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. 2020-187

JANUARY TERM, 2021

Marjorie W. Johnston* v. City of Rutland (Kamberleigh Johnston*)	}	APPEALED FROM:
	}	
	}	Superior Court, Rutland Unit,
	}	Civil Division
	}	
	}	DOCKET NO. 514-10-17 Rdcv
		Trial Judge: Robert A. Mello

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

Kamberleigh Johnston appeals pro se from the denial of his request to intervene in his mother's 2017 property tax appeal. We affirm.

Mother challenges the City of Rutland's assessment of her real property located at 50 Pine Street.[1] The property consists of an old two-story house with a small shed/garage located on 0.09 acres of land. In 2017, the Board of Civil Authority assessed the property's fair market value (FMV) at $52,300, $1000 of which it attributed to the shed. Son claimed the right to intervene in mother's tax appeal by virtue of a "Perpetual Lease Agreement" from mother to son purportedly conveying him an interest in the shed. Following an evidentiary hearing, the court denied son's intervention request.

The court made the following findings. In December 2015, mother signed and delivered to son a document entitled "Perpetual Lease Agreement" (PLA) that purportedly granted son certain "perpetual leaseholder rights" retroactive to April 2005. This included "the right to 1/4th of the shed on the lot known as 50 Pine St." The portion of the shed subject to this right was not defined, and no right of access to the shed was provided. 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 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 even if the City assessed his perpetual leasehold interests at a million dollars, his rental payment of one penny a year would not be affected.

[1] Mother's tax appeal was decided on the merits in August 2020, and no appeal was taken.

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, the court considered whether son was "a 'perpetual leaseholder' for purposes of the property tax statutes and whether this afford[ed] him the right to participate in this case." Johnston v. City of Rutland, No. 2019-028, 2019 WL 6049877, at *2 (Vt. Nov. 14, 2019) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo19-028_0.pdf [https://perma.cc/ST3V-RGQV].

The court determined that son was not a "perpetual leaseholder" for purposes of 32 V.S.A. § 3610 for various independent reasons. Even if he were a perpetual leaseholder under the statute, the court explained, that status would not afford him the right to participate in mother's 2017 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, the court found that he suffered no harm. The court concluded that son's 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." V.R.C.P. 24(a)(2). 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. The court thus denied son's motion to intervene. Son filed a motion to reconsider, which the court denied. This appeal followed.

We emphasize at the outset that the only question before us is whether the court erred in denying son's motion to intervene as of right in his mother's 2017 tax appeal.[2] We recently considered this same question in the context of son's attempt to intervene in his mother's 2016 tax appeal. See Johnston v. City of Rutland, No. 2020-194, 2020 WL 7090885 (Vt. Dec. 4, 2020) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo20-194.pdf [https://perma.cc/SQL8-3A4R]. We reach the same conclusion here based on the same rationale. 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 the court's decision on this ground, we need not address its additional rationales for denying son's motion or son's arguments concerning these grounds, including his assertion that the City "waived all rights to contest the validity of the [Perpetual Lease Agreements]" because it did not appeal from a 2017 Property Valuation and Review decision concerning the PLAs.

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

[2] Many of son's arguments are unrelated to this question, and we therefore do not address them. This includes his assertion that tax appeals should be heard in order, his argument about the creation of new span numbers, his assertion that the City violated 32 V.S.A. § 3610(f), his allegation of a conflict between the parcel law and 32 V.S.A. § 3610, and his arguments concerning the City's ability to modify the FMV of the Perpetual Lease Agreements or to conduct a tax sale.

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. V.R.C.P. 24(a)(2). Despite his allegations about the City's actions or inaction concerning the PLAs, his interest in the PLA with respect to the shed remains 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 omitted) (citations omitted)). We agree with the trial court 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. He fails to show that the court erred in denying his motion to intervene.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Beth Robinson, Associate Justice

Harold E. Eaton, Jr., Associate Justice