THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Case No. 2020-0472

MAIA MAGEE AND SUNFIRE, LLC

V.

VITA COOPER, TRUSTEE, UTOPIA REVOCABLE TRUST

Plaintiffs' Memorandum of Law in this Appeal of a Final Decision of the 9th Circuit Court – District Division – Milford, in a Landlord-Tenant Matter Under RSA 540-A

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ARGUMENT

I. Introduction.

In an Order dated July 23, 2021, this Court stated that Plaintiffs' arguments in this case "challenge the trial court's findings of fact," and that in "prior appeals under RSA 540-A:4, we have addressed challenges to the trial court's factual findings." Order at p. 1 (citing cases). However, this Court also wrote that because RSA 540-A:4, V "expressly provides that the trial court's 'findings of fact shall be final,' and thus limits our review to 'questions of law,'" a "threshold question in this appeal is whether, in light of the limiting language of RSA 540-A:4, V, we may review the plaintiff's challenges to the trial court's findings of fact." Id. (emphasis omitted). Thus, this Court required Plaintiffs to file a memorandum of law "addressing whether, in light of RSA 540-A:4, V, this court may address the plaintiff's challenges to the trial court's factual findings." Id.

The within pleading is intended to comply with this Court's Order. As explained in more detail below, RSA 540-A:4, V does not – contrary to the suggestion of this Court – preclude this Court's review of Plaintiffs' appeal or any issues raised in Plaintiffs' opening brief or reply brief. Accordingly, this Court should address all the challenges and arguments that Plaintiffs have raised in this case concerning the trial court's erroneous dismissal of Plaintiffs' RSA 540-A petition.

II. Plaintiffs' briefs focus upon issues of law, not merely challenges to the factual findings of the trial court.

As a threshold matter, this Court's July 23rd Order is premised upon the incorrect assertion that the arguments set forth in Plaintiffs' opening brief and reply brief are somehow limited to only challenging the trial

court's findings of fact. See Order. Despite such claim by this Court, even a cursory review of Plaintiffs' briefs in this case show that the vast majority of Plaintiffs' arguments here are legal arguments that identify various legal errors made by the trial court.

For example, in their opening brief, Plaintiffs argued, among other things, that: (1) the trial court erred as a matter of law when it failed and refused to address or analyze whether all of the bad actions[1] by Defendant collectively, rather than on an individual basis, amounted to a violation of RSA 540-A; (2) because the trial court found multiple bad acts to have occurred and given that there is no dispute that such actions occurred, such should have sufficed as a matter of law to demonstrate a violation of RSA 540-A; (3) the trial court erred as a matter of law in failing to account for the undisputed timing of the complained-of actions, which all occurred effectively simultaneously and immediately following a hearing in the related possessory action that resolved in Plaintiffs' favor – in other words, no reasonable person could have reached the same decision as the trial court based upon the evidence presented and the undisputed timing of

[1] The various bad acts referred to, which are all undisputed to have occurred, were described at length by Plaintiffs previously and they include, among other things: Defendant playing loud rock music continuously for a several-day period; Defendant shooting off fireworks and/or gunshots toward the leased premises during pre-dawn and post-sunset hours; Defendant yelling at Plaintiffs to "get out of my home!"; and the trespassing photographer. It is also important to note that these matters occurred effectively simultaneously and began almost immediately following a hearing in August 2020 in the related possessory action between the parties, which hearing resolved in Plaintiffs' favor. See generally Plaintiffs' Brief.

Defendant's bad actions; (4) the trial court erred as a matter of law by failing to consider, when engaging in the quiet enjoyment analysis, whether Defendant's actions violated the parties' lease; (5) the trial court erred as a matter of law when it improperly relied upon a lack of evidence as to local sound ordinances when rendering its decision, as there is no authority that requires any evidence pertaining to sound ordinances in the context of an action brought pursuant to RSA 540-A; and (6) damages, reasonable attorney's fees and costs are warranted in Plaintiffs' favor as a matter of law pursuant to certain statutory provisions. See generally Plaintiffs' Brief.

Plaintiffs' reply brief focused upon additional legal issues, including whether the action is moot and whether Defendant is entitled to attorney's fees – both questions were answered in the negative by Plaintiffs in their reply brief. See generally Plaintiffs' Reply Brief.

Accordingly, Plaintiffs' briefs in this case focused almost exclusively upon pure questions of law and various legal errors that the trial court made. As a result, RSA 540-A:4, V explicitly permits this Court to address the same, as said provision clearly provides that, in an RSA 540-A appeal, "questions of law may be transferred to the supreme court in the same manner as from the superior court." Thus, to the extent that this Court's Order from July 23rd suggests that this Court somehow cannot address such issues, said Order is mistaken.

III. Although a small portion of Plaintiffs' opening brief addressed certain factual elements of the trial court's decision, such arguments actually raised questions of law.

As is clear in Plaintiffs' opening brief, particularly pages 49 through 51 thereof, Plaintiffs' arguments concerning certain factual elements of the

trial court's decision were not mere challenges to the trial court's findings of fact in this case. For example, rather than challenging the trial court's ability to make credibility determinations or challenging the trial court's resolution of any potential conflicts in testimony, the thrust of Plaintiffs' argument was that the trial court: ignored uncontroverted evidence presented at the final hearing; made findings that lack support in the record; misapplied the law to the facts; and/or reached conclusions that no reasonable person would have reached based upon the same evidence. See, e.g., Plaintiff's Brief at p. 49-51; cf. Ellis v. Candia Trailers & Snow Equip., Inc., 164 N.H. 457, 466 (2012) ("We defer to the trial court's judgment on such issues as resolving conflicts in testimony, assessing the credibility of witnesses, and determining the weight of the evidence.")

Although these issues involve a tangential discussion of certain factual elements of this case, at bottom the issues raised by Plaintiffs on these points are all questions of law that this Court can – and should – address. See RSA 540-A:4, V (providing in part that "questions of law may be transferred to the supreme court"). This is particularly so given prior decisions from this Court.

For example, as to Plaintiffs' arguments that concern the trial court's misapplication of the law to the facts in this case, such arguments clearly raise a legal question for this Court to address. This Court has stated the same numerous times. See, e.g., New Hampshire Challenge, Inc. v. Comm'r, New Hampshire Dep't of Educ., 142 N.H. 246, 249 (1997) (explaining that the trial "court's legal conclusions and its application of law to fact are ultimately questions for this court"); New Hampshire Health Care Ass'n v. Governor, 161 N.H. 378, 384 (2011) ("We review the trial

court's application of law to fact de novo."); Miller v. Slania Enterprises, Inc., 150 N.H. 655, 659 (2004) ("Legal conclusions, as well as the application of law to fact, are reviewed independently for plain error." (Quotation omitted)).

Likewise, Plaintiffs' arguments concerning the trial court ignoring uncontroverted evidence and making findings that lack support in the record (or otherwise inaccurately relaying certain facts) are legal issues for this Court to address, and which permit this Court to disturb the findings of the trial court, especially when the findings lack evidentiary support and/or are erroneous as a matter of law. See, e.g., Lane v. Barletta, 172 N.H. 674, 676–77 (2019) (citing, among other things, RSA 540-A:4, V and stating that when "reviewing the questions presented by this appeal, we will not disturb the findings of the trial court unless they lack evidentiary support or are erroneous as a matter of law. . . . Our inquiry is to determine whether the evidence presented to the trial court reasonably supports its findings, and then whether the court's decision is consonant with applicable law."); Randall v. Abounaja, 164 N.H. 506, 508 (2013) (same, and again citing to RSA 540-A:4, V); Miller, 150 N.H. at 659 (same, and again citing to RSA 540-A:4, V).

Moreover, it would defy logic and common sense to preclude an appealing party from raising the sort of arguments that Plaintiffs have raised here. For instance, if an appealing party was prevented from asserting on appeal that a trial court's decision lacked factual support or disregarded certain material evidence, a trial court could then make bizarre and irrational factual findings (that had no basis in the record) without fear of ever being challenged on appeal or potentially overturned by this Court.

Surely this Court cannot permit such an inequitable and unjust result, which is why – as noted above – this Court has consistently determined that, even in the context of an RSA 540-A appeal, this Court may disturb the factual findings of a trial court if they lack evidentiary support, are erroneous as a matter of law, and/or if a reasonable person could not have reached the same decision as the trial court based upon the evidence presented. See id.; see also Ellis, 164 N.H. at 466 ("Our standard of review is not whether we would rule differently, but whether a reasonable person could have reached the same decision as the trial court based upon the same evidence.").

Importantly, the types of arguments that Plaintiffs have raised also bear upon and relate to the sufficiency of evidence in this case, which is yet another question of law for this Court to decide. See, e.g., Guyotte v. O'Neill, 157 N.H. 616, 623 (2008) (explaining that this Court "review[s] sufficiency of the evidence claims as a matter of law"); Knight v. Maher, 161 N.H. 742, 745 (2011) (stating that this Court reviews "sufficiency of the evidence claims as a matter of law, and [will] uphold the findings and rulings of the trial court unless they are lacking in evidential support or tainted by error of law" (quotation omitted)); Wasutskie v. Malouin, 88 N.H. 242, 243 (1936) (noting that "while inquiry into the weight of evidence is treated as matter of fact, the question of sufficient evidence is dealt with as matter of law").

Indeed, Plaintiffs have not asked in their briefs for this Court to find new facts, nor are Plaintiffs asking for a re-determination of the weight of evidence – Plaintiffs recognize that such functions are reserved for the trial court. Rather, Plaintiffs here are essentially asking this Court to determine whether there was sufficient support in the record for the trial court's

factual determinations and whether the trial court correctly applied the law to the facts.

For example, as noted by Plaintiffs in their opening brief, it is uncontroverted that the loud rock music was played for days on end and that certain firecracker/gunshot noises were heard by Plaintiffs during pre-dawn and post-sunset hours, and that such derived from Defendant – the trial court found the same and Plaintiffs are not challenging that such occurred; likewise, it is undisputed, and in fact admitted to by Defendant, that Defendant yelled at Plaintiffs to "get out of my home" multiple times. See, e.g., Plaintiffs' Brief at p. 49. Given such (and the various other unrefuted evidence offered below), and given the undisputed timing of when these actions occurred – along with the prior threat by Defendant to shoot Plaintiffs (as found by the trial court in a prior RSA 540-A action between the parties) – the general overall argument by Plaintiffs here is that there is no valid basis for the trial court's ultimate conclusion in this case, which was to dismiss Plaintiffs' RSA 540-A petition. See, e.g., Plaintiffs' Brief at p. 49-51.

Whether such argument is couched in terms of the trial court misapplying the law to the undisputed facts presented below, the trial court omitting (and/or discounting or downplaying the significance of) various unrefuted material facts from its analysis, or otherwise, it is clear that all the arguments that Plaintiffs have raised in this appeal – including those that relate to certain factual elements undergirding (or missing from) the trial court's decision in this case – are, at bottom, legal questions for this Court to answer. Such, of course, is also in conformance with RSA 540-

A:4, V, which expressly allows "questions of law" in an RSA 540-A appeal to be transferred to this Court.[2]

CONCLUSION

In sum, given the above and given the precise arguments being raised by Plaintiffs in this case – even those arguments that touch upon certain factual elements here – it is clear that this Court can and should address all claims raised by Plaintiffs in their briefs. Such a result is not only supported by a wealth of precedent as set forth above but is also expressly permitted by RSA 540-A:4, V, as all the assertions raised by Plaintiffs on appeal encompass questions of law.

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[2] Further, it should be noted that, even if this Court were to consider some of Plaintiffs' arguments here to be mixed questions of fact and law, such are, nevertheless, legal issues that are reviewed de novo by this Court. See, e.g., State v. Carrier, 173 N.H. 189, 198 (2020) (explaining that because the "ultimate determination of custody requires an application of a legal standard to historical facts, that determination is not merely a factual question, but a mixed question of law and fact. . . . Accordingly, although we will not overturn the trial court's findings of historical facts unless they are contrary to the manifest weight of the evidence, we review the ultimate determination of custody de novo."); Forster v. Town of Henniker, 167 N.H. 745, 118 A.3d 1016, 759 (2015) (explaining that whether a "proposed use constitutes an accessory use is . . . a mixed question of fact and law," and, therefore, this Court "review[s] the trial court's application of the law to the facts de novo"); Colonial Vill., Inc. v. Pelkey, 157 N.H. 91, 92 (2008) (explaining that this Court "review[s] questions of law de novo").

Respectfully submitted,

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By their Attorneys,

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Date: August 16, 2021

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CERTIFICATION

I hereby certify that a copy of this memorandum of law has this 16th day of August 2021 been served upon all counsel of record by e-filing with this Court. I further certify that this memorandum complies with applicable word limitations, as there are 2,251 words herein. I also certify that this memorandum complies with all typeface and other formatting requirements set forth in applicable Court rules.

/s/ Stephen Zaharias
Stephen Zaharias, Esq.