VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 88-7-19 Vtec

Purvis North Willard Street

ENTRY REGARDING MOTION

Title: Post-Judgment Motions to Reopen and Enforce (Motion #7)

Filer: Appellant Luke Purvis, a self-represented litigant

Filed Date: February 8, 2023

City's Opposition to Appellant's Post-Judgment Motions to Reopen and Enforce Settlement, filed on February 22, 2023, by Kyle S. Clauss, attorney for the City of Burlington

Reply Memorandum, filed on March 22, 2023, by Appellant Luke Purvis

The motion is DENIED.

Appellant Luke Purvis ("Appellant") asks this Court to reopen this matter, which was closed on January 4, 2021, pursuant to a Stipulated Judgment Order presented to the Court by the parties and signed by the Court that same day. Now, over two years after that Order, Appellant asks the Court to re-open this closed matter so that the Court may consider whether the City of Burlington ("the City") has violated that Order. For all the reasons stated below, the Court concludes that it must deny both of Appellant's requests.

Background

Appellant owns property located at 164 North Willard Street in the City of Burlington ("the Property"). He has been involved is a dispute that has continued over eight or more years, first

with his neighbors (Joseph and Teresa Cleary), and then with the City, which has been the basis of four separate appeals before this Court.[1]

There is a commonality to all this litigation: parking spaces to the north and south of Appellant's driveway.[2] As the 2015 appeal worked its way through discovery and trial preparations, the Court scheduled the matter for a *de novo* trial to begin on September 27, 2016. However, just prior to trial, the parties entered into a settlement agreement and filed a Stipulated Order that would dispose of this appeal. The Court reviewed, approved, signed, and issued that Stipulated Order on September 26, 2016.

The Stipulated Order provided that the appeal was dismissed, but allowed the parties to move to reopen the matter, provided that such a motion was filed by August 1, 2017. Neither Appellant nor the City filed a motion to reopen by that deadline.

On March 9, 2018, Appellant filed a motion for relief from the Stipulated Order, pursuant to V.R.C.P. 60(b). After the parties engaged in extensive memoranda filings, and after the Court held a hearing to consider oral arguments on those motions, the Court denied Appellant's motion to reopen on September 25, 2018, and denied Appellant's subsequent motion to reconsider on January 15, 2019. Appellant thereafter appealed those decisions to the Vermont Supreme Court. By decision dated August 30, 2019, the Supreme Court affirmed this Court's determinations denying relief to Appellant. In re Purvis Nonconforming Use, 2019 VT 60, 210 Vt. 601.

Appellant then filed another application with the City of Burlington Development Review Board ("DRB") in which he requested that the DRB recognize the two parking spaces on his property, one to the north and one to the south of his driveway. These are the same parking spaces that were the subject of the earlier litigation in Docket No. 45-5-15 Vtec. Appellant also requested that the building on his Property be recognized as a triplex, rather than a duplex. When the DRB denied all his requests, Appellant appealed to this Court. That appeal was

[1] *See*, Purvis Nonconforming Use, No. 45-5-15 Vtec; Cleary Site Plan Application, No. 123-11-18 Vtec; Purvis North Willard Street, No. 88-7-19 Vtec; and Purvis Nonconforming Use, No. 22-ENV-00113. This last appeal remains pending before this Court.

[2] In the vicinity of Appellant's Property, North Willard Street runs in a general north/south direction. His driveway is perpendicular to the Street. The Clearys' property abuts Appellant's Property to the south and is identified as 158 North Willard Street.

assigned Docket No. 88-7-19 Vtec, which is the appeal in which we now consider Appellant's post-trial motions.

After somewhat extensive pre-trial motion practice, the Court set the matter for a *de novo* trial to begin on January 7, 2021. However, on January 4, 2021, the parties entered into a Settlement Agreement and provided a Stipulated Judgment Order, which the Court reviewed, approved, signed, and issued that same day. That Stipulated Order provided, in pertinent part, as follows:

> 1. Appellant withdraws his appeal with respect to the northern parking area, Statement of Questions No. 2. The June 28th, 2019 order of the Burlington DRB as it pertains to the northern parking area is now final, and the appeal period has expired. By June 1, 2021, the northern parking area shall be restored to grass.
> 2. Appellant withdraws his appeal with respect to the southern parking area, Statement of Questions No. 3. The June 28th, 2019 order of the Burlington DRB as it pertains to the southern parking area is now final, and the appeal period has expired. The Court's Order denying Appellant's Motion in Limine re the southern parking area is incorporated into this order by reference.[3]
> 3. 164 N. Willard Street (the "Property") shall remain a triplex until May 31, 2022, or until the moratorium on ejectments is lifted pursuant to [Senate Bill] S.333, whichever is later.[4]
> 4. On May 31, 2022, or when the moratorium on ejectments is lifted pursuant to S.333, whichever is later, the Property shall become a duplex.

Order (entered Jan. 5, 2021) (omitting only the paragraph about attorney's fees).

Based upon that Stipulated Order, the proceedings on this appeal were closed. Then, some two years later, Appellant filed his motion to reopen these proceedings and "enforce" certain provisions of the order that Appellant asserts created duties that the City as failed to satisfy.

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[3] See In re: Purvis No. Willard St., No. 88-7-19 Vtec (Entry Regarding Motion in Limine) (entered Dec. 8, 2020) (Durkin, J.)

[4] The moratorium on ejectments was passed by the Vermont Legislature in response to the COVID Pandemic.

Discussion

While not directly moved pursuant Vermont Rule of Civil Procedure 60(b), the Court interprets Appellant's motion pursuant that Rule. Rule 60(b) authorizes the Court to provide relief from a judgment, provided the moving party demonstrates: "(1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (4) the judgment is void; (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application; or (6) any other reason justifying relief from the operation of the judgment." V.R.C.P. 60(b)(5). Such motions must be filed within a reasonable time, and if filed pursuant reasons (1), (2), or (3), the motion must be filed within one year of judgment. In short, Rule 60(b) offers relief from finality, but those "exceptions to [the] finality rule set forth in Rule 60(b) should be applied guardedly and only in extraordinary circumstances given the important interest in finality of judgments," which is in part an "institutional value . . . that transcends the litigants' parochial interests." In re Benoit Conversion Application, 2022 VT 39, ¶ 16.

Most important to our analysis, we do not interpret any of the provisions in the Stipulated Order as having created a duty for the City to perform. Appellant seems to concede this point, as while he states in the first paragraph of his motion that "[t]he City is violating the final order with its actions and inactions," he also refers the Court to an "Agreement" he entered into with the City. But that Agreement is not referenced in the Stipulated Order the Court adopted, was never filed, and Appellant has not otherwise provided the Court with a copy.

The City has opposed Appellant's post-judgment motion to reopen, and Appellant has filed a reply memorandum. In his reply, Appellant asserts that the parties entered into a "Revised Agreement" and that he "seeks to enforce the Revised Agreement." No such agreement has been filed with the Court. We do note that Appellant filed a packet of exhibits on March 22, 2023, with his reply memorandum. Exhibit 5 in Appellant's exhibit package includes a three-page document entitled "Revised Agreement," but that document is not presented as any type of

agreement that could bind the City to act. This document is not signed by either party and the numbering within that document does not correspond with the representations that Appellant makes in his reply memorandum. We therefore decline to use this document as a basis to conclude that the City is somehow bound to perform the tasks that Appellant asserts.

His first assertion of a binding obligation is telling and reinforces the Court's belief that we have no basis for granting Appellant's motion. Appellant asserts that the City "is violating . . . § 9 and § 9c of the Agreement" by somehow failing to abide by the requirements for a site plan. See Appellant's Post-J. Mot. at 1, filed on February 28, 2023. But it is an applicant, not the City, who must provide a sufficient site plan with an application. The wording Appellant uses in his reply memorandum is confusing. What is clear, however, is that the unsigned "Revised Agreement" does not contain the § 9 or § 9c, or any of the other provisions, that Appellant represents in his reply memorandum.

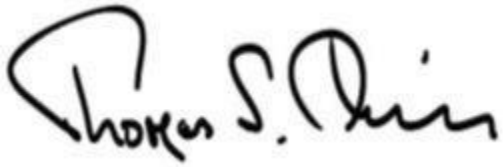
Finally, even assuming this Court could enforce the "revised agreement," or order the City to do so, Appellant's post-judgment motion to reopen here fails for several procedural deficiencies. His motion here was filed on February 8, 2023, which was more than two years after the Stipulated Order had been issued. Thus, V.R.C.P. 60(b)(2) and (3) could not afford relief to Appellant here, since he filed his motion well past the one-year deadline provided in Rule 60(b). To the extent that Appellant is asserting that he is entitled to relief under Rule 60(b)(6), we conclude that the circumstances here, including the over two years Appellant took to file his post-judgment motion, is beyond a reasonable time and thus must also be denied.

Thus, both because of these procedural deficiencies and the failure of Appellant to provide us with the necessary evidence to support his post-judgment claims, we conclude that his motion must be **DENIED**.

This concludes these post-judgment proceedings in this matter.

So Ordered.

Electronically signed at Brattleboro, Vermont on Friday, May 5, 2023, pursuant to V.R.E.F. 9(d).



Thomas S. Durkin, Superior Judge

Superior Court, Environmental Division