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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-465

JULY TERM, 2006

Steven Howard and Tammy Howard	}	APPEALED FROM:
	}	
v.	}	Rutland Superior Court
	}	
Mary Mattell	}	
	}	DOCKET NO. 533-9-03 Rdcv

Trial Judge: Richard W. Norton

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

Landlords Steve and Tammy Howard appeal from the trial court=s order awarding damages to tenant Mary Mattell. They assert the trial court erred in: (1) finding the notice of abandonment they sent to tenant=s attorney did not suffice to also provide notice to tenant; and (2) concluding tenant was entitled to the return of her abandoned property before she paid moving and storage fees to landlords. We affirm.

The trial court made the following findings. In November 2001, tenant purchased a mobile home that sits on a lot now owned by landlords. Before landlords purchased the lot in May 2003, tenant regularly paid rent of

$220 per month on a month-to-month basis. She did not have a written lease agreement. Shortly after landlords acquired the property, they notified tenant that her rent would be increased to $250 per month. Landlords also demanded that tenant pay a $500 security deposit in two monthly installments. Tenant refused, and landlords informed tenant that they wanted her to leave. In July 2003, landlords served tenant with an eviction notice.

Pursuant to a court order, tenant vacated the premises on November 11, 2003, and moved into a motel. She was unable to move her mobile home by that date. On December 1, landlords informed tenant=s attorney in writing that they considered the mobile home to be abandoned. On December 24, landlords informed the attorney that they would charge tenant $600 for the costs they incurred in preparing to move the mobile home, as well as storage fees of $350 per month as of November 1, 2003. Landlords asserted that tenant was obligated to pay these fees before she could get her home back.

Tenant made numerous attempts to move the mobile home. Her first two attempts, in November and mid-December 2003, failed. Tenant then hired Michael Mattote. Mr. Mattote was prepared to move the home on January 21, 2004, but after arriving at the site, he concluded that due to damage to its undercarriage, which the trial court found attributable to landlords, the home could not be moved. On February 12, 2004, Mr. Mattote returned again to move the mobile home. On that date, however, one of the landlords was on the property with a policeman, and she told police that there was a court order and lien which prevented tenant from moving the property. Landlord later admitted in court that this statement was untrue.

On February 17, landlords moved the mobile home to a new location in Castleton, Vermont. It was stored in an inaccessible location in the mud, and it was blocked by another home. As a result, tenant=s mover was unable to move the home during the week of March 22, 2004, as agreed by the parties and ordered by the court.

Based on these facts, the trial court concluded that landlords were not entitled to abandonment damages under 9 V.S.A. ' 4462. It found that landlords failed to provide tenant with written notice that they considered

her property abandoned as required by 9 V.S.A. ' 4462(c). Even if notice had been properly provided, the court explained, landlords were not entitled to damages because it was unreasonable for them to conclude that the property was abandoned. See id. at ' 4462(a)(1). The court found that tenant=s attorney had left numerous phone messages with landlords concerning her efforts to move the property.

The court also concluded that tenant was not responsible for any rent or storage after January 21, 2004 because she had been prevented from moving the mobile home by landlords. Given landlords= behavior, the court found that they were responsible for the motel fees that tenant incurred between January 21, 2004, and the date that the mobile home was ready for occupancy, May 2004. The court explained that landlords, through their actions, demonstrated that they did not want tenant to remove her mobile home. Without justification, they treated it as abandoned in order to hold the mobile home either until tenant did abandon it or until tenant paid additional funds. The total effect of landlords= actions was to hold the home as security for illegal attempts to collect storage fees. The court thus awarded damages to tenant. Landlords appealed.

Landlords first argue that the trial court erred in finding that notice that they provided to tenant=s attorney did not suffice as effective notice to tenant. They maintain that it is well-established that notice to an attorney is presumed to be notice to the client. They also assert that, in this case, tenant had actual notice that landlords considered her mobile home abandoned.

Landlords= argument ignores the plain language of 9 V.S.A. ' 4462(c). See In re Middlebury Coll. Sales & Use Tax, 137 Vt. 28, 31 (1979) (when the meaning of a statute is plain, it must be enforced according to its terms). Section 4462(c) requires that A[i]f any property . . . is unclaimed by a tenant who has abandoned a dwelling unit, the landlord shall give written notice to the tenant mailed to the tenant=s last known address that the landlord intends to dispose of the property after 60 days if the tenant has not claimed the property and paid any reasonable storage and other fees incurred by the landlord.@ Landlords failed to comply with the plain terms of this statutory mandate. We note that even assuming that notice was properly provided to tenant, the trial court found that landlords were not justified in considering the mobile home to be abandoned property because they were informed that tenant intended to move the property and she had been making reasonable

efforts to do so since June 2003. See id. ' 4462(a)(1)-(3) (abandonment established if Athere are circumstances which would lead a reasonable person to believe that the dwelling unit is no longer occupied as a full-time residence;@ rent is not current; and landlords have made reasonable efforts to ascertain tenant=s intentions). Landlords do not directly challenge these findings on appeal.

Landlords next argue that the trial court erred in concluding tenant was entitled to the return of her abandoned personal property before she paid moving and storage charges. They assert there was no evidence that they prevented tenant from moving her home during the week of March 22, nor was there evidence that they prevented her from moving it between March 17 and April 12, the date it was finally moved. Landlords maintain that once they provided tenant with notice of their position that her property was abandoned and that tenant owed them for storage and moving fees, tenant was required to pay fair and reasonable storage and any related reasonable expenses.

We reject these arguments, most of which are at odds with our standard of review. On appeal, we uphold the trial court=s factual findings unless, taking the evidence in the light most favorable to the prevailing party, and excluding the effect of modifying evidence, there is no reasonable or credible evidence to support them. V.R.C.P. 52(a)(2); N.A.S. Holdings, Inc. v. Pafundi, 169 Vt. 437, 438 (1999). In this case, as noted above, the trial court concluded that landlords were not entitled to any moving and storage charges beyond the rent that tenant paid through January 21, 2004, because tenant=s property was not Aabandoned@ under 9 V.S.A. ' 4462 and because landlords prevented tenant from moving her property. The court=s conclusions are supported by the evidence. It is thus immaterial whether, as landlords argue, they Awould have released@ tenant=s mobile home on February 12 had she paid the fees they demanded. The trial court concluded that tenant did not owe the fees that landlords demanded.

The court=s finding that landlords prevented tenant from moving her property is similarly supported by the evidence. As the trial court explained, landlords were to have the mobile home ready and available to be moved in March 2004 pursuant to a court order. Notice was provided to landlords that tenant=s mover would move the property on March 23, 2004. On that date, the mover=s truck broke down. and he advised landlords

that he would return on March 25, 2004. On March 25, the mover found the mobile home blocked by another mobile home, and impossible to move. At that point, the mover refused to return to move the home. Tenant then had to locate another mover. The trial court=s conclusion that landlords prevented tenant from removing her property between March and April is supported by the evidence.

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