

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2003-205

NOVEMBER TERM, 2003

Norma Robinson	}	APPEALED FROM:
	}	
	}	Addison Family Court
v.	}	
	}	DOCKET NO. 9-1-76 Andm
James Egnor	}	
	}	Trial Judge: Helen M. Toor
	}	
	}	
	}	
	}	

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

Plaintiff Norma Robinson appeals the family court's denial of her motion to enforce a provision in the parties' 1978 divorce order. We affirm.

The parties were divorced in 1978. The final divorce order awarded the parties' real estate to Robinson, except that Egnor was given a life estate on one section of the property conditioned upon his payment of back taxes, one-half of the mortgage, A and one-half of all future land taxes as they accrue. @ In 1994, based on the parties' stipulation, the family court issued an order requiring the parties to pay one-half of the real estate taxes due each year on the property. In 2002, Robinson filed a motion to enforce, seeking termination of Egnor's life estate because of his failure to pay his share of the real estate taxes on time.

Following a two-day evidentiary hearing, the family court found that Egnor had never paid his share of the taxes on time, but had always paid them eventually, including the late fees and interest. The court also found that, in the previous three years, neither party had paid the taxes on time. The court determined that the phrase A as they accrue @ in the 1978 final divorce order required Egnor to pay the taxes on time, but concluded that Robinson's failure over the previous twenty-four years to seek enforcement of the 1978 order based on Egnor's late payments led Egnor to believe, to his prejudice, that he was in compliance with the order. Relying on the doctrine of laches, the court dismissed Robinson's claim, but placed Egnor on notice that the 1978 order required him to pay taxes on time.

On appeal, Robinson argues that the family court improperly relied on the doctrine of laches in dismissing her claim because the court failed to take into account her 1994 motion to enforce, and because Egnor failed to demonstrate that he had been prejudiced by any delay in her seeking to enforce the 1978 order. We agree that the family court erred in relying upon the doctrine of laches, given that Robinson had attempted over the years to get Egnor to pay his taxes on time, including filing a motion to enforce in 1994, and that, in any event, no evidence demonstrated that Egnor had been prejudiced in any way by Robinson's delay in initiating formal legal proceedings to force Egnor to make timely payments. See In re Vermont Elec. Coop., 165 Vt. 634, 635 (1994) (mem.) (laches is failure to assert right for unreasonable period of time A when the delay has been prejudicial to the adverse party @). The court's speculation that Egnor would be less likely than before to obtain alternative housing because of his age and retired status cannot make up for a lack of any evidence regarding Egnor's relative financial circumstances over the years. Preston v. Chabot, 138 Vt. 170, 172 (1980) (A Laches is an affirmative equitable defense, and the burden is on the party relying on it. @).

Although the court denied Robinson's claim based on laches, it ruled that Egnor was required to make timely tax

payments, and that Robinson could re-file her motion to enforce if Egnor failed to make timely payments in the future. In essence, the court denied Robinson's motion because the circumstances did not call for the relief requested by Egnor's loss of his life estate on the property. We conclude that, in the absence of any evidence of prejudice to Robinson resulting from Egnor's late payments, the family court acted well within its discretion in refusing to grant Robinson the relief she requested. No evidence indicated that Robinson had suffered any negative financial consequences as the result of Egnor's late payments. There is no indication that she had been forced to pay penalty fees or interest, or that foreclosure proceedings had been initiated or even threatened. We recognize that, under the 1978 divorce order, it was a condition of Egnor's life estate that he pay taxes as they accrue, but the parties' 1994 stipulation simply requires each party to pay his or her share of the taxes each year. The court was not required to terminate Egnor's life estate merely because his tax payments were not timely. Of course, that remedy is not foreclosed for a later time, depending on how Robinson may suffer as the result of any future late payments by Egnor.

Affirmed.

BY THE COURT:

Jeffrey L. Amestoy, Chief Justice

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice