

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

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-254

APR 1 2010

MARCH TERM, 2010

Miriam Levin, Margaret Grundstein and  
Leon D. Grundstein

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APPEALED FROM:

v.

Lamoille Superior Court

Robert Grundstein

DOCKET NO. S148-8-05 Lecv

Trial Judge: Christina C. Reiss

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

Defendant appeals from a contempt order that was based on his failure to abide by a previous injunction requiring him to vacate real property that plaintiffs, his siblings, have a legal right to sell. We affirm.

This is the second time that this matter has come before this Court. On March 5, 2009 a three-justice panel of this Court upheld the superior court's order restraining defendant from interfering with plaintiffs' sale of the subject property pursuant to a previous partition order. See Levin v. Grundstein, No. 2008-417, 2009 WL 2427820, slip op. (Vt. March 5, 2009) (unreported mem.). Following this Court's decision, defendant continued to interfere with plaintiffs' sale of the property by not removing his personal belongings from the property. Plaintiffs filed a motion for contempt, which was granted by the superior court based on the court's conclusion that defendant was in violation of the order requiring him to vacate the property no later than October 8, 2008.

On appeal, defendant challenges the contempt order on several grounds, none of which has any merit. Defendant first argues that because the closing on the sale of the property in October 2008 did not occur, the court's injunctive relief effectively expired, and thus there was no clear, valid order from which he could be found in contempt. The irony of this argument is that the closing did not occur because of defendant's refusal to obey the injunction. The terms of the injunction, which we upheld in our previous appeal, are plain—defendant was required to vacate the subject property no later than October 8, 2008 so that plaintiffs could move forward toward selling the property as permitted by the court's partition order. Defendant was still in violation of the injunction, and we find no basis for overturning the contempt order. The superior court did not give plaintiffs a writ of possession, as defendant suggests, but rather merely provided them with the means to achieve their legal right to sell the property per the partition order. Defendant's vague constitutional arguments claiming a deprivation of property without due process have no merit. In fact, defendant has been afforded due process at every step through extensive legal proceedings in which he has attempted to thwart plaintiffs' legal right to sell the property. To the extent that defendant is challenging the underlying injunction and partition order, those arguments are barred by the principle of res judicata, as the arguments

were raised and rejected in this Court's previous decision. See Kellner v. Kellner, 2004 VT. 1, ¶ 8, 176 Vt. 571 (mem.) ("Res judicata bars litigation if there exists a final judgment in former litigation in which the parties, subject matter, and causes of action are identical or substantially identical."). Finally, defendant's motion for a stay pending appeal is denied as moot.

Affirmed.

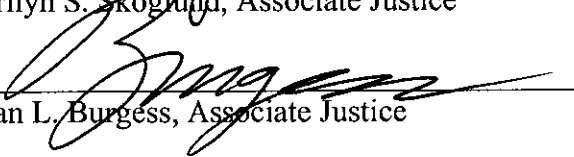
BY THE COURT:



Denise B. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice



Brian L. Burgess, Associate Justice