

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

**ENTRY ORDER**

SUPREME COURT DOCKET NO. 2017-148

OCTOBER TERM, 2017

Wanda Abbey and Marc Abbey, Sr.	}	APPEALED FROM:
	}	
	}	Superior Court, Essex Unit,
v.	}	Civil Division
	}	
Casey Smith and Jessica Smith	}	DOCKET NO. 1-1-17 Excv

Trial Judge: Elizabeth D. Mann

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

Plaintiffs Wanda and Marc Abbey appeal the superior court’s judgment awarding them \$6004 following a hearing on their complaint alleging that defendants Casey and Jessica Smith had violated a real estate agreement between the parties. We affirm.

Plaintiffs did not order a transcript of the final hearing and do not challenge any of the superior court’s findings, which reveal the following facts. Plaintiffs are the parents of defendant Casey Smith, who is defendant Jessica Smith’s husband. Plaintiffs provided financial assistance to defendants in a variety of forms over the years. The family worked out financial arrangements together until the drowning death of defendants’ son, after which Jessica Smith left her employment, defendants separated, and the parties’ finances worsened.

In August 2015, defendants, who had reconciled, and their children moved into a residence on property in Gilman, Vermont, owned but not occupied at the time by plaintiffs. The following month, defendants began making \$400 monthly payments to plaintiffs for staying at the Gilman residence. In December 2015, Jessica Smith transferred to plaintiffs, without payment, real estate that enabled plaintiffs to live there with their disabled daughter. At the same time, the parties entered into a written agreement by which plaintiffs agreed to sell defendants the Gilman property they were renting from plaintiffs. The purchase price was \$27,000, not including \$5000 that defendants paid plaintiffs prior to signing the agreement. The agreement provided that plaintiffs would pay defendants a minimum of \$400 per month until the \$27,000 was paid off, but it did not contain a provision accelerating payments upon default. The agreement also stated that the \$400 payments would be paid to a third individual who had given plaintiffs a personal loan so that they could purchase a mobile home located at the real estate that Jessica Smith had transferred to them.

In July 2016, plaintiffs deeded to defendants the Gilman real estate by quitclaim deed that was signed, notarized, and recorded. The transfer was made at a time when the payments due from defendants were in arrears. The timing of the transfer was related to the fact that Marc Abbey

could not own real estate and maintain his eligibility for financial assistance from the government. Plaintiffs did not take a mortgage deed in connection with the real estate transfer.

At some point after the Gilman real estate was transferred, defendants separated again. They were in the process of obtaining a divorce at the time of the court proceedings below.

In January 2017, plaintiffs filed a complaint seeking enforcement of the December 2015 agreement and payment of additional financial obligations defendants allegedly owed them. An evidentiary hearing was held on April 4, 2017. Plaintiffs both appeared pro se. Casey Smith did not appear, but Jessica Smith appeared pro se. The day after the hearing, the trial court issued a written decision in which it awarded plaintiffs \$6004—\$4800 for payments due up to that point under the December 2015 agreement, \$756 for car payments made by plaintiffs on defendants' behalf, and \$448 in court costs. In arriving at its judgment, the court concluded that the December 2015 agreement was a valid contract for the sale of real estate and that the July 2016 quitclaim deed was a valid transfer of real estate pursuant to 27 V.S.A. § 301.

In their pro se brief on appeal, plaintiffs state that they have not received any payments against the \$6004 judgment and are therefore appealing the judgment. According to plaintiffs, the trial court did not understand that they were requesting the total amount owed under the December 2015 agreement. They propose two options as possible remedies: (1) return of ownership of the subject real estate to them and fulfillment of the \$6004 judgment; or (2) payment of \$18,000 for the property, return of a pellet stove purchased by plaintiffs for defendants, and fulfillment of the \$6400 judgment.

We first note that nothing in the record before us indicates that plaintiffs asked the trial court to award them the entire sum owed on the December 2015 agreement, which contains no provision dealing with default or late payments. Plaintiffs' one-page complaint asks that defendants voluntarily transfer back to them the real property in exchange for what defendants owed them. The complaint states that, "We are only asking for the property back and for them to move out." Because plaintiffs did not order a transcript, we do not know what, if anything, they requested at the April 4, 2017, hearing. In any event, plaintiffs have failed to explain how the trial court erred in awarding them a judgment for the payments then due under the December 2015 agreement or on what basis return of the real estate is an available and appropriate remedy given the facts and circumstances of this case, including the fact that plaintiffs had not obtained a mortgage on the property.\* As for plaintiffs' contention that defendants have not yet paid any part of the \$6004 judgment, that is not an issue for appeal. Plaintiffs may seek to enforce the judgment by filing an action in the superior court seeking to enforce the unpaid judgment. See V.R.C.P. 69.

Plaintiffs have asked this Court to return the property to them. The trial court correctly concluded that plaintiffs did not keep a mortgage on the property to secure defendants' debt, and for that reason did not order return of the property. Plaintiffs' only avenue at this point for seeking

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\* We understand the trial court's order to address only those monthly \$400 payments that were behind as of the time of the court's decision. We do not read the trial court's order as preventing plaintiffs from returning to court to seek a judgment for additional payments on defendants' obligation that have accrued since the court's order.

return of the property is to secure a judgment lien, which they have not done. See 12 V.S.A. §§ 2901-2905 (explaining how to record judgment lien on property of judgment debtor).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Beth Robinson, Associate Justice

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Karen R. Carroll, Associate Justice