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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2008-160

NOVEMBER TERM, 2008

Alex Leonenko and Alla Dzugaeva	}	APPEALED FROM:
	}	
v.	}	
	}	
Gerhard M. Ebner and Pagona D. Brady	}	Rutland Superior Court
	}	
v.	}	
	}	
Barbara Walowit and Walowit Realty	}	DOCKET NO. 210-4-03 Rdcv
		Trial Judge: Mary Miles Teachout

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

The would-be sellers (hereinafter "sellers") of an inn and restaurant appeal the superior court's decision awarding the potential buyers (hereinafter "buyers") damages based on their claim of negligent misrepresentation. We affirm.

This lawsuit concerns the aborted sale of the Butternut Inn and Mrs. Brady's Restaurant in Killington. After signing a purchase and sales agreement but before closing on the agreement, buyers informed sellers that they would not purchase the inn and restaurant because of their concerns over potential contamination from a past gasoline leak on nearby property. Buyers sued sellers in April 2003 when the parties could not agree on the return of buyers' deposit. Later, sellers impleaded their real estate agent and her agency as third-party defendants. Sellers eventually entered a pro se appearance after their third attorney withdrew from the case. In September 2006, the superior court entered a partial final judgment pursuant to Vermont Rule of Civil Procedure 54(b) in favor of the third-party defendants. Six months later, the court denied sellers' request for relief from that judgment. Sellers did not appeal either the partial final judgment or the decision denying relief from that judgment. Following two days of hearing in October and November 2007, the superior court rendered a decision awarding buyers damages based on their negligent misrepresentation claim, and denying all other claims, including sellers' counterclaim alleging breach of contract. The court determined that sellers had negligently failed to inform buyers of the potential risk arising from gasoline contamination on neighboring properties, and that sellers' silence caused buyers to enter into a purchase and sales agreement that they otherwise would not have entered into. The court entered its final judgment in favor of buyers in March 2008 based on this decision.

Sellers appeal the superior court's judgment in favor of buyers, but they do not present any specific claims of error in their brief. Instead, without challenging any particular court findings or conclusions, sellers make statements, without any citation to the record, that are inconsistent with court findings and conclusions. See Simendinger v. City of Barre, 171 Vt. 648, 649 (2001) (mem.) ("In reviewing matters on appeal, we set aside factual findings of the trial court only if they are clearly erroneous, viewing the evidence in the light most favorable to the

prevailing party and disregarding modifying evidence."). For example, sellers suggest that buyers must have known of the contamination before hearing about it from sellers' attorney shortly before the scheduled closing date, but they neither challenge the court's findings to the contrary nor cite the record in support of the suggestion. This is true of several other statements made by sellers. Nor do sellers make any coherent arguments amounting to claims of error. See Schnabel v. Nordic Toyota, Inc., 168 Vt. 354, 362 (1998) (stating that Court will not address assertions unaccompanied by facts, law, or reasoning). For example, other than their claim that buyers must have known of the contamination, sellers fail to challenge any of the elements of negligent misrepresentation found by the court. Moreover, although sellers note that buyers failed to obtain inspections that were their responsibility under the purchase and sales agreement, they do not otherwise challenge the superior court's ruling that, notwithstanding any such provisions for inspections in the agreement, sellers had an obligation to disclose to buyers the history of contamination on neighboring properties.

To a large extent, sellers appear to blame their former attorneys, other parties' attorneys, and their real estate agent for their troubles, but because they did not appeal from the superior court's partial final judgment in favor of their real estate agent, they are precluded from challenging that judgment here. See 10 C. Wright, A. Miller & M. Kane, Federal Practice & Procedure § 2661, at 154 (1998) ("[O]nce there has been a Rule 54(b) certification and a final judgment has been entered, the time for appeal begins to run."). They also claim apparent bias on the part of the trial court, but fail to demonstrate any bias whatsoever. See Gallipo v. City of Rutland, 163 Vt. 83, 96 (1994) (stating that judicial bias cannot be demonstrated based on adverse rulings alone); Ball v. Melsur Corp., 161 Vt. 35, 45 (1993) (stating that "bias or prejudice must be clearly established by the record," and "that contrary rulings alone, no matter how numerous or erroneous, do not suffice to show prejudice or bias"); State v. Carter, 154 Vt. 646, 647 (1990) (mem.) (stating that party seeking to disqualify judge "must affirmatively and clearly show bias or prejudice directed against him," and that disqualification may not be based on "innuendo" or "unsubstantiated suspicion"). In short, they fail to make any argument that raises any doubts concerning the superior court's decision. Although we give some leeway to pro se litigants and will address, if possible, arguments that may not comply with Vermont Rule of Appellate Procedure 28 but are nonetheless comprehensible, in this case it is difficult to decipher any legitimate claims of error. As we have stated numerous times, in the absence of any coherent claims of error, we will not peruse the record searching for error. See Jordan v. Nissan N. Am., Inc., 2004 VT 27, ¶ 10, 176 Vt. 465 (stating that reviewing court "will not search the record for error").

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

_____
Marilyn S. Skoglund, Associate Justice

_____
Brian L. Burgess, Associate Justice