



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

AUGUST TERM, 2026

Juliet Stephens v. Shannon Gilmour*	}	APPEALED FROM:
	}	Superior Court, Washington Unit,
	}	Civil Division
	}	CASE NO. 24-CV-04273
		Trial Judges: Timothy B. Tomasi (pretrial motions); Daniel P. Richardson (trial)

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

Tenant, self-represented, appeals following a jury verdict in favor of landlord in this eviction action. We affirm.

I. Background

The record reflects the following. In October 2024, through counsel, landlord filed a complaint for eviction in which she named tenant and “all other occupants” of the subject premises as defendants. The complaint included the following allegations. Landlord lives in a residence she owns in Montpelier. Pursuant to a written lease with a one-year term, tenant rented two rooms in this residence beginning in September 2023 and lived there with her minor child. In October 2024, landlord served tenant with a notice of termination of tenancy; tenant and child did not vacate the residence by the termination date reflected in the notice. On this basis, landlord sought a writ of possession requiring tenant and child to vacate the residence.

Tenant entered a notice of appearance as a self-represented party. She filed counterclaims on behalf of herself and child, alleging: breach of the implied warranty of habitability based on lack of carbon-monoxide and smoke detectors required by law and intentional infliction of emotional distress (IIED) as to landlord’s conduct regarding that safety equipment; breach of the implied warranty of habitability arising from mold in a bathroom sink; IIED, abuse of process, and defamation stemming from landlord’s service of tenant’s twelve-year-old child with the summons and complaint; and retaliatory eviction in response to tenant’s assertion of her rights in connection with notice of a rent increase and the carbon-monoxide and smoke detectors.

Landlord moved to dismiss the counterclaims for failure to state a claim on which relief could be granted. In January 2025, the court granted the motion as to tenant's two IIED counterclaims and her defamation counterclaim. In its decision, it noted that although tenant appeared on behalf of child as their parent and next friend, child was not represented by counsel. The court explained that tenant, as a nonattorney, could not act as child's legal representative. It therefore directed tenant to, within thirty days, obtain counsel for child or show cause as to why child's counterclaims should not be dismissed. It warned that failure to do so would result in child's counterclaims being dismissed.

Tenant responded to the show-cause order, raising arguments that went to the merits of child's counterclaims. An attorney then filed a notice of appearance on child's behalf, indicating that the appearance was limited to the filing of a motion to clarify, but that if the court ruled that child remained a party, he would file a second notice to advise the court of the scope of his "subsequent limited appearance." In the motion to clarify, the attorney indicated that it was child's intent to move the court to consider the arguments tenant raised on child's behalf, but that counsel did not endorse or adopt those arguments.

Landlord then moved to voluntarily dismiss her complaint against child. The court granted the motion. In the same order, it addressed the issues regarding child's representation. It observed that neither tenant's response to the show-cause order nor the attorney's limited appearance addressed the issue concerning child's lack of legal representation. The court then explained that it was not satisfied that tenant had effectively obtained counsel for child, and that any further delay was unwarranted and would result in prejudice. It therefore dismissed child's counterclaims without prejudice.

Landlord subsequently filed a renewed motion to dismiss tenant's abuse-of-process counterclaim for failure to state a claim and lack of standing. The court agreed that tenant did not have standing to raise a claim on behalf of child and granted the motion on this basis.

The court held a jury trial over two days in October 2025. Landlord was present with counsel and tenant was self-represented.

After the close of evidence, landlord moved for judgment as a matter of law on tenant's warranty-of-habitability counterclaims.¹ The court granted the motion, concluding that tenant did not present sufficient evidence of her damages to submit these claims to the jury.

Following deliberation, the jury concluded that landlord had proved that she properly terminated tenant's tenancy and that tenant had not shown that landlord's notice of termination was a retaliatory eviction. On this basis, the court issued a writ of possession and entered final judgment for landlord. This appeal followed.

¹ Counsel for landlord described the motion as one "for a directed verdict" under Vermont Rule of Civil Procedure 50. Motions under Rule 50 are now titled motions for judgment as a matter of law. See Reporter's Notes—1994 Amendment, V.R.C.P. 50 (amending Rule 50 to refer to motions for judgment as matter of law rather than for direction of verdict and explaining that this change did not alter existing standard and that motion "denominated a motion for directed verdict . . . should be treated as a motion for judgment as a matter of law in accordance with this rule" (quotation omitted)). The court appropriately analyzed landlord's motion under Rule 50(a), and we hereinafter refer to its ruling as one granting judgment as a matter of law.

II. Analysis

Tenant raises numerous arguments on appeal. We begin by addressing two preliminary issues regarding our scope of review before turning to those issues properly before us.

First, although tenant appears to challenge several of the court's rulings related to child's representation and child's counterclaims, tenant has not shown that she has standing to raise these issues on appeal. Generally, an appellant "must assert his own legal rights and interests, and cannot rest his claim to relief on the legal rights or interests of third parties." In re John L. Norris Tr., 143 Vt. 325, 328 (1983) (rejecting appellant's request to remand for consideration of codefendants' interests where codefendants did not appeal and appellant did not show "that either she or her attorney have any authorization or standing to represent their interests"); see Agency of Nat. Res. v. U.S. Fire Ins. Co., 173 Vt. 302, 306 (2001) (explaining that "prudential limitations on standing include the general prohibition on a litigant's raising another person's legal rights" (quotation omitted)). Thus, we have explained that "[t]o establish standing to raise a claim on appeal, 'the rights of the party seeking to appeal must be adversely affected by the judgment.'" PeakCM, LLC v. Mountainview Metal Sys., LLC, 2025 VT 50, ¶ 41 (emphasis added) (quoting In re M.C., 156 Vt. 642, 642-43 (1991) (mem.) (articulating common-law standard governing appellate standing in absence of statutory provision expanding scope of appellate standing)). Because tenant has not demonstrated that she has the right to assert these arguments on behalf of child, we decline to consider them. See id. ¶ 42 (declining to consider appellant's challenge to dismissal of another party's claim where appellant failed to show standing to appeal from that decision).

Second, we note that "[i]t is the burden of the appellant to demonstrate how the lower court erred warranting reversal," and "[w]e will not comb the record searching for error." In re S.B.L., 150 Vt. 294, 297 (1988). Although self-represented litigants "receive some leeway from the courts," they are still bound by the rules of procedure, including the minimum briefing standards of Vermont Rule of Appellate Procedure 28(a)(4). Zorn v. Smith, 2011 VT 10, ¶ 22, 189 Vt. 219; Pcolar v. Casella Waste Sys., Inc., 2012 VT 58, ¶ 19, 192 Vt. 343 (declining to address argument raised by self-represented party because briefing did not satisfy Appellate Rule 28(a)(4)). Appellate Rule 28(a)(4)(A) provides that the argument section of an appellant's principal brief "must contain . . . the issues presented, how they were preserved, and appellant's contentions and the reasons for them—with citations to the authorities, statutes, and parts of the record on which the appellant relies." Tenant's briefing with respect to her contentions that, among other things, the court's rulings unconstitutionally chilled her right to petition the government for redress of grievances, the court erred in failing to address landlord's attorney's alleged violations of the rules of professional responsibility, the court violated the Vermont Constitution by striking a response to an unspecified juror question, and that tenant was prejudiced by an alleged "cascade of institutional failures" and structural and systemic issues do not minimally meet the requirements of Rule 28(a)(4)(A). We do not further address these issues as the briefing is inadequate to support appellate review. Westwardhos LLC v. Anatoly Glass LLC, 2026 VT 19, ¶ 18 (explaining that this Court "will not address arguments," even those raised by self-represented litigants, "that do not minimally meet" requirements of Appellate Rule 28(a)).

With this understanding, we turn to tenant's remaining arguments. We first address her contention that the trial court violated constitutional due-process guarantees by "refus[ing]" to appoint an attorney to represent her at public expense. In general, there is no right to counsel—and thus no right to the appointment of counsel—in civil cases. In re G.G., 2017 VT 10, ¶ 10,

204 Vt. 148. Tenant argues, however, that due process required such an appointment under the circumstances of this case. She has not demonstrated that she preserved this argument for our review by raising it below. See O'Rourke v. Lunde, 2014 VT 88, ¶ 21, 197 Vt. 360 (holding that “[i]n order to rely on an argument on appeal, an appellant must properly preserve it by presenting it to the trial court with specificity and clarity” and declining to address arguments raised for first time on appeal (quotation omitted)); In re Green Mountain Power Corp., 2012 VT 89, ¶ 22, 192 Vt. 429 (recognizing that it is appellant’s “burden to show how an issue is preserved”); see also V.R.A.P. 28(a)(4)(A). While tenant asserts that she repeatedly raised the issue below, she has not cited to any portion of the record reflecting that she ever requested appointment of counsel or that the trial court denied that request. Because tenant has not shown that she presented this argument to the trial court, we do not address it on appeal.

Tenant next argues that the court erred in dismissing her IIED counterclaims. We review the grant of a motion to dismiss for failure to state a claim “without deference, applying the same standard as the trial court.” Montague v. Hundred Acre Homestead, LLC, 2019 VT 16, ¶ 10, 209 Vt. 514. Under that standard, we assume that the facts pleaded are true and draw all reasonable inferences in favor of the nonmoving party. Id. Dismissal is proper when it is beyond doubt that there exist no facts or circumstances that would entitle the nonmoving party to relief. Id.

