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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-150

MARCH TERM, 2009

Michael Rinaldo	}	APPEALED FROM:
	}	
v.	}	Bennington Superior Court
	}	
Edward Doucette	}	DOCKET NO. 334-9-05 Bncv
		Trial Judge: David A. Howard

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

Tenant appeals pro se from a judgment in his favor in this landlord-tenant dispute. He argues that the court erred by: (1) making findings that were incomplete or erroneous; and (2) failing to award him the $250,000 in damages that he sought in his complaint. We affirm.

Tenant filed a complaint against landlord in September 2005, alleging that his rental unit was unsafe and unsanitary; that landlord had acted contrary to law; and that tenant was injured as a result. Tenant sought $250,000 in damages. A default judgment was entered in tenant's favor, but that judgment was set aside after landlord entered a pro se notice of appearance. Landlord later filed a counterclaim against tenant, asserting that: tenant owed back rent of $16,275; tenant ruined the rental unit by keeping an excessive number of pets; tenant was stealing his mail; and tenant had deliberately caused landlord mental anguish by threatening to kill him. The court held a trial at which landlord failed to appear. In a written order, the court awarded tenant $4,000 in damages.

The court found as follows. Tenant rented a mobile home from landlord beginning in September 2003. The unit fell into serious disrepair, due both to tenant's numerous pets as well as landlord's failure to properly maintain the unit. Tenant was arrested for cruelty to animals during the rental period, and he tried to blame landlord for this charge, but the court found this allegation unsupported by the evidence. Tenant had not paid rent for a considerable period of time, and he refused to do so based on the condition of the premises. Landlord and his daughter tried to evict tenant over rent issues but there had not been a determination of fault by any court. The court found that at some point in the tenancy, tenant fell on a set of stairs that did not have a guardrail. Tenant testified that he felt pain from this fall, but he offered no evidence of lost wages or medical bills. Tenant left the residence in late 2007. He claimed to have left certain items behind but he provided no description of these items or any other evidence that would allow the court to assess their value.

The court found that tenant blamed landlord for numerous things, relying on hearsay to support his claims. The court explained that it would not find this testimony credible even if it were admissible. The court did find that there had been several physical altercations between

landlord and tenant, however, some of which resulted in criminal charges against tenant. While tenant suffered some pain from these incidents, the court found no evidence of any actual monetary losses from lost wages or medical bills. Tenant did not work, and while he had some plans to start a business involving sports cards, the court found no reliable evidence that this venture would have been profitable or that tenant lost any money from not being able to do this while at the residence. His evidence on this point was very speculative and vague. Indeed, the court found that tenant's failure to present credible evidence to support his claims was a serious problem throughout the case. Based on these and other findings, the court concluded tenant was entitled to damages of $1,500 for pain and suffering due to his fall, and $2,500 for the breach of the warranty of habitability, after setting off rent and other amounts due. The court dismissed all of tenant's remaining claims, finding that tenant failed to produce sufficient evidence to support them. Tenant appealed.

Tenant identifies numerous findings that he believes are incomplete, erroneous, or irrelevant. He asserts, for example, that the court misstated a date and mistakenly stated that landlord kept numerous pets, rather than tenant. Tenant also asserts that the court should have entered a default judgment against landlord when landlord failed to appear at trial. As to his injury from the stairs, tenant asserts that landlord was issued several orders by the town to place handrails on the steps. He also maintains that he and his animals suffered damages when his water pipes froze. He raises numerous additional claims in this vein. In addition to these arguments, tenant characterizes certain findings by the court—such as the inadmissibility of hearsay evidence and the speculative nature of his sports-card business—as irrelevant.

Tenant did not provide the Court with a transcript of the proceedings below as required by rule. V.R.A.P. 10(b)(1). We thus cannot evaluate his arguments, other than the obviously harmless misstatement that landlord rather than tenant owned numerous pets. Tenant bears the burden of showing how the trial court erred warranting reversal, and he fails to meet that burden here. By failing to order a transcript, he waived any challenges to the court's factual findings. See V.R.A.P. 10(b)(2) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant shall include in the record a transcript of all evidence relevant such finding or conclusion."); In re S.B.L., 150 Vt. 294, 297 (1988) (appellant bears burden of demonstrating how lower court erred warranting reversal, and Supreme Court will not comb the record searching for error); see also Appliance Acceptance Co. v. Stevens, 121 Vt. 484, 487 (1960) (appellant has burden to demonstrate error in challenged rulings below and must, therefore, produce a record that substantiates appellant's position). In many respects tenant appears to be challenging the court's evaluation of the weight of the evidence. As we have often stated, it is the role of the trial court, not this Court, to weigh the evidence and evaluate the credibility of witnesses. This Court will not re-weigh the evidence on appeal. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995).

We similarly reject tenant's assertion that he was entitled to his claimed damages of $250,000 simply because landlord did not appear at trial. Rather than enter a default judgment, the record shows that this case went to trial, and that the court found most of tenant's claims unsupported by the evidence. See V.R.C.P. 55(b)(6) (where a defendant has appeared in an action but fails to appear at trial, plaintiff may either move for default or proceed to trial). The court acted appropriately in awarding damages based on its evaluation of the evidence. We note, moreover, that even if landlord had never entered an appearance, it does not follow that tenant

would be entitled to $250,000 in damages. The trial court retains discretion to hold hearings "to determine the amount of damages or to establish the truth of any averment by evidence" whenever necessary. V.R.C.P. 55(b)(3); see also Credit Lyonnais Sec. v. Alcantara, 183 F.3d 151, 155 (2d Cir. 1999) (explaining that even when default judgment is warranted based on a party's failure to defend, the allegations in the complaint with respect to the amount of the damages are not deemed true, and trial court "must instead conduct an inquiry in order to ascertain the amount of damages with reasonable certainty"). This claim of error is thus without merit.

Finally, we do not address tenant's allegations about acts that allegedly occurred following the trial court's decision, nor do we consider evidence that was not presented to the trial court. This information is not part of the record on appeal. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). We have considered all of the arguments raised by tenant, and we find them all without merit. Tenant fails to demonstrate that the court erred in awarding him $4,000 in damages.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice