

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-015

JUNE TERM, 2007

Wendy Donahue	}	APPEALED FROM:
	}	
v.	}	Caledonia Superior Court
	}	
Town of St. Johnsbury	}	
	}	DOCKET NO. 8-1-06 Cacv
	}	
		Trial Judge: M. Kathleen Manley

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

Plaintiff Wendy Donahue appeals pro se from the trial court's order dismissing her complaint against the Town of St. Johnsbury with prejudice. She raises numerous arguments. We affirm.

While it is difficult to tell, it appears that plaintiff sought to secure water service from the town. Because the town records did not indicate that plaintiff was the owner of the property in question, plaintiff was informed that she needed to record a copy of her deed as well as a property transfer tax return before the account would be transferred into her name. Plaintiff did not want to do this, apparently believing that she should not have to pay any property tax or a transfer tax because she received her deed "free of any encumbrances" and her property is "private property." In January 2006, plaintiff filed a document with the superior court entitled "Notice of Common Land Purview of the Claim of the Landowner Procuring in whose Favor Thus Reserved, Extinguishing All Rights Used by the Public." This document was construed as a complaint against the town. In February 2006, the town filed a motion to dismiss pursuant to V.R.C.P. 12(b)(6), asserting that plaintiff's complaint failed to state a claim upon which relief could be granted.

In a March 2006 entry order, the trial court agreed that plaintiff's pleading failed to sufficiently articulate a claim but it allowed plaintiff ten days to submit a short and plain statement of her claim showing that she was entitled to relief and demanding judgment for the relief she sought. In response, plaintiff filed a document entitled "Notice to Admit." She stated, among other things, that she was "seeking relief from [the town's] attempt to invade on the interest in [her] private property as described in the terms of the contract," and she indicated that she sought summary judgment to protect her interest "by declaring her document to be authentic and that she is the party of interest named in the document." According to plaintiff, the town was attempting to force her into surrendering an interest in her private property by compelling her into a contract, and it was using blackmail by prohibiting her from accessing public water under her own name. She sought relief "from being forced into a contract" that would cause her to suffer a loss of interest in her private property, force her into involuntary servitude, and violate her constitutional rights. Plaintiff subsequently filed numerous additional pleadings, including a request for default judgment.

In June 2006, the town renewed its motion to dismiss, and in September 2006, the court granted its request. The court found plaintiff's complaint to be "a confusing hodgepodge of constitutional and contractual arguments, which at base appear[ed] to represent nothing more than an attempt to have the court declare that [her] deed [was] authentic." The court concluded that there was no justiciable controversy that would make a declaratory judgment action concerning the validity of her deed appropriate, nor did plaintiff present any claim or allege any facts that sounded in involuntary servitude or in contract law. The court therefore dismissed her complaint. Numerous filings by plaintiff followed, including a motion to recuse Judge Manley, which was denied by the administrative judge. This appeal followed.

Plaintiff raises numerous arguments on appeal. She asserts, among other things, that the filing of a transfer tax form is injurious to her investment in private property, and that the town is attempting to gain an interest in her private property. She argues that she was entitled to a default judgment in her favor. She also maintains that the trial judge was negligent and biased; that her motion to recuse should have been granted because the trial judge "failed to administer justice;" and that the town, the trial judge, and the administrative judge deprived her of her rights.

We find no error in the court's decision to dismiss plaintiff's complaint. Dismissal pursuant to Rule 12(b)(6) is appropriate where "it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Amiot v. Ames, 166 Vt. 288, 291 (1997) (citation omitted). On review of the trial court's decision, we take as true all factual allegations pleaded by the nonmoving party, and we accept all reasonable inferences that can be drawn from the nonmoving party's pleadings. Id. In this case, as the trial court found, plaintiff failed to assert any discernible claim that would entitle her to relief. It is unclear what plaintiff means when she asserts that the town is trying to force her to enter into a contract, that the town is not a "real party in interest" to her deed, or how the filing of a property transfer tax return would force her to "surrender an interest in her private property." Plaintiff fails to state any viable contract or constitutional claims. The town is not claiming that it is a party to plaintiff's warranty deed, and no party disputes that plaintiff's deed is in fact "authentic." To the extent that plaintiff sought a declaration of the authenticity of her deed from the court, the court did not err in finding such relief unwarranted. See 12 V.S.A. § 4716 ("The court may refuse to render or enter declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding."). It is unclear how any of these arguments relate to the statutory requirement that plaintiff file a property transfer tax return. See 32 V.S.A. § 9606(a) (a property transfer return must be filed with town clerk at time of payment of any property transfer tax or at time of the delivery to the town clerk for recording of a deed evidencing a transfer of title to property which is not subject to such transfer tax).

None of plaintiff's arguments on appeal undermine this conclusion. Her claims that the trial judge acted negligently or breached her employment contract are without merit, and wholly irrelevant to the issue of whether plaintiff stated a viable claim in her complaint. Her assertions that the trial

judge was biased and prejudiced against her are devoid of record support, as is her assertion that the administrative judge erred in denying her motion to recuse Judge Manley. There is similarly no support for plaintiff's assertion that the trial court committed procedural errors in considering this case. We note that the town moved to dismiss plaintiff's complaint before filing an answer, which was appropriate under the rules. See V.R.C.P. 12(b). Plaintiff was not entitled to a default judgment or summary judgment in her favor. We have considered all of the arguments raised by plaintiff and find them all without merit. Plaintiff's complaint was properly dismissed for failure to state a claim upon which relief can be granted.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice