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. 2020-194

DECEMBER TERM, 2020

Marjorie W. Johnston* v. City of Rutland (Kamberleigh Johnston*)	}	APPEALED FROM:
	}	Superior Court, Rutland Unit, Civil Division
	}	DOCKET NO. 454-8-16 Rdcv
		Trial Judge: Robert A. Mello

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

Mother and son, Marjorie and Kamberleigh Johnston, appeal pro se from the court's denial of son's motion to intervene and his motion to reconsider. We affirm.

Son seeks to intervene in mother's 2016 property tax appeal.[1] His initial intervention request was denied. We reversed and remanded that ruling for additional findings on whether son was a "perpetual leaseholder" under 32 V.S.A. § 3610 and if so, whether that entitled him to intervene in mother's case. See Johnston v. City of Rutland, No. 2019-028, 2019 WL 6049877 (Vt. Nov. 14, 2019) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo19-028_0.pdf [https://perma.cc/ST3V-RGQV]. We rejected son's remaining appellate arguments.

Following an evidentiary hearing, the court concluded for several independent reasons that son was not a "perpetual leaseholder" under § 3610 and it denied his motion to intervene. It made the following findings. Mother owns seven properties totaling 1.9 acres improved with various houses, sheds, and garages. In December 2015, mother signed and delivered to son a document entitled "Perpetual Lease Agreement" that purportedly granted son certain "perpetual leaseholder rights" to her properties retroactive to April 2005. The agreement stated that "[t]he lease lasts as long as the trees grow and the water continues to flow" and expressed the intent to allow son "to maintain such lease for the amount of a penny a year." The lease was recorded in the City's land records; a property transfer tax return indicated that son paid nothing for the "perpetual lease." In January 2020, a Rutland City Property Valuation Hearing Officer found the fair market value (FMV) and listed value of each of the nine Perpetual Lease Agreements was zero. The hearing officer concluded that "if a lease ha[d] no FMV there [was] no property tax to be assessed."

Son acknowledged at the hearing in this case that he was not currently being taxed on his perpetual leasehold interests in mother's properties. He also acknowledged that his rental payment

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[1] We note that mother's 2016 tax appeal was decided on the merits in July 2020 and that decision was not appealed.

of one penny a year would not be affected, even if the City assessed his perpetual leasehold interests at a million dollars.

The court explained that to prevail on his motion to intervene as of right, son needed to show that he "claim[ed] an interest relating to the property or transaction which is the subject of the action and . . . that the disposition of the action may as a practical matter impair or impede [his] ability to protect that interest, unless [his] interest is adequately represented by existing parties." V.R.C.P. 24(a)(2). In evaluating son's request on remand, the court was required to make "additional findings and a determination whether [son] [was] in fact a 'perpetual leaseholder' for purposes of the property tax statutes and whether this afford[ed] him the right to participate in this case." Johnston, 2019 WL 6049877, at *2.

The court determined that son was not a "perpetual leaseholder" for purposes of § 3610. It found that the "Perpetual Lease Agreement" had not been "acknowledged by the grantor before a notary public" as required by 27 V.S.A. § 341(a). Additionally, the court found that the rights purportedly contained in the agreement were not conveyed to son and his heirs, executors, administrators, and assigns, as required by 32 V.S.A. § 3610(a). It further found that the agreement lacked specificity as to the nature of the various conveyances. In the absence of a proper description of, and right of access to, the property allegedly being leased, the court determined that the lease had no market value and could not be sold at a tax sale or otherwise. It found this determination consistent with the City's assessment that son's leasehold interest had no value and with the fact that son paid mother nothing for the agreement and paid "one penny a year" in rent.

Even if he were a perpetual leaseholder, the court continued, that status would not afford him the right to participate in mother's 2016 tax appeal. The court found no possibility that the disposition of mother's case would "as a practical matter impair or impede" son's ability to protect his interest in the property. V.R.C.P. 24(a)(2). Son acknowledged that he was not currently being taxed on his interest in mother's property and thus, he suffered no harm. His rights, if any, as a perpetual leaseholder remained unimpeded and unimpaired despite his allegations that the City violated § 3610, refused to recognize the existence of his leasehold interest, valued his interest at zero, and refused to include his lease in the Grand List. Finally, the court noted that if son truly had any real "interest" in getting the City to "recognize" and tax his leasehold interest, that interest was already "adequately represented by existing parties." Id. Mother had an interest in having the City recognize and tax son's leasehold interest in her property because it could reduce her own tax liability. Thus, for these various independent reasons, the court denied son's motion to intervene. Son filed a motion to reconsider, which the court denied as untimely and meritless. This appeal followed.

Son argues on appeal that his perpetual lease agreements are valid and that he is an aggrieved party under 32 V.S.A. § 4221 entitled to intervene.

We find no basis to disturb the court's decision.[2] The only question before the court on remand was whether Mr. Johnston was entitled to intervene by virtue of his perpetual lease agreements. We agree with the court that, even assuming son is a "perpetual leaseholder" within the meaning of § 3610, that status would not afford him the right to intervene. Because we affirm

[2] After oral argument in this case, son filed an ex parte motion for emergency relief, arguing that his appeal was timely filed and should be considered on the merits. As we have considered the merits of the appeal, we deny the motion as moot. To the extent son seeks other relief in the motion, those requests are denied.

the court's decision on this ground, we need not address its additional rationales for denying son's motion.

As set forth above, to be entitled to intervene as of right, son needed to show that he "claim[ed] an interest relating to the property or transaction which is the subject of the action and [he] is so situated that the disposition of the action may as a practical matter impair or impede [his] ability to protect that interest, unless [his] interest is adequately represented by existing parties." V.R.C.P. 24(a)(2). Son is not being taxed on his interest in mother's property and he therefore could not have suffered any harm from the City's 2016 tax assessment of mother's property. The outcome of mother's tax appeal does not "as a practical matter impair or impede [his] ability to protect" whatever interest he may hold by virtue of the Perpetual Lease Agreement. Id. Despite his allegations about the effect of the City's actions, which he appears to contend make him an aggrieved party, his interests in the Perpetual Lease Agreement remain unaffected. See U.S. Bank Nat'l Ass'n v. Kimball, 2011 VT 81, ¶ 12, 190 Vt. 210 (explaining that "plaintiff must have suffered a particular injury that is attributable to the defendant, and a party who is not injured has no standing to bring a suit" (quotations and citations omitted)). We agree with the trial court, in any event, that to the extent son does have an interest in having the City recognize and tax his leasehold interest, that interest can be protected by mother. Son offers no persuasive argument to the contrary; his list of statutory provisions is unavailing. Son fails to show that the court erred in denying his motion to intervene.

Affirmed.

BY THE COURT:

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Beth Robinson, Associate Justice

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Harold E. Eaton, Jr., Associate Justice

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Karen R. Carroll, Associate Justice