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. 2019-327

AUGUST TERM, 2020

Richard A. Gay v. Therese M. Brock*	}	APPEALED FROM:
	}	
	}	Superior Court, Windham Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 20-1-19 Wmcv
		Trial Judge: Robert P. Gerety, Jr.

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

Tenant appeals from a judgment in landlord's favor following a bench trial. She argues that the court's findings are clearly erroneous and that she was not given adequate time to present her case. We affirm.

Landlord filed an eviction complaint against tenant in January 2019; tenant filed counterclaims. Tenant was pro se below; landlord was represented by counsel. Following a bench trial, the court made the following findings. The parties entered into a rental agreement for residential premises owned by landlord; tenant occupied the premises; landlord gave notice of termination of the agreement; and tenant vacated the premises in June 2019. The agreed rent was $700 per month. Tenant breached the agreement by failing to pay rent in any form between August 2018 and June 2019. The total unpaid rent was $7700.

The court explained that in her counterclaim, tenant sought $33,000 she claimed was owed to her under a separate contract. The court found that the parties had entered into an agreement whereby tenant would provide property management services for landlord for various rental properties he owned. Tenant provided such services for landlord. The parties did not agree on the terms of the contract, including how tenant would be paid for her work. Tenant claimed the parties agreed that she would receive 10% of the rent collected as a fee but the court found no such agreement existed. It also could not determine how much rent tenant collected. Landlord paid money to tenant for her work. The court was unpersuaded by tenant's evidence about the amount of rent she collected or the amount that she was allegedly owed.[*] There was no evidence of the fair value of her work. The court could not make any finding that landlord owed tenant any money for work that she performed.

As reflected above, the court found that tenant failed to carry the burden of proof on her counterclaim. She failed to show that landlord breached any agreement with her or that she suffered damages as a result. Tenant also failed to establish the fair value of her work or show that

[*] Because tenant spent much of her allotted time on cross-examination, she presented little evidence concerning this counterclaim.

she had not been fairly compensated for such work. Additionally, she failed to establish that she was unlawfully evicted in retaliation for lawful conduct as she alleged. The court thus entered judgment for landlord and awarded him $7700 in damages plus his $295 filing fee. This appeal followed.

Tenant, now represented by counsel, argues that the court erred in finding that she owed landlord back rent. She argues that her rent was included as part of the compensation for her property management work. She contends that landlord did not seek back rent for the month of August 2018 in his complaint. Tenant further asserts that the evidence is unclear as to when landlord terminated her management work and whether she owed rent once she no longer performed this work for landlord. Tenant also argues that the court abused its discretion in allowing each party one hour and twenty-five minutes to present evidence and cross-examine witnesses.

On appeal, we consider the trial court's findings "in the light most favorable to the prevailing party, disregarding modifying evidence." Soon Kwon v. Edson, 2019 VT 59, ¶ 23 (quotation omitted). The findings will stand "unless there is no credible evidence to support" them. Id. (quotation omitted). It is for the factfinder, not this Court, to assess the credibility of witnesses and weigh the evidence. See, e.g., Mullin v. Phelps, 162 Vt. 250, 261 (1994) (role of Supreme Court in reviewing findings of fact is not to reweigh evidence or to make findings of credibility de novo).

Tenant fails to squarely address the trial court's findings in this case. The court found that there was a rental agreement to pay $700 per month, which tenant breached by failing to pay any rent between August 2018 and June 2019. These findings are supported by the evidence. Landlord testified that the agreed-upon rent for the rental (which was part of his home) was $700 per month. He testified that he terminated tenant's property-management employment on June 9, 2018, when he tendered her a check for $54,000 as payment in full for what she claimed she was owed. After terminating tenant's employment, landlord asked her to vacate the property, which she did not do. She remained in the home and paid no rent from the time her employment was terminated until the time she was evicted in June 2019. The court's award of back rent beginning in August 2018 is consistent with this evidence, specifically, landlord's testimony as to when he terminated tenant's employment. Tenant did not object to this testimony that her unpaid rent dated back to August. See V.R.C.P. 15(b) ("When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings."). The court did not find that tenant was entitled to stay in the home for free, that she had made any contributions towards rent between August 2018 and June 2019, or that landlord owed her any money that could offset the rent due. It did not find the existence of a conditional rent agreement, as tenant suggests, such that the parties had to agree anew that rent was $700 per month once landlord terminated tenant's employment. To the extent tenant argues otherwise, she failed to so persuade the trial court.

This case is not like Soon Kwon, cited by tenant, where we reversed several findings in an eviction case as unsupported by the evidence. 2019 VT 59, ¶ 26 (concluding that there was no direct or circumstantial evidence to support trial court's findings that parties agreed tenants would start paying rent when building was up to code or that building was brought up to code at time court determined). In this case, as set forth above, the court's findings are supported by the evidence. Landlord's testimony supports the finding that the agreement here was to pay $700 in monthly rent, which was covered in some form during the period tenant performed work for landlord. When those services were terminated, tenant's obligation to pay rent continued but she contributed nothing. Thus, the court could conclude on this record that she owed back rent.

We thus turn to tenant's argument concerning the amount of time allotted for trial. The court advised the parties by entry order how the trial would proceed, including that each party would have one hour and twenty-five minutes to present evidence and conduct cross-examination. No party objected to this approach. The court was careful to remind tenant during trial of the amount of time that had elapsed, encouraging her to use her time efficiently.

Tenant now argues that the trial court's schedule prevented her from presenting her evidence. Even if this argument had been preserved, we would find it without merit. The trial court has "broad discretionary latitude" in exercising its authority under Vermont Rule of Evidence 611(a) to control the introduction and order of evidence. Bevins v. King, 147 Vt. 203, 207 (1986). Its decision "will not be disturbed on appeal unless the party can show an abuse of discretion resulting in prejudice." Id. That tenant regrets how she utilized the time made available to her does not demonstrate an abuse of discretion. In fact, the trial court repeatedly cautioned her as she spent most of her time attempting to cross-examine a recalcitrant and difficult witness whose answers did not advance her case. Although landlord complicated the matter by presenting extensive evidence about matters not clearly implicated by the pleadings, leading tenant to spend precious time attempting to rebut those claims through cross-examination, the trial court did not abuse its discretion in concluding that the time allotted to tenant to present her case, including cross-examining landlord, would have been adequate had she heeded the court's advice. The fact that the court asked questions of the parties does not demonstrate that she was denied "a full opportunity to be heard," Vt. Elec. Supply Co. v. Andrus, 135 Vt. 190, 190 (1977), nor does its failure to inquire about tenant's retaliatory eviction claim. This is not a case where a remand is required "to prevent a failure of justice." Shea v. Pilette, 108 Vt. 446, 455 (1937). We find no basis to disturb the court's decision.

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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William D. Cohen, Associate Justice