Vermont Superior Court
Filed 11/13/26
Windham Unit

VERMONT SUPERIOR COURT
Windham Unit
7 Court Street
Newfane VT 05345
802-365-7979
www.vermontjudiciary.org

CIVIL DIVISION
Case No. 26-CV-04482

Christian Walker, Administrator to The Estate of Cory Walker v. Catherine Morrill

ENTRY REGARDING MOTION

Title: Motion to Dismiss (Motion: 1)
Filer: Ronald Ferrara
Filed Date: August 25, 2026

The motion is GRANTED. but see below

Defendant Catherine Morrill, represented by Attorney Ronald A. Ferrara, seeks dismissal of this lawsuit based on failure to state a claim and failure to join necessary parties.[1] Oral argument on the motion was heard on October 19, 2026. Plaintiff Christian Walker, Administrator of the Estate of Cory Walker, is represented by Attorney Christopher S. Moore.

The pertinent facts as set forth in the Complaint and supplemented by representations at oral argument and in a subsequent motion, are as follows.

Cory Walker died intestate, leaving as heirs three minor children. At the time of his death, two of them were living with their mother, Catherine Morrill, on real estate he owned. She and the children have since vacated the premises, although she would like to arrange to retrieve remaining personal property.

The Complaint was filed against Catherine Morrill only and consists of one count of "Eviction for No Cause" pursuant to 9 V.S.A. §4467(c)(1)(b) and includes a request for a writ of possession. At oral argument, Catherine Morrill's attorney argued that Title 9 is inapplicable as there never was a landlord tenant relationship between Cory Walker and Catherine Morrill and therefore Plaintiff failed to state a claim. He also argued that the decedent's three minor children hold interests in the property as heirs, and Plaintiff failed to join them as necessary parties. The attorneys also discussed whether a Title 12 claim could be used as the basis for a writ of possession. Plaintiff does not assert such a claim and it is unclear whether it would be applicable. Plaintiff's counsel's position is that all his client, the Administrator of Cory Walker's intestate estate, is seeking is a writ of possession to be able to take charge of the property as an asset of the estate. It is unclear that he is unable to do so without a writ.

[1] A claim of improper service of process was withdrawn at oral argument.

After oral argument, Defendant filed a 'Notice Regarding Status and Writ of Possession' with this court and apparently also in the Probate Division. It was treated by this court as an emergency motion. Defendant's attorney represented that in a recent Probate Division hearing, Ms. Morrill was ordered "to turn over the Premises immediately, as, *inter alia,* it is an asset to be liquidated for all heirs." Defendant's attorney indicated in the Notice that his client agrees to the issuance by this court of a writ of possession.

V.R.C.P. Rule 69 provides: "Process to enforce a judgment for the delivery of possession of land shall be a writ of possession." It is in Section VII of the civil rules relating to Remedies, and clearly must be based upon a judgment.

The cause of action asserted in this case is an eviction based on a landlord tenant relationship, with a Motion to Dismiss pending in which it is claimed that no landlord tenant relationship has been shown and also claiming failure to join the three heirs as necessary parties. Plaintiff's facts in this case do not show that there actually was a landlord tenant relationship subject to Title 9 created by Cory Walker prior to his death, even though Plaintiff seeks to act as if there were one. It is clear that the three heirs hold an interest in the property and they have not been joined. For both these reasons, the Motion to Dismiss is *granted.*

The parties nonetheless seek a writ of possession. Despite the agreement of the two parties that this court may issue a writ, without the legal representatives of the heirs having been joined *and* without a basis for a legal claim calling for "delivery of possession of land," the court does not have grounds for a judgment for possession, and thus is unable to issue a writ of possession.

In Plaintiff's Opposition to the Motion to Dismiss, counsel requested that if the Motion were granted, leave to amend, rather than outright dismissal, be granted. This request is granted.

If no Amended Complaint is filed by November 9, 2026, the case will be dismissed. If an Amended Complaint is filed, Plaintiff's counsel shall include an explanation of why the statutes, rules, and procedures in the Probate Division are insufficient for the Administrator to carry out his responsibilities such that Civil Division action is appropriate.

Electronically signed October 26, 2026 pursuant to V.R.E.F. 9 (d).

Mary Miles Teachout
Superior Judge (Ret.), Specially Assigned

11/13/26 Apologies for the delay in notice. The date for filing an Amended Complaint is extended to 12/1/26. MMT