To state a claim for IIED, the proponent must allege “outrageous conduct, done intentionally or with reckless disregard of the probability of causing emotional distress, resulting in the suffering of extreme emotional distress, actually or proximately caused by the outrageous conduct.” Colby v. Umbrella, Inc., 2008 VT 20, ¶ 10, 184 Vt. 1 (quotation omitted). Establishing a prima facie case of IIED is a “heavy burden.” Siliski v. Allstate Ins. Co., 174 Vt. 200, 208 (2002). We have explained that “[t]he conduct must be so outrageous in character and so extreme in degree as to go beyond all possible bounds of decent and tolerable conduct in a civilized community and be regarded as atrocious and utterly intolerable.” Dulude v. Fletcher Allen Health Care, Inc., 174 Vt. 74, 83 (2002).

As to the IIED claim related to the absence of smoke and carbon-monoxide detectors, the court explained that landlord’s alleged conduct did not rise to the requisite standard. The only challenge tenant appears to raise in connection with this ruling is that the court’s dismissal order did not address an exhibit that had been filed several weeks earlier. On a motion to dismiss, however, the court’s consideration is limited to the allegations in the pleading and the documents attached to or incorporated by reference therein. Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 10 n.4, 186 Vt. 605 (mem.). The court did not err in not considering a subsequently filed exhibit in its analysis.

The second IIED claim was based on landlord’s conduct in arranging for tenant’s child to be served with a separate summons and complaint in connection with the eviction action, as well as the alleged conduct of landlord’s attorney while acting on her behalf. As noted above, “[t]he standard for establishing ‘outrageous’ conduct is necessarily a high one.” Denton v. Chittenden Bank, 163 Vt. 62, 66 (1994). The trial court concluded that the allegations in the complaint did not satisfy this rigorous standard. Tenant has not shown that this was error under our existing precedent addressing IIED claims predicated on litigation conduct. See, e.g., Siliski, 174 Vt. at 207-08 (concluding that allegations that defendants filed counterclaim without factual or legal basis for purpose of humiliating, embarrassing, and intimidating plaintiffs and coercing them into dropping their own bona fide claims, taken as true, were “simply not enough to make out a claim for IIED”).

Next, we consider tenant's challenge to the court's dismissal of her abuse-of-process counterclaim. Although the majority of tenant's arguments go to the merits of the counterclaim, the court did not reach that issue. Instead, it held that assuming tenant's allegations stated a cause of action for abuse of process, that claim would need to have been brought by child rather than tenant because the principal harm asserted was suffered by child.

On appeal, tenant argues that she had standing to raise the abuse-of-process counterclaim because she suffered a direct constitutional injury in the form of interference with her liberty interest in "the care, custody, and control" of child. Troxel v. Granville, 530 U.S. 57, 65 (2000) (recognizing fundamental right of parents to care, custody, and control of child). Tenant did not, however, raise this contention in opposition to landlord's motion to dismiss the counterclaim. As a result, she has not preserved it for our review on appeal. See State v. Ben-Mont Corp., 163 Vt. 53, 61 (1994) ("To properly preserve an issue for appeal a party must present the issue with specificity and clarity in a manner which gives the trial court a fair opportunity to rule on it.").

Next, tenant argues that the trial court abused its discretion in excluding evidence related to a September 2024 call between tenant and landlord's attorney. In a pretrial ruling addressing, among other things, the parties' motions in limine, the court concluded that pre-suit communications between tenant and the attorney were made in the context of settlement negotiations and therefore inadmissible under Vermont Rule of Evidence 408. As the court noted, that rule provides that evidence of "conduct or statements made in compromise negotiations regarding the claim or any other claim" is inadmissible when offered to, among other things, prove liability for a disputed claim. V.R.E. 408(a)(2).

"A trial court has broad discretion in its pretrial evidentiary rulings," and we will affirm those rulings "absent a showing that the court has withheld or abused its discretion on clearly untenable or unreasonable grounds." Shaffer v. N.E. Kingdom Hum. Servs., Inc., 2025 VT 31, ¶ 13 (quotations omitted). Tenant has not made this showing here. She appears to assert that because the communication gave rise to her retaliatory-eviction counterclaim, there was no disputed claim at the time the communication was made. As noted above, however, the rule applies broadly to "conduct or statements made in compromise negotiations regarding the claim or any other claim"—such as landlord's eviction claim. V.R.E. 408(a)(2) (emphasis added).

Tenant also argues that she was prejudiced by the timing of the court's ruling shortly before trial because she did not have a meaningful opportunity to restructure her case. We do not reach this contention because tenant has not demonstrated that she preserved it below by filing a motion to continue the trial on this basis. See Ben-Mont Corp., 163 Vt. at 61.

Next, tenant challenges the court's ruling, at trial, that she had not pleaded a counterclaim under the Consumer Fraud Act. During tenant's opening argument, she alluded to landlord's attorney's alleged participation in the conduct giving rise to tenant's retaliatory-eviction counterclaim. The court then addressed the parties in a sidebar, where tenant argued that the attorney could be held responsible under the Consumer Fraud Act. The court responded that there was no consumer-fraud claim in the case, explaining that although tenant "wrote the words 'consumer fraud' on the initial answer," she "did not plead the elements of consumer fraud." The court took up the issue again when the parties discussed the proposed jury instructions on the last day of trial, reiterating its conclusion that tenant had not pleaded a consumer-fraud claim. It explained that tenant's pleadings were not sufficient to put landlord on notice that tenant was raising a consumer-fraud counterclaim, and that tenant never sought to amend those pleadings in order to raise the claim.

Tenant argues that the court failed to make appropriate allowances for her in light of her self-represented status. As the court recognized in addressing this issue, however, self-represented litigants “are still bound by the ordinary rules of civil procedure.” Zorn, 2011 VT 10, ¶ 22 (quotation omitted). These include pleading standards set forth in Civil Rule 8. See Reporter’s Notes, V.R.C.P. 8 (providing that pleading must be “a statement clear enough to give the defendant fair notice of what the plaintiff’s claim is and the grounds on which it rests” (quotation omitted)). Tenant has not demonstrated that the court erred in concluding that she did not plead a counterclaim under the Consumer Fraud Act. See Bloomer v. Gibson, 2006 VT 104, ¶ 14, 180 Vt. 397 (“The court does not abuse its discretion where it enforces the rules of civil procedure equitably, even against a pro se litigant.”).

Next, tenant contends that the court erred in granting judgment as a matter of law on her implied-warranty-of-habitability counterclaims. We review a trial court’s decision to grant judgment as a matter of law without deference, applying the same standard used below. Driscoll v. Wright Cut & Clean, LLC, 2024 VT 49, ¶ 6, 219 Vt. 623; V.R.C.P. 50(a)(1). In doing so, we consider the evidence in the light most favorable to tenant as the nonmoving party and afford her the benefit of all reasonable inferences. Driscoll, 2024 VT 49, ¶ 6. We will affirm a grant of judgment as a matter of law when “there is no legally sufficient evidentiary basis for a reasonable jury to find for the nonmoving party, such that the facts do not directly support[] the claim and would require the jury to rely on conjecture, surmise or suspicion.” Id. ¶ 6 (quotations and citations omitted).

As the trial court recognized, “[i]n residential lease contracts,” damages for violation of the implied warranty of habitability “are calculated by determining the difference in value between the agreed-upon rent for [the] unit in habitable condition, and the value of the same unit with habitability defects.” Willard v. Parsons Hill P’ship, 2005 VT 69, ¶ 30, 178 Vt. 300. A claim for breach of the implied warranty sounds in contract, id., and “breach-of-contract damages must be proved with reasonable certainty,” Madowitz v. Woods at Killington Owners’ Ass’n, 2014 VT 21, ¶ 14, 196 Vt. 47 (quotation omitted). The trial court reasoned that because there was no evidence of the value of the unit with the alleged habitability defects, the jury could not find for tenant without resorting to speculation as to her damages, which were an essential element of the counterclaim. On appeal, tenant does not dispute that she did not admit evidence of the value of the unit with the alleged habitability defects. The trial court did not err in concluding that there was no evidentiary basis to find for tenant on habitability claims without relying on conjecture and therefore granting landlord’s motion for judgment as a matter of law. Driscoll, 2024 VT 49, ¶ 6.

Finally, tenant argues that the court erred in instructing the jury on the law governing her retaliatory-eviction counterclaim. Tenant did not, however, raise these objections when the court provided the parties with its draft instructions. Civil Rule 51 provides that “[n]o party may assign as error the giving or the failure to give an instruction unless that party objects thereto either at a charge conference or before the jury retires to consider its verdict, stating distinctly the matter objected to and the grounds of the objection.” V.R.C.P. 51(b). Because tenant did not raise her challenges to the instructions below, she has forfeited them on appeal. See Follo v. Florindo, 2009 VT 11, ¶ 14, 185 Vt. 390 (holding that claims of error with respect to jury instructions were forfeited on appeal where not raised as required by Rule 51(b) below).

We have addressed all arguments discernible in tenant’s brief and conclude that they are without merit. Tenant has not identified grounds to disturb the judgment below.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice