

SUPREME COURT OF NEW HAMPSHIRE

WMUR Channel Nine v. New Hampshire Department of Fish and Game

154 N.H. 46 (2006) (N.H. 2006) · No. No. 2005-787 · Decided August 3, 2006

SUMMARY

The Supreme Court of New Hampshire held that the New Hampshire Department of Fish and Game violated RSA 91-A:2, II by excluding television cameras from a public hunting-license appeal hearing. The court rejected the department’s arguments that due process concerns or administrative rules authorized the exclusion. It affirmed the denial of attorney’s fees because the hearing officer neither knew nor should have known that the conduct violated the Right-to-Know Law.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Galway, J.; Dalianis, J.; Duggan, J.; Hicks, J.
JURISDICTION	New Hampshire
DECIDED	August 3, 2006
DOCKET	No. 2005-787
DISPOSITION	affirmed
PROCEDURAL POSTURE	WMUR appealed the denial of attorney's fees after the Superior Court found that the Department violated New Hampshire's Right-to-Know Law. The Department cross-appealed the finding that it violated the statute. The parties submitted the matter on cross-motions for summary judgment.
STANDARD OF REVIEW	Summary judgment is reviewed by considering the evidence and reasonable inferences in the light most favorable to the nonmoving party; if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law, the ruling is affirmed. Application of law to facts is reviewed de novo. Factual findings concerning attorney's fees are deferred to unless unsupported by the evidence or erroneous as a matter of law.
PRECEDENTIAL VALUE	published precedential opinion of the Supreme Court of New Hampshire

PARTIES

WMUR Channel Nine v. New Hampshire Department of Fish and Game

TOPICS

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PRACTICE AREAS

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attorney's fees

QUESTIONS PRESENTED

1. Whether excluding WMUR's cameras from Hardwick's administrative hearing violated RSA 91-A:2, II.
2. Whether the Department or its presiding officer had authority under administrative rules to exclude cameras despite RSA 91-A:2, II.
3. Whether WMUR was entitled to attorney's fees under RSA 91-A:8 when the lawsuit was necessary to open the proceeding but the presiding officer neither knew nor should have known that excluding cameras violated the statute.

HOLDINGS

1. Because the hearing was a public proceeding subject to RSA 91-A:2, II, the statute gave any person, including the media, the right to use video recording equipment, and the Department violated the statute by excluding WMUR's cameras.
2. An administrative rule authorizing a hearing officer to regulate the course of a hearing and take actions consistent with applicable law did not authorize exclusion of cameras because that interpretation conflicted with RSA 91-A:2, II.
3. WMUR was not entitled to attorney's fees because, although its lawsuit was necessary to make the proceeding open to the public, the record supported the finding that the presiding officer neither knew nor should have known that excluding the cameras violated RSA chapter 91-A.

KEY QUOTATIONS

"An agency, however, must 'comply with the governing statute, in both letter and spirit, and agency regulations which contradict the terms of a governing statute exceed the agency's authority.'"

FACTUAL BACKGROUND

The New Hampshire Department of Fish and Game denied John Hardwick's application for a new hunting license after previously revoking his license when he shot and killed another hunter. During Hardwick's administrative appeal, the presiding officer excluded television cameras and recording devices because he believed their presence would interfere with Hardwick's ability to present his case. WMUR was permitted to

attend through an employee who took notes but was barred from bringing cameras, prompting WMUR to seek injunctive relief and attorney's fees under the Right-to-Know Law.

PROCEDURAL HISTORY

The Department excluded television cameras from an administrative hearing concerning John Hardwick's application for a hunting license. WMUR sought injunctive relief and later moved for summary judgment, arguing that the exclusion violated RSA chapter 91-A and entitled it to attorney's fees. The Superior Court ruled that the Department violated RSA 91-A:2, II but denied attorney's fees because the presiding officer neither knew nor should have known that his conduct violated the statute. The Supreme Court of New Hampshire affirmed both rulings.

DISPOSITION

affirmed

CASES CITED

- Dalton Hydro v. Town of Dalton, 153 N.H. 75, 77 (2005)
- Goode v. N.H. Legislative Budget Assistant, 148 N.H. 551, 553-54 (2002)
- State v. Dellorfano, 128 N.H. 628, 632 (1986)
- Town of Nottingham v. Newman, 147 N.H. 131, 135 (2001)
- Wilkinson v. Austin, 125 S. Ct. 2384, 2393 (2005)
- Conti v. United States, 291 F.3d 1334, 1341 (Fed. Cir. 2002)
- Pennsylvania Game Com'n v. Marich, 666 A.2d 253, 257 (Pa. 1995)
- Appeal of Town of Nottingham, 153 N.H. ____ (May 19, 2006)
- Prof'l Firefighters of N.H. v. HealthTrust, 151 N.H. 501, 507 (2004)
- Goode v. N.H. Legislative Budget Assistant, 145 N.H. 451, 455 (2001)
- Bragg v. Director, N.H. Div. of Motor Vehicles, 141 N.H. 677, 678 (1997)

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