord was provided notice of the various hearings in this matter, including the date of the jury draw and the court trial. She chose not to attend any of the proceedings. The court made its findings based on credible evidence presented at trial, and landlord fails to establish that any of these findings are clearly erroneous. See N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 438 (1999) (Supreme Court will uphold the trial court's factual findings unless, taking the evidence in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, there is no reasonable or credible evidence to support them); see also Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (trial court's findings entitled to wide deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented). The court's findings amply support its conclusion that landlord violated the VFHA, 9 V.S.A. ' 4503(a), and the court acted well within its discretion in awarding compensatory and punitive damages to tenants. While landlord argues that the damages award was excessive as compared to other cases, we have recognized that each case must be evaluated on its own facts. Sweet v. Roy, 173 Vt. 418, 444 (2002). In this case, as noted above, the court found that landlord's behavior was egregious, and there was credible evidence presented by numerous witnesses regarding the effect that landlord's behavior had on these particular tenants.

We do not address landlord's request for a writ of possession against Tanner nor her challenge to the court's order that vacated a previous order requiring tenants to pay rent into court and refunding the money that tenants had already paid into court. As reflected above, landlord failed to appear to prosecute her eviction complaint, and the motion for payment of rent into court was filed in connection with that complaint. The court dismissed the complaint for want of prosecution, and it vacated its related order requiring tenants to pay rent into court. The court plainly has authority to return this money to tenants. See 12 V.S.A. ' 4853a(a), (e) (in action against tenant for possession, landlord may file motion requesting order that tenant pay rent into court; the funds shall be distributed in accordance with the final order from the trial court). We do not address landlord's request for punitive damages or any of her allegations about the alleged emotional injuries that she suffered. Landlord did not raise these arguments at trial below. There is no support for landlord's assertion that the court was biased against her. Finally, we deny landlord's request that this Court terminate Tanner's tenancy. We have considered all of those arguments that are discernable in landlord's brief and find them all without merit. The trial court did not err in granting judgment to tenants on their discrimination claims.

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice