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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2017-086

SEPTEMBER TERM, 2017

Walter Zorn and Arthur B. Zorn	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
v.	}	Civil Division
	}	
	}	
Robert Zorn	}	DOCKET NO. 25-1-11 Rdcv

Trial Judges: Helen M. Toor,
William D. Cohen

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

Defendant Robert Zorn appeals from the trial court's award of summary judgment in favor of plaintiffs Walter Zorn and Arthur B. Zorn. We affirm.

Plaintiffs sued defendant in 2011 seeking a judgment that plaintiffs, as the executors of the estate of the parties' mother, Edna Zorn, were the rightful owners of certain real property formerly owned by Edna. They also sought damages for the value of the portion of Edna's former property that defendant sold to innocent third parties. In August 2014 and January 2015, plaintiffs filed motions for partial summary judgment and entry of judgment on the issue of title, which defendant opposed.

The trial court issued a written decision in April 2015 with the following findings. In July 1999, Edna signed a deed conveying to defendant all of her property in Middletown Springs and Wells, with the exception of a parcel containing her home and a parcel she had previously conveyed. On the same date, defendant signed a deed conveying to Edna a "Parcel One" from what was known as the former Pertschnigg property. Defendant recorded the deed from him to Edna immediately, and recorded the deed from Edna to him more than two months later. This had the effect of conveying all the lands referenced in both deeds to defendant. Defendant subsequently sold portions of the former Pertschnigg property to innocent third-party buyers. Defendant also claimed an interest in Edna's home parcel by virtue of a 1997 deed he handwrote, which purports to convey the parcel to "Edna A. Zorn and in trust for heirs and assigns forever," and also states that upon Edna's death, defendant "will be the soul [sic] landowners of this tract of land." Under Edna's will as probated, defendant is not Edna's heir or assign.

The court found that the July 1999 transaction was intended as a land swap, and not a gift of all the land to defendant. It held that the former Pertschnigg property, minus the portions subsequently conveyed by defendant to third parties, was part of Edna's estate. The court found by clear and convincing evidence that defendant fraudulently induced Edna into conveying all of her land to him. The court determined that rescission was not an appropriate remedy with regard to the parcels sold to innocent third parties. It accordingly ruled that defendant was liable to

plaintiffs for the value of the parcels he improperly conveyed to third parties, although it did not calculate the amount due.

The court also held that the 1997 deed did not make defendant the owner of Edna's home parcel because it contained conflicting terms and should be construed against the drafter—in this case, defendant. The court concluded that plaintiffs were entitled to a writ of restitution restoring them to possession of Edna's home parcel.

The court entered judgment "[p]ursuant to V.R.C.P. 54(b)" in favor of plaintiffs. The judgment stated that plaintiffs owned Edna's home parcel and the former Pertschnigg parcel, except for the portions conveyed by defendant to third parties. Defendant did not appeal this judgment.

In December 2015, the court granted plaintiffs' motion for a writ of restitution and possession of the properties, which defendant was still occupying. Around this time, defendant was arrested and charged with burglary and assault. In February 2016, the criminal division found him to be incompetent to stand trial and he was ordered to be hospitalized. The civil division issued a June 2016 entry order stating that it would not issue any further orders in the case "until there is a clear understanding of the determination from the civil division or the competency of Robert Zorn."

A status conference was held in October 2016 at which the civil division was apparently satisfied that the case could move forward, as it issued a deadline for plaintiffs to file summary judgment on their remaining claim, i.e., damages for the value of the parcels defendant had conveyed to third parties. Plaintiffs moved for summary judgment on that issue in December 2016. Defendant filed a response stating that "the court failed to join the cases in which testimony from Edna A. Zorn provided proof of Robert E. Zorn's ownership of property." He did not state which cases these were.

In February 2017, the civil division granted plaintiffs' motion for summary judgment. The court first addressed the issue of defendant's competency. It noted that defendant had no legal guardian and that a guardian ad litem had been appointed to assist him, which was all that was required under the civil rules. The court found that further delay of the action was unwarranted because judgment on the merits had already been issued in 2015, defendant had responded to the motion "in a manner that is no different from the sort of response many pro se parties file," and he did not challenge the property values asserted by plaintiffs. The court found that no additional steps, such as seeking a lawyer willing to represent defendant pro bono, would save defendant's claims. It held that defendant owed plaintiffs $246,000 for the two parcels he sold.

On appeal, defendant appears to challenge the court's 2015 determination that he does not own the properties. Plaintiffs argue that defendant's appeal is untimely because it was filed more than thirty days after the entry of judgment regarding that issue. See V.R.A.P. 4. They argue that he can only challenge the amount of damages for the parcels he sold to innocent third parties, and he has not done so.

We agree. The April 2015 judgment was plainly meant to be a final order pursuant to V.R.C.P. 54(b). Although the judgment did not contain an "express determination that there is no just reason for delay," the context in which it was issued makes clear that the court found the requirements of the rule to be satisfied. In their January 2015 motion requesting entry of partial judgment, plaintiffs argued that there was no just reason for delay because the case had been pending since 2011, defendant had not opposed plaintiffs' motion, filed an answer, or otherwise defended the action, and the issue before the court—i.e., who owned the land—could be resolved

independent of the remaining claims. They attached "a proposed V.R.C.P. 54(b) judgment" to their motion, which the court signed and entered in the docket. This indicates that the court intended the judgment to be final as to those issues. Our conclusion that the April 2015 order was a final appealable order is supported by the fact that it ordered an immediate transfer of Edna's home parcel to plaintiffs. See Hospitality Inns v. S. Burlington R.I., 149 Vt. 653, 656 (1988) (explaining that an otherwise interlocutory order "will be treated as a final appealable order if it calls for the immediate transfer of real or otherwise unique property"). Because defendant did not appeal the order within thirty days of its entry, we lack jurisdiction to review it. Casella Constr., Inc. v. Dep't of Taxes, 2005 VT 18, ¶ 3, 178 Vt. 61.

We note that even if defendant's appeal were timely, he has offered no basis for this Court to reverse either of the judgments below. He has not shown that the trial court's factual findings regarding the ownership of the properties or the amount of damages were clearly erroneous. See Thibault v. Vartuli, 143 Vt. 178, 180 (1983) (explaining that factual findings are reviewed for clear error). He does not argue that the trial court misinterpreted the applicable law. He simply states that all of Edna's property belongs to him. This bald claim is insufficient to disturb the decisions below.

Affirmed.

BY THE COURT:

_____
Marilyn S. Skoglund, Associate Justice

_____
Beth Robinson, Associate Justice

_____
Harold E. Eaton, Jr., Associate Justice