

DONALD TOZIER

v.

KENNETH C. JOHNSON et al.

Submitted on Briefs January 22, 2009

Decided February 5, 2009

Panel: CLIFFORD, ALEXANDER, LEVY, and GORMAN, JJ.

MEMORANDUM OF DECISION

Donald Tozier appeals from a judgment of the Superior Court (Hancock County, *Cuddy, J.*) granting a M.R. Civ. P. 60(b)(6) motion filed by Joanne and Joseph St. Pierre and clarifying the original judgment of the Superior Court (*Mead, J.*) to permit the St. Pierres to remove their home from land found by the original judgment to belong to Tozier. Tozier asserts that the motion court erred in granting the Rule 60(b)(6) relief because: (1) the original judgment had awarded the home to him, and (2) the St. Pierres' motion for relief was not filed within a reasonable time.

Review of the original judgment indicates that the court had expressed concern for the St. Pierres' situation and had not indicated whether the home should remain on the property or could be removed by the St. Pierres. Shortly after the original judgment was entered, it was appealed by another defendant, depriving the trial court of authority to act further on it. M.R. App. P. 3(b); *Doggett v. Town of Gouldsboro*, 2002 ME 175, ¶¶ 5-6, 812 A.2d 256, 258. Later, the appeal was dismissed, returning authority to act on the case to the trial court. The Rule 60(b)(6) motion was filed the same day the appeal was dismissed. Thus, there was no unreasonable delay in filing the motion.

The entry is:

Judgment affirmed.

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