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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2002-557

JULY TERM, 2003

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| Windham County Humane Society | } | APPEALED FROM: |
| v. | } | Windham Superior Court |
| Jesse-Lynn V. Gentlewolf | } | DOCKET NO. 209-5-95 Wmcv |
| | } | Trial Judge: John P. Wesley |

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

Appellant Jesse-Lynn Gentlewolf seeks reversal of the Windham Superior Court's order dismissing her post-judgment pleading for failure to comply with V.R.C.P. 8. We affirm.

In 1995, appellee Windham County Humane Society (WCHS) filed an action to recover boarding costs incurred for animals that had been placed in its care without appellant' s consent because of an allegation that she had been mistreating them. Appellant responded that WCHS could not recover boarding costs because the district court in the underlying criminal proceeding determined that the animals' seizure was illegal. Appellant also counterclaimed for damages arising from the seizure. After the superior court denied WCHS' s claim for boarding costs due to the illegal seizure, appellant moved to dismiss her counterclaims against WCHS with prejudice. The superior court granted the motion, and the case was considered closed by the end of 1996.

Five years later, and after an unsuccessful attempt to hold WCHS accountable in federal court, appellant filed a pro se pleading in the original superior court action, apparently to revive her counterclaims. The document, which is over two inches thick, consists of roughly thirty-six separate motions. WCHS moved to dismiss the pleading arguing that it does not provide a short, plain statement or simple, direct, and concise averments required under V.R.C.P. 8. The superior court agreed, and it dismissed appellant's filing in November 2002. This appeal followed.

The only issue on appeal is whether the trial court erred by dismissing the pleading. The parties disagree about the standard of review we must employ in reviewing appellant's claim. Appellant contends that we owe no deference to the trial court, and WCHS argues that we must review the superior court' s order for an abuse of discretion. We need not decide which standard is the appropriate one because we conclude that the dismissal did not amount to reversible error under either standard.

V.R.C.P. 8(a) and (e) together require a party seeking judicial relief to set forth the party' s claims in a " short and plain statement of the claim showing that the pleader is entitled to relief," and to keep the party' s averments "simple, concise, and direct." The Rule assures that a pleading is sufficient if it gives the opposing party notice of the claim and the grounds upon which it rests. Soloman v. Atlantis Dev., Inc., 147 Vt. 349, 358 (1986). Appellant' s pleading does not meet the requirements of V.R.C.P. 8. Not only is her pleading voluminous, its averments are lengthy, rambling, and confusing. It is unclear what precise relief appellant seeks and on what grounds she bases her claim(s). There was no error in dismissing her case because the document she filed meets neither the spirit nor the letter of V.R.C.P. 8.

Finally, we address an issue WCHS raised in its brief to clarify the record and to prevent confusion following the

issuance of this entry order. WCHS asserts that the court' s dismissal was without prejudice under V.R.C.P. 41(a)(2) because the court did not specify whether it intended to dismiss with or without prejudice. See V.R.C.P. 41(a)(2) (if voluntary dismissal order is silent, dismissal is without prejudice). Therefore, WCHS argues, appellant is free to try again with a filing that complies with V.R.C.P. 8. We disagree. V.R.C.P. 41(a)(2) applies only to voluntary dismissals. The rule applicable to this case is V.R.C.P. 41(b)(2), a dismissal upon a motion by the defendant for the plaintiff' s failure to comply with the civil rules. See V.R.C.P. 41(b)(2) (court may dismiss on a motion by defendant for failure of the plaintiff to comply with the rules of procedure); see also V.R.C.P. 41(c) (making provisions of Rule 41 applicable to counterclaims, cross-claims, and third-party claims). Under V.R.C.P. 41(b)(3), an order dismissing an action under subsection (b) " operates as an adjudication on the merits" unless the court' s order states otherwise. Thus, the dismissal order appellant contests was with prejudice because the court entered the order upon a motion by the counterclaim defendant (WCHS) for the counterclaim plaintiff' s (appellant) failure to comply with the rules, and the order does not specify that the dismissal was without prejudice.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned