VERMONT SUPREME COURT
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Case No. 2021-156

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

MARCH TERM, 2022

Alpine Haven Property Owners' Association, Inc. v. Edward Deptula*	}	APPEALED FROM:
	}	Superior Court, Franklin Unit,
	}	Civil Division
	}	CASE NO. 124-3-13 Frcv
		Trial Judge: Thomas Carlson

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

Defendant appeals pro se from the trial court's denial of his motion to reopen under Vermont Rule of Civil Procedure 60(b) and its award of attorney's fees to plaintiff Alpine Haven Property Owners' Association (AHPOA). He raises numerous arguments. We affirm.

As described in detail in a prior case, Alpine Haven Property Owners' Ass'n v. Deptula, 2020 VT 88, ¶¶ 1-8, the parties have been involved in multi-year litigation over the payment of homeowners' fees. Defendant began challenging the fees approximately thirty years ago, leading to numerous lawsuits. The underlying judgment in the instant case involves a collection action that AHPOA filed in 2012; defendant filed counterclaims against AHPOA and third-party claims against AHPOA's now-deceased former counsel and his law firm. In 2018, the court granted summary judgment to the attorney and his firm on the third-party claims and in 2019, it granted judgment to AHPOA for $17,680.91 plus interest and costs. We affirmed these decisions on appeal. See id. ¶ 1. Following our decision, AHPOA renewed its request for attorney's fees. Defendant then moved for relief from judgment under Vermont Rule of Civil Procedure 60(b). The court denied defendant's motion and granted AHPOA's request. We address these decisions, and defendant's challenges to them, in turn.

I. Rule 60(b) Motion

A. Trial Court's Findings

The court made the following findings with respect to the Rule 60(b) motion. Defendant argued that he was entitled to relief from judgment because: (1) subsequently discovered IRS nonprofit tax returns proved that the accounting relied upon by the court was a fraud; (2) certain "reserve fee" funds charged as part of the fee were misused; (3) the judgment amount failed to account for $4800 in prior payments; and (4) both the trial court and Supreme Court mistakenly relied on the wrong complaint in determining the amount due.

The court found that defendant failed to show that he could not have discovered AHPOA's 2009-2015 IRS tax forms earlier and the court further found no apparent fraud reflected in these tax forms. As to the second allegation, the court stated that it would not reopen the merits of the case to allow for this new defense, if in fact it was a new defense. It explained that defendant's argument that AHPOA somehow misused some of the funds raised in its assessments could have been raised in the years of litigation that preceded summary judgment. The final judgment order had determined that the charges imposed were reasonable and the court would not reengage with defendant's endless skepticism about those charges and how the funds were spent. The court emphasized the importance of the finality of judgments. With respect to the alleged mistakes in accounting and which complaint was relied upon, the court found that defendant appeared confused about how the court determined the judgment amount. The court explained that it had not simply relied on the amounts claimed in the second amended complaint; it relied on the accounting filed in June 2018. The court concluded that the time to challenge the accounting was in 2018 and the litigation needed to end.

The court touched on these issues again in denying defendant's motion to reconsider its ruling. It rejected defendant's request that it "correct mathematical errors in the judgment, grant defendant a hearing on his claim of excusable neglect, and allow him to inquire into the cost basis of the fee." It found that all of these issues either had been addressed or could have been addressed and declined to revisit them.

B. Arguments on Appeal

Defendant now raises numerous challenges to the court's denial of his Rule 60 motion, some of which are difficult to discern or inadequately briefed. Defendant reasserts the "excusable neglect" argument considered and rejected by the trial court. He contends that his disabilities rendered him incompetent during the underlying litigation, which constitutes excusable neglect sufficient to set aside the judgment. He next argues that the court should have found that he established a fraud upon the courts. He reiterates arguments about the reasonableness of the fee charged by AHPOA. He asserts that the tax forms he submitted constitute irrefutable evidence of fraud and he appears to allege judicial misconduct in the underlying proceedings concerning discovery rulings. Defendant next challenges the amount of the judgment awarded to AHPOA, including whether it was based on the second amended complaint and whether it accounted for certain payments made. Finally, he asserts that the court erred in rejecting his argument about the reserve funds.

We review the court's decision for abuse of discretion, and we find none. See Kotz v. Kotz, 134 Vt. 36, 40 (1975) (explaining that "discretionary ruling of the trial court is not subject to review on appeal unless it clearly and affirmatively appears that such discretion has been abused or withheld"). The court considered and rejected defendant's arguments and provided reasonable grounds for its decision.

First, defendant fails to show the court erred in rejecting his "excusable neglect" argument. The record shows that defendant fully litigated his defenses and his claims below and then pursued numerous arguments related to both on appeal. His arguments were considered and rejected on the merits. Indeed, this Court rejected his argument that the case below should have been stayed due to his anxiety, which appears to be similar to the argument being raised here. See Deptula, 2020 VT 88, ¶ 60 (concluding that trial court did not err in denying defendant's request to stay, which was based on defendant's assertion that case was causing him anxiety). The fact that some of his arguments in 2020 may have been difficult to decipher, moreover, does

not show that defendant was incompetent or that he is somehow entitled to have the judgment set aside because of "excusable neglect."

The court similarly did not err in rejecting defendant's claim to relief from judgment due to newly discovered evidence of "fraud." As the court explained, defendant failed to show why he could not have discovered the IRS documents prior to the entry of final judgment and the documents did not show fraud. The first ground alone supports the court's conclusion, and we find no basis to disturb this conclusion. See Darken v. Mooney, 144 Vt. 561, 566 (1984) (affirming denial of motion for reconsideration where party could have, with due diligence, discovered evidence prior to entry of final judgment and explaining that Rule 60 "does not operate to afford parties a chance to relitigate matters in which there was ample time to prepare" "[n]or does it afford relief from tactical decisions which later prove to be ill advised"). While it's not clear to which claim this argument attaches, defendant's disagreement with the court's discovery rulings does not show "misconduct" or bias. See Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994) (stating that judicial bias cannot be demonstrated based on adverse rulings alone); Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "that contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"), abrogated on other grounds by Demag v. Better Power Equip., Inc., 2014 VT 78, 197 Vt. 76.

The court provided reasonable grounds for rejecting defendant's remaining arguments under Rule 60(b)(6) as well. As set forth above, the court found that to the extent that these arguments had not been pursued below, they should have been. This is consistent with our case law and with the purpose of the rule. See McCleery v. Wally's World, Inc., 2007 VT 140, ¶ 10, 183 Vt. 549 (mem.) (explaining that while the language of Rule 60(b)(6) is broad, "interests of finality necessarily limit when relief is available" and rule "may not substitute for a timely appeal or provide relief from an ill-advised tactical decision or from some other free, calculated, and deliberate choice of action" (quotations omitted)). Rule 60 "is intended to accomplish justice in extraordinary situations that warrant the reopening of final judgments," id., and the court did not err in concluding that there were no extraordinary circumstances here. See also 12 J. Moore, et al., Moore's Federal Practice § 60.48[3][b], at 60-188 (explaining that in vast majority of cases finding that extraordinary circumstances exist so as to justify relief under Rule 60(b)(6), "the movant is completely without fault for his or her predicament; that is, the movant was almost unable to have taken any steps that would have resulted in preventing the judgment from which relief is sought"). As we emphasized in Wally's World and the trial court emphasized here, "[t]here must be an end to litigation someday, and free, calculated, deliberate choices are not to be relieved from." 2007 VT 140, ¶ 13 (quotation omitted). While defendant disagrees with the court's decision, he fails to show any abuse of discretion. See, e.g., Meyncke v. Meyncke, 2009 VT 84, ¶ 15, 186 Vt. 571 (mem.) (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion).*

* Given the lengthy and extensive history of these repetitive fee disputes and the trial court's finding regarding defendant's vexatious behavior, we note that "Rule 11 affords the trial court the necessary means to avoid being held hostage by paperwork from vexatious litigants" and "[n]o litigant enjoys a constitutional right to delay justice to others and occupy the court's time with unfounded filings." Zorn v. Smith, 2011 VT 10, ¶ 17, 189 Vt. 219 (citation omitted). In Zorn, for example, we concluded that the trial court "acted within its discretion in restricting, while not barring, [the plaintiff] from filing additional materials" where "[t]he recent history of

II. Attorney-Fee Award

A. Trial Court Findings

We thus turn to the attorney-fee award. The court acknowledged that, in general, parties in civil actions bear their own attorney's fees but it found this to be an exceptional case. See Cameron v. Burke, 153 Vt. 565, 576 (1990) (recognizing that "equity court may grant fees in exceptional cases as justice requires," including "where a litigant acts in bad faith or vexatiously and where a litigant's conduct is unreasonably obdurate or obstinate" (quotations omitted)). The court explained that it had been on this case since April 2018. At that point, the case had been pending for years, delayed for a variety of reasons, most conspicuously litigation over whether AHPOA qualified as a common interest community. That chapter ended in 2016 with a Supreme Court determination that AHOPA was not a common interest community. See Khan v. Alpine Haven Prop. Owners' Ass'n, 2016 VT 101, ¶ 1, 203 Vt. 251. AHPOA then amended its complaint to seek recovery of charges due under the language of the relevant deeds. Other landowners in the same neighborhood litigated essentially the same issue in another collection action brought by AHPOA, Alpine Haven Property Owners' Ass'n v. Brewin, 2018 VT 88, 208 Vt. 462. This Court held there that a landowner like defendant must pay a reasonable fee similar to that charged from the outset of the instant litigation. Brewin essentially reiterated the holding of an earlier case, Alpine Haven Property Owners' Ass'n v. Deptula, where this Court stated that AHOPA "is not limited to charging only costs, but may assess a reasonable fee for its services." 2003 VT 51, ¶ 17, 175 Vt. 559 (mem.).

At an August 2018 status conference, the trial court conveyed to defendant that Brewin appeared to effectively resolve the issues that he raised in defense of AHPOA's complaint. Defendant was unpersuaded. The court thereafter issued two lengthy decisions dismissing defendant's third-party complaint against the law firm that initially represented AHPOA and granting summary judgment to AHPOA for the charges it claimed were due. The court also dismissed defendant's many counterclaims against AHPOA and his third-party claims as a matter of law based on the undisputed facts. It granted summary judgment to plaintiff essentially pursuant to Brewin and the 2003 decision against defendant.

The court found that defendant had been fighting the assessments for thirty years, as illustrated by decisions dating back to 1992. In 1992, a final order determined a fair and equitable fee. Another final order determined a reasonable fee in 2003. This Court then issued a final order in the instant case in October 2020, again determining a reasonable fee on the same order of magnitude.

Defendant argued that an award of attorney's fees was unwarranted because: (1) AHPOA made the case unnecessarily complex due to inconsistent claims and litigation over whether Alpine Haven was a common interest community; (2) AHPOA eventually recovered a de minimus amount for its efforts; and (3) defendant's defense and counterclaims were reasonable. The court somewhat agreed with the first point and limited its focus for attorney-fee purposes on litigation after August 2018. The court acknowledged the second point but found that this was not a lodestar sort of calculation, and this particular point could hardly justify favoring defendant over AHPOA.

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th[e] litigation reflect[ed] a pattern of chronic vexatious, baseless, and frivolous filings." Id. ¶ 19.

The court concluded that an attorney-fee award was warranted here because defendant's defenses, once past the common-interest-community issue, were unreasonable and because defendant filed seemingly endless pleadings that were perseverating, hard to discern, and blind to the amount at stake. The court found that if anyone should be asked why they would put so much effort into a dispute so small, and thereby require AHPOA to engage in similar efforts and cost his neighbors tens of thousands of dollars, it was defendant. The court deemed defendant's arguments unreasonable given prior final orders establishing his obligation, followed by the Brewin decision, and it found that defendant relentlessly pursued an explanation to which he was not entitled. Likewise, the court found defendant's counterclaims never had significant substance and were intended only to delay or discourage.

The court determined that defendant was more than a struggling self-represented litigant. He approached the defense of these modest annual charges as a pathological life mission, provoking an obstinacy in him that was vexatious to all on the other side. The court found significant evidence of that behavior even before Brewin. It explained that this stage of the dispute represented years twenty-two to thirty of defendant's fight against these charges and "round three." The problem was evident after Brewin when defendant refused to even begin to acknowledge the writing on the wall and it was only reinforced by defendant's most recent motions seeking to overturn the recently affirmed underlying judgment. The court concluded that defendant's "seemingly blind obstinacy, above all, made this case extraordinary and gave cause for an attorney-fee award." "Whatever the source of that pathology," the court continued, others should not bear the cost once the law was as clear as it was after Brewin. Among other things, the court expressed hope that its award would serve as more than fair warning about persisting in the same path. The court thus concluded that AHPOA was entitled to a reasonable attorney's fee award for the post-Brewin litigation, including the appeal.

Defendant then moved to reconsider this decision, which the court denied. Following additional proceedings, including a hearing, the court awarded $30,468.40 in attorney's fees and costs to AHPOA.

In both of these rulings, the court considered and rejected arguments that defendant now reiterates on appeal. In denying the motion to reconsider, the court rejected defendant's references to Vermont Rule of Civil Procedure 11 as the basis for the attorney-fee award. It reiterated that it made its award based on its inherent authority. See Agency of Nat. Res. v. Lyndonville Sav. Bank & Tr. Co., 174 Vt. 498, 501 (2002) (mem.) (recognizing that court may impose attorney's fees "where a party is unjustly forced to endure a second round of litigation").

The court also rejected defendant's assertion that he lacked notice that attorney's fees could be awarded against him or that his behavior was "sanctionable." The court explained that, as of 2003, defendant had been unsuccessful in eight attempts to legally contest his homeowners' fees. That was ten years before the instant case began. And, in the 2003 case, the trial court found that defendant acted in bad faith for continuing to contest a reasonable fee and it assessed him approximately $40,000 in attorney's fees, a decision that was affirmed on appeal. See Deptula, 2003 VT 51, ¶¶ 7, 21. In fact, the trial court continued, the Supreme Court had also expressly rejected defendant's argument that attorney's fees could not be awarded absent a motion under Rule 11 or a finding of bad faith on his part. See Alpine Haven Prop. Owners' Ass'n v. Orrock, No. 2005-107, 2005 WL 6151851, at *2 (Oct. 1, 2005) (unpub. mem.), https://www.vermontjudiciary.org/sites/default/files/documents/eo05-107.F.pdf [https://perma.cc/Y3YM-LRW5]. The court found that the 2005 case was approximately the ninth round of litigation about essentially the same issue. And even before that, the court explained, dating as

far back as 1992, defendant was on notice that his unreasonable dispute of reasonable fees put him at risk of an award of attorney's fees. In short, the court explained, defendant could not possibly, within any bounds of reason, complain of lack of notice of his risk of an award of attorney's fees in this case.

The court explained that, in this case, AHOPA asked for an attorney-fee award in its complaint and it filed its first motion requesting fees in April 2019, immediately following entry of judgment for the underling liability earlier that month.

The court again addressed similar issues raised by defendant in its June 2021 order awarding attorney's fees. It explained that following the hearing on attorney's fees, defendant filed a motion for sanctions against an attorney for AHPOA, alleging that the attorney violated Rule 11 by seeking Rule 11 sanctions against defendant. Because the attorney or AHPOA never sought Rule 11 sanctions against defendant and the court's attorney-fee award was independent of Rule 11, the court denied defendant's motion for sanctions.

The court also denied defendant's request for a jury trial on the question of attorney fees. It explained that a hearing had been held on the amount of the attorney-fee award and the court had advised defendant at that hearing that, where, as here, the underlying merits were resolved by summary judgment, there was no further jury trial question. It had further advised defendant that the rules were clear that attorney-fee requests under Vermont Rule of Civil Procedure 54 were for the court to resolve "without extensive evidentiary hearings" and even by reference to a master but with no right to jury trial.

The court then made findings as to reasonableness of amounts requested. It reiterated its finding and conclusion that defendant's continued litigation of AHOPA's reasonable association fees reflected an obstinacy to the point of vexatiousness that made this an extraordinary case. It awarded fees as of the August 2018 status conference at which point it was clear based on Brewin that AHOPA had the right to charge homeowners like defendant a reasonable fee and that the fee here was reasonable. The court determined that the attorney fees it awarded were reasonable and reasonably within the scope of the representation required by defendant's ongoing litigation of the claim.

B. Arguments on Appeal

Defendant now reiterates many of these same arguments on appeal. He asserts that: he was entitled to have a jury find whether he acted in bad faith, apparently to support an award of attorney's fees; the court erred in rejecting his request for Rule 11 sanctions against an AHPOA attorney; the court had no authority to award attorney's fees outside Rule 11; he did not act in bad faith and AHPOA did not plead "sanctions" or "vexatiousness"; AHPOA did not prevail below; he did not know fees would be awarded for work related to the Rule 60(b) motion; the court should not have awarded pre-judgment interest for the period between the January 28, 2021 order denying his Rule 60 motion (and granting the request for fees) and the June 2021 final judgment order; and several other arguments that appear to be related to the award of attorney's fees but are either inadequately briefed or impossible to discern.

We review the court's decision for abuse of discretion, and we find none. See L'Esperance v. Benware, 2003 VT 43, ¶ 21, 175 Vt. 292 ("When determining an award of attorney's fees, the trial court must make a determination based on the specific facts of each case and, accordingly, we grant the trial court wide discretion in making that determination."). As set forth above, the court considered and rejected most of these arguments in its decisions and

defendant simply wars with the result. See Meyncke, 2009 VT 84, ¶ 15 (explaining that arguments which amount to nothing more than disagreement with court's reasoning and conclusion do not make out case for abuse of discretion). The court provided reasoned grounds for its conclusions regarding: the absence of any need for a jury trial; the source of its attorney-fee award; why it rejected defendant's request for Rule 11 sanctions; whether defendant was on notice that attorney's fees could be awarded; and the basis of its decision to award fees. Defendant offers no basis to disturb those conclusions. He similarly fails to show why the fees associated with responding to the Rule 60(b) motion should not be included in the fee award. The court made clear that AHPOA was unjustly required to respond to defendant's actions after August 2018, which includes its Rule 60 response as well as its response to the various motions that he filed after the Rule 60 motion was denied. Defendant also fails to show that the award of prejudgment interest was error. See Estate of Fleming v. Nicholson, 168 Vt. 495, 500 (1998) (recognizing that even where damages are not readily ascertainable, "trial court maintains the ability to award prejudgment interest in a discretionary capacity to avoid injustice" and trial court retains "traditional discretionary capacity . . . to award prejudgment interest where it is required to make the plaintiff whole"). We have considered all of the arguments discernible in defendant's brief and conclude that they are all without merit.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Karen R. Carroll, Associate Justice