

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-454

JUNE TERM, 2010

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|------------------------------|---|---------------------------|
| Burlington Housing Authority | } | APPEALED FROM: |
| | } | |
| | } | |
| v. | } | Chittenden Superior Court |
| | } | |
| | } | |
| Kelly Raymond | } | DOCKET NO. S0413-09 CnC |

Trial Judge: Helen M. Toor

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

Tenant appeals a judgment of ejection, arguing that the trial court erred in denying her request for a continuance and relying on inaccurate testimony. We affirm.

The basic facts are as follows. In December 2008, the police responded to a call from tenant's apartment. The responding officer recounted in his report of the incident that tenant told him her son and daughter-in-law, both living in the apartment, were IV drug users.* Based on this information, on March 9, 2009, landlord terminated tenant's lease for illegal drug activity—a breach of the terms of the lease.

Tenant failed to vacate the apartment, and landlord brought an eviction action on March 12, 2009. A merits hearing was scheduled for October 29, 2009. On October 26, 2009, tenant moved to continue the hearing and requested a jury trial. The court denied the continuance and concluded that the request for a jury trial was untimely. At the merits hearing, tenant again requested a continuance to obtain an attorney. The court denied the request, explaining that tenant had had seven months to obtain an attorney. Tenant testified at the hearing and presented witnesses.

The court found for landlord and issued a writ of possession on October 29, 2009. The court granted tenant's request for a stay pending appeal.

Tenant's principal brief does not contain any argument, but is a compilation of various documents. Landlord argues that the briefing is inadequate and we should accordingly affirm the trial court's decision without discussion. In her reply brief, tenant argues that (1) the trial court's findings are incorrect because one of landlord's witnesses' testimony was false and the police report was inaccurate, (2) Vermont Legal Aid, Inc. improperly denied her representation, and (3) the court erred in denying her requests for continuances. Ordinarily, we do not address arguments that are raised for the first time in a reply brief. Maynard v. Travelers Ins. Co., 149

* While tenant does not appear to dispute that her son and daughter-in-law used drugs in her home, she contends that she was trying to stop them and have them removed from her house.

Vt. 158, 160 (1987). In this case, however, the reply brief is the only place where tenant's arguments are set out, and we will address them.

Tenant's claims with respect to the evidence and the continuance requests are effectively unreviewable because we have neither a transcript of the proceeding nor a copy of the videotape of the proceedings. See V.R.A.P. 10.1(a). Unfortunately, we cannot provide a transcript at public expense in an eviction proceeding. Without the transcript, we cannot review claims about the pretrial proceedings or events and testimony at the trial. See State v. Gadreault, 171 Vt. 534, 538 (2000) (mem.) (explaining that appellant's failure to file a transcript precludes review of claims); In re S.B.L., 150 Vt. 294, 307 (1988) ("The appellant must bear the consequence of the lack of a transcript of the evidence."). This includes the court's ruling on the request for a continuance because that ruling is discretionary and we do not know the grounds for the court's ruling. See Colony Park Assocs. v. Gall, 154 Vt. 1, 9 (1990). Even with a transcript, we cannot review claims of perjury because the trial court is the judge of credibility of the witnesses. See State v. Mayo, 2008 VT 2, ¶ 14, 183 Vt. 113.

At oral argument, tenant raised two additional issues. Tenant asserted that her original lease did not contain a provision prohibiting drug activity and that she did not receive notice of this lease requirement. We do not reach the merits of this claim because tenant admitted that she did not raise this issue in the trial court. See Roberts v. Chimileski, 2003 VT 10, ¶ 14 175 Vt. 480 (mem.) (explaining this Court will not review issues not raised below). She also disputed landlord's assertion that her residence resembled a "drug house." As explained, because there is no transcript of the proceedings below, we lack any basis to evaluate the merits of this assertion.

As to the denial of Vermont Legal Aid, Inc. services, that is a matter between tenant and Vermont Legal Aid, Inc., which we cannot review in this eviction appeal. We cannot speculate whether tenant would have prevailed if she had been represented by counsel.

Affirmed.

BY THE COURT:

John A. Dooley, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice