Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2005-548

JULY TERM, 2006

Norman Rainville	}	APPEALED FROM:
	}	
	}	
v.	}	Washington Superior Court
	}	
Douglas Keith, Kathleen Keith, Tom Gardner	}	
and David M. Dion Real Estate	}	DOCKET NO. 136-3-03 Wncv

Trial Judge: Helen M. Toor

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

Defendant David Dion Real Estate appeals from a superior court judgment granting a motion to enforce a settlement agreement and dismissing all claims among the parties. We affirm.

The facts may be summarized as follows. The underlying dispute in this case involved a claim by plaintiff Norman Rainville that a driveway used by his neighbors, defendants Douglas and Kathleen Keith, encroached on his property. Rainville filed a complaint against the Keiths for trespass and ejection, and also included claims for professional negligence against David M. Dion Real Estate (DRE) and Tom Gardner, the real estate agency and broker who had represented Rainville when he purchased the property.

On June 3, 2005, counsel for Rainville, attorney Aicher, communicated a settlement offer to counsel for DRE and Gardner, attorney Monahan. The offer was to dismiss all claims against DRE and Gardner in exchange for a release of all claims that they might have against Rainville for attorneys= fees as prevailing parties under the buyer-broker contract. The offer was contingent upon Rainville and the Keiths also reaching a settlement agreement. The court found, based on the testimony of attorneys Aicher and Monahan, that Aicher informed Monahan that he needed an answer that day (a Friday) to avoid the costs of preparing for a pretrial hearing scheduled for the following Monday. The court also found that Monahan communicated the offer to Gardner and David Dion, DRE=s owner, who eventually authorized the settlement.

Negotiations between Aicher and the attorney for the Keiths continued over the next two weeks, ultimately resulting in a settlement agreement in mid-June. Dion refused to sign a mutual release on behalf of DRE, however, claiming that his settlement agreement with Rainville had been contingent upon Rainville and the Keiths reaching an agreement on June 3, 2005, and that their continued negotiations past that date was a failure of a material term of the agreement. Rainville and the Keiths moved to enforce the settlement agreement. Following an evidentiary hearing, the court issued a written decision and judgment, granting the motion and dismissing all claims among the parties.

The court noted that Dion did not deny entering into the agreement but instead claimed that it was unenforceable because he understood that it required all parties to settle on June 3, 2005. The attorneys testified, and the court found, however, that the June 3 deadline applied only to the settlement offer from Rainville to DRE and Gardner, and the court noted in this regard that there was no evidence Dion had made DRE=s acceptance contingent upon the deadline being met by the other parties. The court also concluded that the alleged deadline was not an essential term of the agreement, finding that DRECas Dion readily acknowledgedChad suffered no prejudice or other effects from the Keiths= delayed settlement.

On appeal, DRE contends the court erred in rejecting its claim that its acceptance of the settlement offer on June 3 was contingent upon all of the parties reaching a settlement that day. The existence of an

agreement and the content of its essential and material terms are questions of fact. Quenneville v. Buttolph, 2003 VT 82, & 13, 175 Vt. 444; Town of Rutland v. City of Rutland, 170 Vt. 87, 90 (1999). We will overturn the trial court=s factual findings only if they are clearly erroneous. Quenneville, 2003 VT 82, & 11. Here, there was substantial evidence that the terms of the settlement offer communicated to Dion required a decision that day, but that no mention was made by any of the parties or attorneys of a similar deadline for settlement with the Keiths. It was also undisputed that the additional two weeks that passed before the Keiths= settlement resulted in no prejudice to Dion. Thus, there was ample evidence to support the court=s finding that there was nothing material or essential about the date on which the other parties settled the dispute. Although DRE asserts that the court=s reliance on the question of prejudice Adisrespects Dion=s rights@ to refuse to settle the case, the evidence is plainly relevant to the question of materiality, and we discern no Adisrespect@ or other impropriety in the court=s analysis.

DRE also questions whether the oral settlement agreement was effective in light of a specific provision in the buyer-broker contact between Rainville and DRE stating that all amendments to the contract shall be in writing. The claim was not raised below and therefore was not preserved for review on appeal. In re Champlain Oil Co., 2004 VT 44, & 8, 176 Vt. 458. Moreover, apart from simply raising the claim, DRE=s brief contains no discussion or analysis of the issue. Accordingly, we decline to address it for this reason as well. See King v. Gorczyk, 2003 VT 34, & 21 n.5, 175 Vt. 220 (Court will not address issues inadequately briefed).

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Marilyn S. Skoglund, Associate Justice

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Brian L. Burgess, Associate Justice