

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 105-9-19 Vtec

Town of Pawlet v Daniel Banyai

ENTRY REGARDING MOTION

Title: Motion in Limine (Motion: 19)
Filer: Merrill E. Bent, Attorney for the Town of Pawlett
Filed Date: October 27, 2022
Response in Opposition, filed on October 31, 2022 by Attorney Mark Kaplan, Attorney for Defendant Daniel Banyai
Reply in Support of Motion in Limine, filed on November 1, 2022 by Attorney Merrill Bent

The motion is GRANTED.

DECISION ON MOTION IN LIMINE

The Town of Pawlet ("Town") initiated an enforcement action against Mr. Daniel Banyai in September 2019 for violations of the Town's Zoning Bylaws. This Court conducted a merit hearing on December 16, 2020, and issued a decision on March 5, 2021. The Town moved for civil contempt against Mr. Banyai and requested a hearing before this Court on April 21, 2021. Mr. Banyai appealed the Court's decision on the merits to the Vermont Supreme Court on May 4, 2021. The Court deferred action on the Town's Motion for Contempt in response to Mr. Banyai's appeal.

The Supreme Court affirmed the Court's merits decision on January 14, 2022. The Supreme Court concluded that the second notice of violation ("NOV") issued in August 2019 is final and binding under 24 V.S.A. § 4472 and that Mr. Banyai is therefore precluded from challenging the violations contained in it. Upon the matter's return to this Court, the Town renewed its Motion for Contempt and moved this Court to set fines on February 10, 2022. The Court held a motion hearing on April 18, 2022, but did not complete the hearing due to Mr. Banyai's refusal to comply with discovery requests. The Court ordered Mr. Banyai to comply with those requests or to be subject to further fines. The Town moved again for contempt sanctions

on July 21, 2022. The Court scheduled a hearing to complete review the Town's Motion for Contempt on Friday, November 4, 2022.

Presently before the Court is the Town's Motion in Limine to preclude Mr. Banyai from introducing evidence and arguments relating to zoning exemptions for agricultural structures at the November 4th contempt hearing.

Standard of Review

The Vermont Rules of Evidence apply to matters before the Environmental Division. V.R.E.C.P. 2(e).¹ Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." V.R.E. 401. Relevant evidence is generally admissible. V.R.E. 402. This Court is "generally liberal in allowing relevant evidence to be admitted." See Diverging Diamond Interchange Act 250 and SW Permits, Nos. 169-12-16 and 50-6-16 Vtec, slip op. at 1–2 (Vt. Super. Ct. Envtl. Div. Feb. 8, 2018) (Walsh, J.). The Court is "'unlikely to be 'unduly swayed by a questionable evidentiary offering' as a jury may be." Id. Once relevant evidence is admitted, we afford it the weight it deserves, if any. Id.; In re Application of Lathrop Ltd. P'ship I, 2015 VT 49, ¶ 90, 199 Vt. 19.

Discussion

The Town moves to preclude "any evidence or argument that Defendant's structures are agricultural structures exempt from zoning" citing "[r]ecent conversations with counsel for Defendant." Pl.'s Mot. in Lim. at ¶¶ 1–2, filed Oct. 27, 2022. The Town asserts the issue is barred under 24 V.S.A. § 4472 and because "the zoning regulations have already been fully litigated and are subject to a final order of this Court upheld by the Vermont Supreme Court." Id. at ¶ 1. The Town explains, "Defendant did not assert the agricultural exemption at any point during the pendency of this proceeding prior to judgment, or even in his appeal to the Vermont Supreme Court." Id. at ¶ 3.

The Town provides a certified copy of a determination made by the Vermont Agency of Agriculture, Food and Markets ("Agency") at the request of Mr. Banyai, which declined to determine whether the structures at issue are agricultural. See Id. (Ex. 1). The Agency determined the 31-acre parcel located at 541 Briar Hill Road in Pawlet, Vermont, is a farm subject to the Required Agricultural Practices Rules. Id. (Ex. 1). The Agency declined to designate the structures on the parcel "farm structures" because "[Mr. Banyai] built and sited them previously, did not provide written notice to [the] town before building them, and [the] buildings may have been subject to municipal zoning requirements at the time of construction." Id. (Ex. 1). Further, the Agency stated, "[it] does not know whether [Mr. Banyai] build 'farm structures' or properly cited the structures [he] built, and it appears [Mr. Banyai] and [the] town fully litigated a dispute

¹ The V.R.E.C.P. allow the Environmental Division to relax evidentiary rules when appropriate. See, V.R.E.C.P. 2(e).

about [his] buildings.” Id. (Ex. 1). The Agency concluded, “[g]iven the existing background, the Agency lacks sufficient information to make a retrospective determination about whether [Mr. Banyai] built farm structures exempt from municipal permit requirements.” Id. (Ex. 1).

Mr. Banyai opposes the motion, arguing that the Town inappropriately applies the Zoning Bylaws to all structures on his property. See Def.’s Opp. at ¶ 2 (filed Oct. 31, 2022). Mr. Banyai asserts “a building which does not require a zoning permit, cannot be the subject of a Notice of Violation.” Id. Mr. Banyai references the Court’s Entry Order dated September 2, 2022, in which the Court denied in part the Town’s Motion to Further Request to Impose Contempt Sanctions, and construes the Court’s order to “grant [him] the opportunity to make a showing that newly erected structures are not in violation of the NOV.” Id. at ¶ 3. Mr. Banyai states he is “not seeking to collaterally attack the NOV.” Id. at ¶ 4. Mr. Banyai explains:

The gravamen of [earlier litigation] was the validity of the permit for the school building. The agricultural structures which are now challenged by the Town at the post-judgment stage were never contemplated or subject to the underl[y]ing NOV nor were they previously challenged by the Town or considered prior to judgment or on appeal to the Vermont Supreme Court.

Id.

Mr. Banyai continues with arguments relating to the alleged agricultural status of certain structures on his property. Mr. Banyai concludes, “[t]he sole issue in this contempt proceeding is whether the Defendant has complied with the NOV and Judgment Order as it applies to the Court’s Judgment Order.” Id. at ¶ 9.

In its reply, the Town reiterates its opposition to Mr. Banyai’s arguments relating to zoning exemptions for agricultural structures. Pl.’s Reply at ¶ 1, filed Nov. 1, 2022. The Town reasserts that Mr. Banyai’s arguments are barred by 24 V.S.A. § 4472 and the parties are bound to this Court’s final judgment later affirmed by the Vermont Supreme Court. Id. The Town argues Mr. Banyai “intends to collaterally attack the [NOV] and the Court’s final order” Id. at 4. The Town then rebuts each of Mr. Banyai’s arguments in his opposition, concluding with a recitation of its request to preclude zoning exemptions for agricultural structures.

Pursuant to 24 V.S.A. § 4472(d), failure to file a timely appeal from a decision of “an appropriate municipal panel” binds all interested persons to that decision. This Court, as affirmed by the Supreme Court, has repeatedly directed that Mr. Banyai is precluded from contesting the NOV because he failed to file a timely appeal. See, e.g., Town of Pawlet v. Banyai, 2022 VT 4, ¶¶ 13–21 (“[T]he plain meaning of § 4472 is to prevent any collateral challenge.”). Further, Mr. Banyai confirms that he did not raise arguments relating to the supposed agricultural structures at any stage prior to the judgment against him becoming final. See Def.’s Opp. at ¶ 4. In fact, Mr. Banyai did not introduce the suggestion of agricultural exemptions until August 4, 2022, when he opposed the Town’s Motion to Further Request to Impose Contempt Sanctions. See Def.’s Opp. at ¶ 6 (filed Aug. 4, 2022).

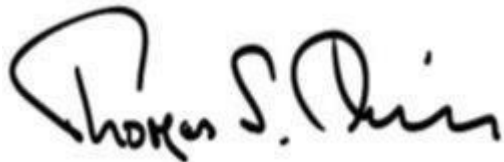
Contrary to Mr. Banyai's procedural construction, the Court did not "grant the opportunity to make a showing that newly erected structures are not in violation of the NOV." Def.'s Opp. at ¶ 3 (filed Oct. 31, 2022). The Entry Order Mr. Banyai references permits him to outline the structures on his property which are subsequent to the final judgment affirming the NOV so the Court may properly evaluate whether Mr. Banyai complied with the removal of unpermitted structures pursuant to its Judgment Order. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip op. at 3–4.

The Court adjudicated this matter on March 5, 2021, a decision which the Vermont Supreme Court later affirmed. See Town of Pawlet v. Banyai, No. 105-9-19 Vtec, slip. op. at 1 (Vt. Super. Ct. Envtl. Div. Mar. 5, 2021) (Durkin, J.); see also Banyai, 2022 VT 4. This matter is now post-judgment. No further determinations regarding the application of Zoning Bylaws to Mr. Banyai's structures may be made or considered. Therefore, the Court will not hear Mr. Banyai's arguments relating to zoning exemptions for agricultural structures as they pertain to the Town's enforcement of the NOV that was affirmed by this Court and the Vermont Supreme Court.

On Friday, November 4, 2022, the Court will conduct a hearing regarding the Town's Motion for Contempt. The Court will consider Mr. Banyai's compliance with its order that concluded the Town's enforcement action against him by receiving evidence of what structures, if any, Mr. Banyai has caused to be removed since the Judgment Order against him became final. The Court will also hear arguments for and against the imposition of fines, should the evidence persuade the Court that Mr. Banyai has as of yet fully complied with its Judgment Order. Specifically, the Court will evaluate whether Mr. Banyai has removed any structures in place at the time that the adjudication of the NOV became final. The Court will not assess the characteristics of structures constructed after the NOV became final, since such structures are not the subject of enforcement in this Court's Judgment Order. Therefore, we **GRANT** the Town's Motion in Limine to preclude Mr. Banyai from presenting evidence and arguments in this litigation relating to zoning exemptions for agricultural structures.

So Ordered.

Electronically signed at Newfane, Vermont on Thursday, November 3, 2022, pursuant to V.R.E.F. 9(d).

A handwritten signature in black ink, appearing to read "Thomas S. Durkin". The signature is stylized with a large, looping initial 'T' and a cursive 'D'.

Thomas S. Durkin, Superior Judge
Vermont Superior Court, Environmental Division