Note: In the case title, an asterisk (*) indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2019-155

NOVEMBER TERM, 2019

Tri-Park Cooperative Housing Corporation v. Michelle A. Carrasquillo* et al.	}	APPEALED FROM:
	}	Superior Court, Windham Unit, Civil Division
	}	DOCKET NO. 254-7-18 Wmcv
	}	Trial Judge: Robert P. Gerety, Jr.

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

Tenant appeals pro se from the judgment in favor of landlord and writ of possession issued by the civil division in this eviction case. We affirm.

Landlord Tri-Park Cooperative Housing Corporation owns a mobile home park in Brattleboro. Tenant Michelle Carrasquillo rented a lot in the park. In July 2018, landlord filed a complaint for eviction against tenant.[*] Landlord alleged that tenant had failed to pay rent and substantially violated the terms of her lease by allowing her male companion to live in her home for more than thirty days in a calendar year and engaging in behavior that unreasonably disturbed other residents and violated the law.

In October 2018, landlord moved for summary judgment against tenant. Because it was undisputed that tenant had not paid rent, the court granted the motion, entered final judgment, and issued a writ of possession in favor of landlord. Tenant paid her overdue rent before the writ of possession was executed. The court vacated the judgment and writ. It dismissed the count alleging failure to pay rent but not the remaining counts. The court subsequently permitted landlord to amend its complaint to add another count alleging that tenant had violated the lease by engaging in criminal behavior in November 2018.

After a bench trial in February 2019, the court issued a written decision in landlord's favor. The court found insufficient evidence to establish that tenant had violated the lease provision prohibiting guests from residing with tenants for more than thirty days in a calendar year. However, it found that landlord had proved its claims that tenant violated the lease by engaging in unreasonably disruptive and criminal behavior. The court found that police had been called to the park numerous times from April 2018 onward because tenant was screaming and yelling obscenities outside her home or other residents' homes. In August 2018, police responded to the

[*] Landlord also named tenant's male companion as a co-defendant. The court granted landlord's motion for default judgment against him, and he has not appealed.

park to address tenant's disruptive behavior four times in one day. On another occasion, tenant screamed racial slurs in the presence of children who were members of a minority group during a neighbor's birthday party. On several other occasions tenant operated her car at unsafe speeds while driving out of the park in a rage. She nearly collided with another resident who was returning to the park during one of these incidents. On Thanksgiving Day in 2018, tenant yelled and screamed at her companion and chased him with her car through the park while blowing her car horn for an extended period of time. She was arrested and charged with a crime as a result of this behavior. The court found that tenant's behavior was disturbing and disruptive to the neighbors and constituted disorderly conduct as defined by 13 V.S.A. § 1026.

The court stated that tenant appeared to be suffering from mental health difficulties and would likely benefit from treatment. However, it was unable to conclude that tenant's behavior was caused by any particular mental illness. It further stated that even if her behavior was related to a mental illness, it was not aware of any legal authority that would excuse her breaches of the lease and prevent landlord from seeking possession. It therefore entered judgment in favor of landlord and awarded reasonable legal fees and expenses of $15,120.25. The court granted tenant's subsequent motion to stay the writ of possession pending appeal on the condition that tenant continue to pay rent.

On appeal, tenant argues that once she mentioned her mental illness, the court should have stopped the eviction proceeding, tested her competency, and ensured she had representation. If this were a criminal case, tenant's argument might have merit. Section 4817 of Title 13 provides that if the issue of a defendant's competency to stand trial is raised at any time before final judgment, the court must hold a hearing to determine competency and may not try the defendant if the defendant is found incompetent. However, there is no equivalent statute applicable to civil proceedings.

