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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-115

AUGUST TERM, 2008

James E. Pietrangelo, II	}	APPEALED FROM:
	}	
	}	
v.	}	Chittenden Superior Court
	}	
	}	
AMI-Burlington, Inc.	}	DOCKET NO. S0462-07 CnC
d/b/a Anchorage Inn, et al.	}	
		Trial Judge: Matthew I. Katz

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

Plaintiff appeals from the superior court's order granting summary judgment to defendants. On appeal, plaintiff raises numerous claims attacking the superior court's order, including that the court erred by (1) not issuing an opinion, (2) denying plaintiff's motions to file an interlocutory appeal, to substitute a party, to amend his complaint, to strike, for surreply, and for a protective order, and (3) granting defendants' motions for summary judgment, and denying plaintiff's motions for summary judgment and sanctions. We affirm.

The undisputed facts are as follows. Plaintiff checked into the Anchorage Inn on April 9, 2005, intending to stay for three months, except for two days every twenty-eight days. During the evening of April 19, 2005, plaintiff was disturbed from his sleep by truck noise in the hotel parking lot. Plaintiff complained about the noise to staff and he also called the South Burlington Police Department (SBPD). Plaintiff was offered another room to sleep in, but he refused. During a conversation with the Anchorage desk clerk, plaintiff indicated that he intended to move to a different hotel and to sue Anchorage for any difference in the price. Plaintiff then paid the balance of his bill, but did not pay for the night of April 19. He told the desk clerk that he was leaving, and asked for a cab so he could move to a different hotel. Plaintiff asked to keep his room key so that he could remove his belongings from his room. He then asked the desk clerk to inspect the room before his departure. The desk clerk offered to have police do the inspection and plaintiff agreed. When police arrived, plaintiff greeted them cordially. Plaintiff asked the officers to wait outside his room, but the officers declined and entered. The officers proceeded to assist in removing plaintiff's belongings from the room against his wishes. Plaintiff alleges they damaged certain items in the process. Plaintiff concedes that the officers never touched him and that they did not unholster their weapons during the encounter.

In May 2005, plaintiff filed suit in federal court against the Anchorage, the desk clerk, the South Burlington Police Department and the two officers individually. Plaintiff's complaint

asserted both federal and Vermont Constitutional claims. The district court granted defendants summary judgment on all of the federal claims in a lengthy order, explaining that there was no basis for plaintiff's Fourth Amendment claims because plaintiff lacked an expectation of privacy in his room at the Inn. The court also granted summary judgment on plaintiff's claims under the First, Fifth and Fourteenth Amendments. The court declined to exercise jurisdiction over plaintiff's state law claims. Plaintiff then filed a forty-one-count complaint in superior court, asserting Vermont Constitutional and common-law violations. Many of the counts are based on the events of April 19, and include unlawful arrest, search, seizure, violation of free speech, conspiracy, false imprisonment, trespass, invasion of privacy, illegal eviction, intentional infliction of emotional distress, slander, negligence, and breach of contract. The remaining counts allege that the SBPD has a custom of acting as bouncers for hotels, including conspiring with the Anchorage Inn in particular, and that following the incident, the SBPD and Anchorage Inn slandered him and/or portrayed him in a false light.

Following lengthy motions and requests from both sides for summary judgment, the superior court granted summary judgment to defendants on all counts, without findings of fact or conclusions of law. Plaintiff moved for written findings pursuant to Rule of Civil Procedure 52, and the court denied the request. Plaintiff now appeals.

Summary judgment is appropriate when the record demonstrates that "there is no genuine issue as to any material fact and that any party is entitled to judgment as a matter of law." V.R.C.P. 56(c)(3). "On appeal, we review summary judgment de novo and use the same standard as the trial court." Gallipo v. City of Rutland, 2005 VT 83, ¶ 13, 178 Vt. 244.

On appeal, plaintiff first argues that the superior court erred in granting defendants summary judgment without issuing an opinion with findings of fact and conclusions of law. We conclude there was no procedural error in the court's decision. Rule 56 allows the court to enter "judgment as a matter of law" on behalf of a party when the record demonstrates that "there is no genuine issue as to any material fact"; however, the Rule does not require the court to issue a written decision. V.R.C.P. 56(c)(3). Indeed, we have explained that "[w]hile a trial court's recitation of the undisputed facts is often helpful for appellate review of a grant of summary judgment, they are not necessary." Blake v. Nationwide Ins. Co., 2006 VT 48, ¶ 21, 180 Vt. 14.

We are not persuaded by plaintiff's argument that his request for findings required the court to issue written findings. Rule 52 states:

> In all determinations of motions in which (a) the decision of the court is based upon a contested issue of fact, (b) the decision is or could be dispositive of a claim or action, and (c) a party has, within five days of the notice of decision, requested findings of fact and conclusions of law, the court shall, on the record or in writing, find the facts and state its conclusions of law.

V.R.C.P. 52(a)(3). Although plaintiff requested findings and the decision on summary judgment was dispositive of plaintiff's claims, a motion for summary judgment is not a decision "based upon a contested issue of fact." Id. "It is not the function of the trial court to find facts on a motion for summary judgment, even if the record appears to lean strongly in one direction." Fritzeen v. Trudell Consulting Eng'rs, Inc., 170 Vt. 632, 633 (2000). Thus, we conclude that the court did not err in issuing its decision on summary judgment without findings.

Next, we consider plaintiff's claim that the court erred in granting defendants summary judgment. Plaintiff argues that there were disputed material facts and/or he was entitled to summary judgment as a matter of law on each of his claims, but does not explain further. Plaintiff's allegations of arrest, false imprisonment, seizure, deprivation of property, invasion of privacy, conversion, and trespass all stem from his belief that he had a protectable right to privacy in his hotel room after he had settled his bill and told staff that he was leaving. These claims are essentially the same as those raised and dismissed in federal court, although plaintiff now brings them under the Vermont Constitution. We have explained that "[t]he Vermont Constitution may afford greater protection to individual rights than do the provisions of the federal charter." State v. Kirchoff, 156 Vt. 1, 4 (1991). It is, however, a litigant's burden to demonstrate "why the Vermont Constitution is more restrictive than the United States Constitution." State v. Schofne, 174 Vt. 430, 434 (2002). Plaintiff has failed to meet this burden in this case. Therefore, we adopt the federal district court's conclusion that plaintiff lacked a reasonable expectation of privacy in his room and that police did not conduct an unreasonable search or a seizure of plaintiff or his belongings. We also agree with the federal court that there was no constitutional violation of plaintiff's right to free speech. Thus, the superior court properly granted summary judgment to defendants on plaintiff's constitutional and privacy-related claims. Furthermore, having found that police did not violate plaintiff's constitutional rights, we also conclude that the court properly granted the Inn and its employee summary judgment because there could be no conspiracy without police wrongdoing.

Finally, having decided that summary judgment for defendants was appropriate, we decline to address plaintiff's claims that the trial court erred in denying his motions for interlocutory appeal, to substitute a party, to strike, or for surreply because none of these motions would alter the decision on summary judgment. As to plaintiff's remaining claim regarding the court's denial of plaintiff's motion to amend his complaint, we find no abuse of discretion. See Hickory v. Morlang, 2005 VT 73, ¶ 5, 178 Vt. 604 (explaining that trial court has discretion in deciding whether to grant a motion to amend).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

_____
Denise R. Johnson, Associate Justice

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Marilyn S. Skoglund, Associate Justice