

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

Docket No. 2020-0472

Maia Magee and Sunfire, LLC

v.

Vita Cooper, Trustee, Utopia Revocable Trust

APPELLEE’S COURT ORDERED MEMORANDUM OF LAW

NOW COMES, Vita Cooper, Trustee, Utopia Revocable Trust, Appellee, by and through her attorneys, Bruce J. Marshall Law Offices, P.L.L.C., and hereby provides the following memorandum of law as ordered by this Supreme Court, stating in support thereof as follows:

1. By order dated July 23, 2021, this Supreme Court ordered the parties to file memorandums of law on or before August 23, 2021 addressing whether or not the Supreme Court may address Plaintiff’s challenges to the factual findings of the Lower Court.

2. Pursuant to RSA 490:4 the Supreme Court has jurisdiction over all courts to prevent and correct errors of law. In the instant matter the Appellants make several arguments in their brief that assert that the Lower Court’s factual findings were somehow incorrect. However, in addition to RSA 490:4 the legislature further limited this Supreme Court’s review in appeals brought pursuant to RSA 540-A via RSA 540-A:4, V. Namely that “the findings of facts shall be final, but questions of law may be transferred to the supreme court in the same manner as from the superior court.” *See RSA 540-A:4, V.* This requirement is in effect a condition precedent to a party seeking relief pursuant to

RSA 540-A. To the extent the Appellants seek to dispute the factual findings of the lower court, their appeal must be dismissed as unlawful.

3. Regardless, this Supreme Court has further established that in similar cases it shall not disturb the factual findings below unless they are not supported by the evidence presented or are erroneous as a matter of law. *See Miller v. Slania Ent., Inc.* 150 N.H. 655 (2004). Presumably this Supreme Court rendered such a decision upon consideration of the language of RSA 540-A:4, V. Clearly the legislature intended to limit this Supreme Court's review of appeals brought pursuant to RSA 540-A.

4. A review of the history of this Supreme Court makes it abundantly clear that factually speaking this Supreme Court's inquiry is limited to whether or not the evidence presented reasonably supports the Lower Court's findings. *Id.* @ p. 659. The Trial Court's weighing of the evidence presented at trial is a finding and not a ruling. *See Wasutskie v. Malouin*, 88 N.H. 242 (1936). As such this Supreme Court may only determine whether or not there was reasonable evidence presented at trial to support the trial court's finding fact. *Id.* A review of the transcript in the instant matter makes it abundantly clear that the Lower Court properly weighed the evidence presented and based its factual findings on the evidence presented. To permit this Supreme Court to question the Lower Court's findings is both contrary to the legislature's intent and contrary to this Supreme Court's holdings in prior cases.

CONCLUSION

5. The record below is abundantly clear that the Lower Court based its decision on the credible evidence presented at trial. Upon appeal this Supreme Court must limit its review of the factual findings of the Lower Court to whether or not the Lower Court applied them lawfully to the applicable law. To the extent Appellants seek to argue the facts as determined by the Lower Court are somehow improper, their appeal must be dismissed as legally improper.

WORD LIMIT CERTIFICATION

This memorandum contains less than 3000 words and therefore complies with the word limitation set forth in this Supreme Court’s Order dated July 23, 2021.

Respectfully submitted,
VITA COOPER, TRUSTEE,
UTOPIA REVOCABLE TRUST

/s/ Bruce J. Marshall
Bruce J. Marshall, Esq., NH Bar No. 12313
Bruce J. Marshall Law Offices, P.L.L.C.
48 Grandview Road, Suite 3
Bow, NH 03304
(603) 715-8720

CERTIFICATE OF SERVICE

I hereby certify on this 23rd day of August 2021, a copy of the foregoing is being sent via the Court’s electronic filing system to Craig Donais, Esq.

Dated: August 23, 2021

/s/ Bruce J. Marshall
Bruce J. Marshall, Esq.