The civil rules do permit the court to appoint a guardian ad litem for an individual who is found to be incompetent. V.R.C.P. 17(b); In re H.L., 143 Vt. 62, 65 (1983). In this case the court determined that it could not make the findings necessary to appoint a guardian ad litem. We cannot say that this ruling was clearly erroneous. See State v. Bean, 171 Vt. 290, 295 (2000) (reviewing finding that defendant was competent for clear error). The fact that tenant asserted that she had a mental illness does not necessarily mean that she was incompetent to participate in the eviction proceeding. See State v. Curry, 2009 VT 89, ¶ 17, 186 Vt. 623 (mem.) (explaining that "mental illness is not a necessary or sufficient condition for incompetency," and mentally ill defendants can be competent to stand trial). The transcripts of the hearings below show that tenant understood that she was being evicted for her disruptive behavior. She was able to question witnesses and communicate her objections to the court. Because it appeared that tenant had a rational and factual understanding of the proceedings against her, the court was not required to appoint a guardian ad litem for her. See In re C.L., 143 Vt. 554, 558-59 (1983) (holding court not required to appoint guardian ad litem for mother in termination-of-parental-rights case because mother was not hospitalized for mental or medical condition and record showed she understood proceeding and could communicate to attorney).

Tenant's argument that she was entitled to have an attorney appointed to represent her likewise fails. In general, the constitutional right to counsel does not apply to civil proceedings, In re G.G., 2017 VT 10, ¶ 10, 204 Vt. 148, and tenant has not identified a statutory provision

entitling her to state-appointed counsel in this eviction case. The court therefore was not obligated to appoint a lawyer to represent tenant.

Tenant further asserts that the "Equality Act of 2010" prohibits a landlord from treating a tenant unfavorably because of his or her disability. She claims that the court should have entered a "suspended order of possession" that would allow her to keep her home until her mental health improved. Tenant appears to be referring to British law that is not applicable in this Vermont eviction proceeding. We are therefore unable to grant relief on this basis.

Tenant also argues that landlord violated the Fair Housing Act (FHA) by discriminating against her because of her disability and placing conditions on her residency. Tenant failed to preserve this argument by raising it below. Progressive Ins. Co. v. Brown, 2008 VT 103, ¶ 6, 184 Vt. 388 ("[I]n order to rely upon an argument on appeal, an appellant must properly preserve it by presenting it to the trial court with specificity and clarity." (quotation omitted)). Even if we were to consider tenant's argument, it would fail because tenant did not establish the required elements of an FHA claim, including that landlord refused her request to make a reasonable accommodation in its policies and procedures. See 42 U.S.C. § 3604(f)(3)(B) (prohibiting discrimination in rental of dwelling on basis of handicap by "refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling").

Finally, tenant argues that the court erred by refusing to admit letters from her therapist and psychiatrist regarding her mental health status and a letter from her insurer regarding a claim for damage caused by a tree. We see no error. The letters were inadmissible hearsay because their authors did not testify at trial, tenant offered them to prove the truth of the matters asserted therein, and tenant did not show that any exception to the hearsay rule applied. See V.R.E. 801(c) (" 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted."), 802 (providing that hearsay is generally not admissible at trial). The court therefore did not abuse its discretion in excluding the letters. See Kinney v. Johnson, 142 Vt. 299, 302 (1982) ("The admissibility of documentary evidence is a matter to which we necessarily accord considerable discretion to the trial court judge.").

We briefly address two other arguments raised by tenant. First, she claims that she was not allowed to provide evidence that landlord was not complying with its own obligations under the lease. This claim is not sufficiently briefed to warrant consideration on appeal. See Johnson v. Johnson, 158 Vt. 160, 164 n.* (1992) (noting that Court will not consider contentions "so inadequately briefed as to fail to meet the standard of V.R.A.P. 28(a)(4)"). Second, she argues that she was not allowed to explain to the court that the only reason that landlord commenced the eviction proceeding was because they were applying her rent payments to past trash and lawyer fees. As noted above, tenant cured her nonpayment of rent and that issue is not relevant to this appeal.

The evidence supports the court's findings that tenant substantially violated the lease terms by engaging in unreasonably disruptive and criminal behavior and that landlord gave proper notice

to tenant and commenced the eviction proceeding within sixty days of the violations. Under the terms of the lease and Vermont law governing mobile home parks, landlord was therefore entitled to terminate the tenancy and take possession of the lot. See 10 V.S.A. § 6237(a) (stating that leaseholder may be evicted for substantial violation of lease terms of mobile home park provided that owner commences eviction proceeding within sixty days of violation).

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice