

VERMONT SUPERIOR COURT
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CIVIL DIVISION
Case No. 23-CV-05141

Mountain View Land Lease, LLC v. James Avery

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 2)
Filer: Terri Kinsella
Filed Date: September 10, 2024

In this mobile home park eviction action, the court issued a final judgment and writ of possession against defendant James Avery on August 28, 2024. Nonparty Terry Kinsella, who has been living in the mobile home at issue and paying rent in the absence of a lease, subsequently filed motions to stay execution of the writ of possession and to dismiss the case. A hearing was held on September 25, following which the court stayed execution on the writ of possession until October 26 and directed plaintiff to respond to Ms. Kinsella's motion to dismiss by October 9. Plaintiff failed to respond.

The court construes Ms. Kinsella's motion as, in effect, seeking relief from the court's final order in this case under V.R.C.P. 60(b)(6). While a proper respect for the finality of judgments warrants exercising caution when applying that rule, it should nonetheless be liberally construed when necessary to "prevent hardship or injustice." *Penland v. Warren*, 2018 VT 70, ¶ 10, 208 Vt. 15; *Pierce v. Vaughan*, 2012 VT 5, ¶¶ 9, 10, 191 Vt. 607.

Relief under Rule 60(b)(6) is warranted here. Ms. Kinsella has lived in the mobile home for the duration of this litigation along with her adult daughter and three young grandchildren. They have timely paid rent, although they have failed to complete a rental agreement.

Plaintiff was aware that Ms. Kinsella and her family were living in the mobile home—or at least plaintiff should have been aware under the circumstances—but plaintiff failed to name Ms. Kinsella or her daughter in the complaint or join them as parties in this action. *But see* 10 V.S.A. § 6237(g) ("A park owner shall serve notice of eviction proceedings pursuant to this section and 12 V.S.A. chapter 169 to the leaseholder and *to any occupants known to the park owner residing in the mobile home.*" (emphasis added)). The court concludes that in these circumstances, Ms. Kinsella and her daughter are indispensable parties, as a writ of possession for the mobile home cannot in "equity and good conscience" be issued without joining them as parties to the case. *See* V.R.C.P. 19(a).

Accordingly, the court will vacate the writ of possession issued on August 28, 2024. The judgment of \$391.21 against defendant James Avery remains in effect.

If plaintiff wishes to evict Ms. Kinsella and her daughter from the mobile home, plaintiff must name them as parties and proceed against them in compliance with Title 10 and the Vermont Rules of Civil Procedure.

Order

The motion to dismiss is GRANTED IN PART. The court grants Ms. Kinsella relief from judgment under Rule 60(b)(6) and vacates the writ of possession issued by the court on August 28, 2024.

Electronically signed on: 10/21/2024 pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read 'B. Battles', is written over a horizontal line.

Benjamin D. Battles
Superior Court Judge