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. 2019-028

NOVEMBER TERM, 2019

Marjorie W. Johnston* v. City of Rutland (Kamberleigh Johnston*)	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 454-8-16 Rdcv
		Trial Judge: Samuel Hoar, Jr.

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

Kamberleigh Johnston appeals pro se from the denial of his motion to intervene in this property tax appeal, which concerns the 2016 grand list. We reverse and remand for additional findings.

The record indicates the following. Appellant's mother is the record owner of certain contiguous property in Rutland consisting of a single-family residence and apartment buildings. The city assessor valued the property at $326,300. Appellant's mother grieved this assessment to the Rutland Board of Civil Authority, naming appellant as her "representative." After several hearings, the BCA upheld the assessor's valuation of the property. In August 2016, appellant's mother appealed to the superior court. From the outset, both she and appellant sought to have appellant intervene and participate in this matter. Appellant first filed a "notice of appearance as an interested person." The court denied appellant's request for permission, as a nonlawyer, to file a notice of appearance. It explained that a nonlawyer may not appear in court on behalf of another party because that person would be engaged in the unauthorized practice of law. While appellant suggested that he had been given a power of attorney, the court explained that this was insufficient to overcome the bar upon the unauthorized practice of law. Appellant moved for reconsideration of the court's ruling, which was denied.

Appellant and his mother continued to file repetitive motions in this vein, in addition to seeking numerous extensions of time. In July 2017, appellant's mother filed a motion for "ADA accommodations," seeking to have appellant assist her, and a motion to add appellant as a necessary party pursuant to Vermont Rule of Civil Procedure 19. The court denied the motion. The court found that appellant's mother had not made a proper showing of a need for the accommodation sought. It further noted that, in other proceedings, she had shown herself more than capable of properly representing her interests. The court also found that mother failed to establish that appellant was a necessary party.

In December 2018, appellant filed the motion at issue here—an "emergency ex-parte motion to intervene." The court denied the motion. It found that appellant had no legally cognizable right to intervene. With respect to appellant's request to participate in a representative

capacity, the court cited to an earlier ruling by this Court where we granted a motion to strike appellant's appearance in another of his mother's property tax appeals. See Johnston v. City of Rutland, No. 2014-380, 2015 WL 7628665 (Vt. Nov. 19, 2015) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo14-380.pdf [https://perma.cc/MCL9-M7LH]. Appellant now appeals from the denial of his December 2018 motion.

Appellant appears to assert that because he was "an acknowledged party" in a different case, he is entitled to intervene in this case. In the case cited, appellant was a named defendant in a foreclosure case. See Wells Fargo Bank, N.A. v. Johnston, No. 2018-329, 2019 WL 2355034 (Vt. June 3, 2019) (unpub. mem.). Appellant claims a right to intervene because he allegedly has "perpetual lease agreements" in the property at issue, he is his mother's sole heir, and he has been appointed as her guardian with the power to file lawsuits on her behalf. He states that he was allowed by this Court to speak in the 2015 tax appeal involving the same property and that "much has changed" since this Court ruled that he could not appear on behalf of his mother in a tax appeal case. He claims that the trial court's rulings violate his constitutional rights.

We remand this matter to the trial court because we cannot discern from the record if in fact appellant has recorded what he refers to as a "perpetual lease agreement." We thus cannot address appellant's assertion that he is a "perpetual leaseholder" with the right to have the property listed "as real estate against the lessee" with the corresponding obligation to pay the property taxes based on the property's "market value." See 32 V.S.A. § 3610 (defining term "perpetual lease" and describing how "perpetual leased lands" are taxed); see also Lesage v. Town of Colchester, 2013 VT 48, ¶ 27, 194 Vt. 377 (explaining that § 3610 "requires towns to list perpetual leases as real estate to be taxed to the lessee, with certain exemptions and conditions" and it "is aimed at making owners of perpetual leases of land the effective owners of the property for purposes of taxation—nothing more").

Appellant does not direct us to anything in the record of this case to show that he has ever filed his "perpetual lease agreement" in the land records. There is no indication that he ever filed a "property transfer tax return" in which he describes the perpetual lease agreement with the Vermont Department of Taxes. While this would generally be fatal to appellant's claim, there is a suggestion made in a different case involving appellant indicating that this agreement may have been recorded. See Wells Fargo, No. 2018-329, at *3. In that foreclosure case, the bank indicated in its complaint that it had included appellant as a defendant because he had recorded a perpetual lease agreement in the land records in December 2015. The bank's brief in that case indicates, however, that it had no actual proof that appellant had in fact filed such a document in the land records beyond appellant's assertion in a separate case. See Appellee's Brief, Johnston v. Wells Fargo Bank, N.A., 2019 WL 1751021, at *17 (March 22, 2019). We referred to appellant as a "third-party holder of an interest in the property." Wells Fargo, No. 2018-329, at *3. It was sufficient in that case, however, that the alleged recording date of appellant's lease agreement post-dated the recording of the bank's mortgage. Thus, despite our reference to a possible recording of this document in our decision, it is not apparent that any such document has ever been filed. Given the uncertainty regarding this issue and its possible implications for appellant's ability to participate in this case as a party (as opposed to as a "representative" on his mother's behalf), we remand this matter to the trial court for additional findings and a determination whether appellant is in fact a "perpetual leaseholder" for purposes of the property tax statutes and whether this affords him the right to participate in this case.

Because they are likely to arise again, we address appellant's remaining arguments. We reject his assertion that the court erred in denying his request to represent his mother in the

proceeding below. There is no legal support for his assertion that he has standing to participate by virtue of being his mother's "sole heir." The fact that appellant may have been allowed to present oral argument in this Court, moreover, does not mean that the trial court abused its discretion in declining to allow him to speak on his mother's behalf in proceedings before the trial court. There is no support for appellant's assertion that the court's decision violates the Common Benefits Clause of the Vermont Constitution. As reflected above, the court provided numerous reasons for denying appellant's request, including that appellant's mother had demonstrated in prior proceedings that she was able to represent herself and that appellant was not a lawyer. While appellant disagrees with the court's decision, he fails to show any abuse of discretion. See Vermont Nat. Bank v. Clark, 156 Vt. 143, 145 (1991) ("Abuse of discretion requires a showing that the trial court has withheld its discretion entirely or that it was exercised for clearly untenable reasons or to a clearly untenable extent.").

Reversed and remanded for additional findings with respect to appellant's perpetual-lease argument only.

BY THE COURT:

_____
Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice