

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2005-054

AUGUST TERM, 2005

Leita and Roland Pion	}	APPEALED FROM:
	}	
	}	
v.	}	Franklin Superior Court
	}	
Kevin Bean and Tina Clapper	}	DOCKET NO. S348-00 Fc
	}	

Trial Judge: Ben W. Joseph

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

Plaintiffs Leita and Roland Pion appeal from a post-judgment order requiring them to pay \$8680 in contracting fees to repair damage they did to defendants= property. We affirm.

The facts of the parties= dispute are set forth in the Court=s 2003 opinion, Pion v. Bean, 2003 VT 79, 176 Vt. 1, and we need not repeat them all here. In summary, plaintiffs sued defendants over the location of a common boundary separating the parties= land. Defendants filed several counterclaims relating to plaintiffs= harassment, which the trial court found was aimed at forcing defendants to vacate their home and land. Plaintiffs lost. Defendants successfully proved their counterclaims and won both compensatory and punitive damages. The court found that plaintiffs acted maliciously toward defendants, thus justifying the punitive damages award.

The trial court=s final judgment included several specific orders to address the property damage plaintiffs caused. The court issued the specific orders because plaintiffs had not followed its previous orders to make repairs during the pendency of the case. To address the property damage, and to avoid further delay in making the repairs, the trial court ordered defendants to get an estimate for the work needed to restore the property to its previously undamaged condition. Defendants were ordered to submit the estimate to the court for its approval. The order further provided: A[i]f and when an estimate is approved by the court, the court will issue judgment for the defendants against the Pions in that amount.@ The court=s judgment was affirmed on appeal, id., and plaintiffs never challenged the restoration order. Thus, the procedure the court established for entering judgment on the restoration costs became final and unappealable following the Court=s 2003 opinion.

When defendants filed an estimate with a breakdown of its components, plaintiffs asked for a hearing to challenge the estimate. The court denied the request but allowed plaintiffs to file a written challenge to the estimate. Plaintiffs did so, and the court eventually entered judgment for defendants in the amount of the estimate, less \$300 to correct for an error.

Plaintiffs now challenge that judgment on appeal, claiming that they were entitled to a hearing on the estimate. We find no merit to the argument. Plaintiffs are, essentially, seeking to circumvent the finality of the prior judgment through this appeal. The court=s previously affirmed order established the procedure for obtaining court approval of the restoration costs plaintiffs must pay under the order. The court=s restoration order did not grant plaintiffs an opportunity to contest defendants= estimate if they believed it was unreasonable. Indeed, the court established the

procedure to prevent plaintiffs from further delaying the ordered repairsCa delay now aggravated by this appeal. In sum, the trial court gave plaintiffs more than they were entitled to by allowing them to respond to defendants= estimate in writing before it issued the judgment. We find no error in the court=s refusal to hold a hearing when it did not provide for one in its original judgment, which was affirmed on appeal in 2003.

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