

Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-174

NOVEMBER TERM, 2019

Mark C. Nowakowski v. City of Rutland	}	APPEALED FROM:
(Kamberleigh Johnston*)	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 141-3-19 Rdcv

Trial Judge: Samuel Hoar, Jr.

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

Intervenor Kamberleigh Johnston appeals a superior court order denying his motion to intervene. We affirm.

In March 2019, plaintiff Mark Nowakowski filed suit against the City of Rutland seeking to invalidate the election results of March 5, 2019, because the City allegedly failed to timely release the city report. On May 13, 2019, intervenor filed a motion seeking to intervene in the proceedings under Vermont Rule of Civil Procedure 19(a)(2), which deals with joinder of persons with “an interest relating to the subject of the action.” Intervenor’s motion alleged that he had been harmed by the City’s noncompliance with charter requirements and the City’s failure to post hearing notices properly. The superior court denied the motion on the basis that intervenor had failed to show an interest relating to March 5, 2019 election and instead raised more general arguments regarding the City’s failure to abide by reporting requirements. Intervenor appealed.¹

Intervenor argues that the superior court erred in denying his motion to intervene because intervenor has the same interest as plaintiff, and it would be more efficient to resolve intervenor’s issues against the City all in one case.

Rule 19, regarding joinder of parties, is modeled after Federal Rule of Civil Procedure 19. Grassy Brook Vill., Inc. v. Richard D. Blazej, Inc., 140 Vt. 477, 481 (1981). The threshold question for joinder under Rule 19 is whether intervenor qualifies as a party that should be joined “if feasible.” Id. Rule 19² lists the criteria for determining if someone should be joined in an

¹ On appeal, intervenor presents argument as to why his appeal is not moot even though the underlying case has been dismissed. Given that defendant concedes that the appeal is not moot, we do not address the mootness issue.

² Rule 19(a) provides:

action, including “whether the claims of the parties, the factual circumstances of the case, and the appropriate legal authorities create a reasonable potential for inadequate or conflicting judgments.” Id. at 481-82. The party seeking joinder “bears the burden of advancing a cogent argument on why the absent party is needed to prevent inconsistent or inadequate judgments.”³ Id. at 482.

Here, the superior court did not err in concluding that intervenor failed to meet his burden of demonstrating that he qualified as a party that should be joined if feasible. Based on the City’s failure to timely file an annual report, plaintiff sued seeking to invalidate election results under 17 V.S.A. § 2603, which provides a process for contesting elections. Intervenor sought to join to address alleged invalid warning of lister grievance hearings and the City’s failure to comply with charter requirements. Intervenor did not show that complete relief for plaintiff could not be granted in his absence insofar as intervenor did not show how plaintiff’s ability to invalidate the election he challenged would be impacted by intervenor’s absence from the suit. Moreover, intervenor failed to demonstrate that his absence would impede his ability to protect his interest or create a risk of double judgment. Intervenor’s issues were unrelated to invalidating election results. Intervenor retained whatever ability he had to separately sue the City to address his concerns and adjudicate his right to his requested relief, which was beyond the scope of what plaintiff sought.

Given intervenor’s failure to meet the requirements of the rule, we reject intervenor’s arguments that the court erred in denying joinder because it would be more efficient to address his claims in this suit and that making him file a new suit is unnecessary. Joinder under Rule 19 is not designed as an opportunity for every person having a claim against the named defendant to join the existing suit. It is for “persons needed for just adjudication.” V.R.C.P. 19 (title). As explained above, intervenor did not meet this standard.

Intervenor also argues that the superior court erred in denying his request without a hearing and without first getting responses from the parties to the case. The court had discretion to dispose of the motion without hearing argument. See V.R.C.P. 78(b)(2) (“In any case, the court may decline to hear oral argument and may dispose of the motion without argument.”); Shaw v. Barnes, 166 Vt. 610, 610 (1997) (mem.) (holding that court has discretion to decline oral argument on motions). As far as waiting for replies from the other parties, intervenor has not demonstrated how waiting for a response from the parties would have affected the result. Even if a party had conceded

A person who is subject to service of process shall be joined as a party in the action if (1) in the person’s absence complete relief cannot be accorded among those already parties, or (2) the person claims an interest relating to the subject of the action and is so situated that the disposition of the action in the person’s absence may (i) as a practical matter impair or impede the person’s ability to protect that interest or (ii) leave any of the persons already parties subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations by reason of the person’s claimed interest.

³ For this reason, we reject intervenor’s argument that the superior court erred in placing on him the burden of showing that joinder was necessary.

to intervenor's request, it would not have changed the fact that intervenor did not meet the requirements for joinder in Rule 19(a).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice