

SUPREME COURT OF NEW HAMPSHIRE

Lally v. Flieder, 159 N.H. 350

986 A.2d 652 (2009) · No. No. 2008-917 · Decided October 30, 2009

SUMMARY

The New Hampshire Supreme Court held that cable television is a protected utility service under RSA 540-A:3, I, which prohibits landlords from willfully interrupting utility services as a self-help eviction tactic. The court reversed the dismissal of the tenant's claim and remanded for further proceedings, including consideration of whether the landlord unlawfully attempted to evict the tenant under RSA 540-A:2.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	October 30, 2009
DOCKET	No. 2008-917
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The plaintiff appealed the Concord District Court's dismissal of his RSA chapter 540-A action after the court ruled that cable television was not a protected utility service and granted the defendant a writ of possession.
STANDARD OF REVIEW	Statutory interpretation is reviewed de novo.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	Christopher Lally v. Lauren Flieder

TOPICS

- landlord tenant
- eviction
- statutory interpretation
- civil procedure
- remedies

PRACTICE AREAS

- Landlord-tenant law
- New Hampshire statutory interpretation
- Civil procedure
- Eviction remedies

QUESTIONS PRESENTED

1. Whether cable television service is a protected utility service under RSA 540-A:3, I.
2. Whether Flieder attempted to unlawfully evict Lally in violation of RSA 540-A:2.

HOLDINGS

1. Cable television is a protected utility service under RSA 540-A:3, I, and a landlord's unlawful termination of that service may constitute a prohibited self-help eviction tactic.

KEY QUOTATIONS

“Therefore, we hold that cable television is a protected utility service under RSA 540-A:3, I.” (986 A.2d at 654)

FACTUAL BACKGROUND

Lally rented an apartment from Flieder as a month-to-month tenant without a written lease. After the parties agreed that the tenancy would end in August 2008, Flieder served Lally with an eviction notice, and Lally remained in the apartment through the end of August. After filing an eviction action, Flieder disconnected a cable connection to the apartment; she testified that she had learned the connection was illegal. Lally claimed the disconnection was an unlawful self-help eviction tactic and sought relief under RSA chapter 540-A.

PROCEDURAL HISTORY

Lally rented an apartment from Flieder as a month-to-month tenant. After Flieder terminated the cable service to the apartment, Lally filed a petition under RSA chapter 540-A. The Concord District Court granted Flieder's petition for a writ of possession and dismissed Lally's action. The New Hampshire Supreme Court reversed and remanded.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The trial court was instructed to conduct further proceedings on Lally's RSA 540-A:3, I claim and to consider whether Flieder attempted to unlawfully evict Lally in violation of RSA 540-A:2, in light of the opinion.

CASES CITED

- In re Estate of King, 149 N.H. 226, 230, 817 A.2d 297 (2003)
- Kenison v. Dubois, 152 N.H. 448, 451, 879 A.2d 1161 (2005)
- Dalton Hydro v. Town of Dalton, 153 N.H. 75, 78, 889 A.2d 24 (2005)
- State v. Njogu, 156 N.H. 551, 553, 937 A.2d 887 (2007)

OPINION

HICKS, J.

986 A.2d 652 (2009) Christopher LALLY v. Lauren FLIEDER. No. 2008-917. Supreme Court of New Hampshire. Submitted: September 24, 2009. Opinion Issued: October 30, 2009. *653 Christopher Lally, by brief, pro se. Lauren Flieder, pro se, filed no brief. HICKS, J. The plaintiff, Christopher Lally, appeals the Concord District Court's (Boyle, J.) dismissal of his RSA chapter 540-A action against the defendant, Lauren Flieder.

We reverse and remand. The record supports the following facts. Lally rented an apartment from Flieder as a month-to-month tenant for approximately two years. The parties did not have a written lease agreement. In June 2008, the parties agreed that Lally's tenancy would terminate at the end of August.

On July 31, 2008, Lally paid rent for the month of August but told Flieder that he was not moving until the following summer. That same day, Flieder served Lally with an eviction notice requiring that he vacate the apartment on or before August 31, 2008. Lally, however, remained in the apartment through the end of August.

On September 2, 2008, Flieder filed an action with the trial court seeking unpaid rent and a writ of possession. Six days later, Flieder terminated the cable television service to Lally's apartment. Lally wrote a letter to Flieder requesting that she restore the cable television service.

After Flieder failed to do so, Lally filed a petition with the trial court pursuant to RSA chapter 540-A. On September 24, 2008, the trial court held a hearing on Lally's request for relief and Flieder's petition for a writ of possession. At the hearing, Flieder testified that after speaking with the cable provider, she learned that Lally's apartment was receiving cable television through an illegal connection.

Upon discovering this information, she disconnected a wire supplying cable to Lally's apartment. Lally argued that the termination of the cable connection was designed to carry out a self-help eviction. The trial court granted Flieder's petition for a writ of possession and dismissed Lally's action, ruling that cable television is not a protected utility under RSA 540-A:3, I. On appeal, Lally first argues that the trial court erred by ruling that cable television service is not a protected utility service for purposes of RSA 540-A:3, I. Second, he contends that Flieder attempted to unlawfully evict him in violation of RSA 540-A:2.

A third issue regarding an alleged violation of the right to quiet enjoyment under RSA 540-A:2 is raised in the notice of appeal but not briefed, and therefore we deem it waived. See *In re Estate of King*, 149 N.H. 226, 230, 817 A.2d 297 (2003).

The interpretation of a statute is a question of law, which we review de novo. *Kenison v. Dubois*, 152 N.H. 448, 451, 879 A.2d 1161 (2005). We are the final arbiter of the intent of the legislature as expressed in the words of the statute considered as a whole. *Id.* We first examine the language of the statute, and, where possible, we ascribe the plain and ordinary meanings to the words used.

Id. When the language of a statute is clear on its face, its meaning is not subject to modification. *Dalton Hydro v. Town of Dalton*, 153 N.H. 75, 78, 889 A.2d 24 (2005). We will neither consider what the legislature might have said nor add words that it did not see fit to include. Id. RSA 540-A:3, I, provides: No landlord shall willfully cause, directly or indirectly, the interruption or termination *654 of any utility service being supplied to the tenant including, but not limited to water, heat, light, electricity, gas, telephone, sewerage, elevator or refrigeration, whether or not the utility service is under the control of the landlord, except for such temporary interruption as may be necessary while actual repairs are in process or during temporary emergencies.

RSA 540-A:3, I. "We have said that where the phrase `including, but not limited to' is used in a statute, the application of that statute is limited to the types of items particularized therein." *State v. Njogu*, 156 N.H. 551, 553, 937 A.2d 887 (2007).

Thus, read in the context of the statute as a whole, the plain and unambiguous language of RSA 540-A:3, I, protects "any utility service" that is comparable to those services it has specified. The specified utility services in RSA 540-A:3, I, all pertain to the habitability of a dwelling or a person's well-being. Modern cable television also pertains to the habitability of a dwelling and a person's wellbeing.

Indeed, many people access essential telephone service, the Internet, news information and entertainment by way of cable. Thus, the unlawful termination of a tenant's cable television service would be a means of accomplishing a self-help evictionthe very evil the legislature meant to deter.

The legislative history supports the conclusion that RSA 540-A:3, I, was intended to prevent landlords from engaging in self-help tactics. At a hearing, the Senate Public Works Committee considered testimony that a landlord seeking to evict a tenant would "do things such as turn off the heat, electricity or other utilities."

Moreover, the New Hampshire House Journal indicates: "This bill is needed because of the abuse of a landlord to his tenants in evicting the person without giving proper notice." N.H.H.R. Jour. 333 (1979). In view of the legislative history and wide spread use of cable television as a utility service, we conclude that the unlawful termination of cable television by a landlord is the type of self-help tactic that the legislature intended to prevent.

Therefore, we hold that cable television is a protected utility service under RSA 540-A:3, I. Accordingly, we reverse the decision of the trial court dismissing Lally's RSA 540-A:3, I, claim and remand for further proceedings consistent with this opinion.

We note that the trial court did not address specifically whether the defendant attempted to unlawfully evict the plaintiff in violation of RSA 540-A:2. We remand this issue to the trial court for further consideration in light of our opinion. Reversed and remanded. BRODERICK, C.J., and DALIANIS, DUGGAN and CONBOY, JJ., concurred.

