

SUPREME COURT OF VERMONT

Agency of Natural Resources v. Hugh McGee & Eileen McGee

203 Vt. 115 (2016) · No. 2015-412 · Decided August 19, 2016

SUMMARY

The Vermont Supreme Court affirmed a decision of the Environmental Division upholding a wetlands violation against Hugh and Eileen McGee for placing unpermitted fill in a Class II wetland. The Court held that the evidence supported the finding that the affected area had not been used consistently to grow food or crops since 1990, so any farming exemption had expired. The placement of fill was also not an allowed use under the wetlands regulations.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Eaton, J.; Reiber, C.J.; Dooley, J.; Skoglund, J.; Robinson, J.
JURISDICTION	Vermont
DECIDED	August 19, 2016
DOCKET	2015-412
DISPOSITION	affirmed
PROCEDURAL POSTURE	Defendants appealed an administrative wetlands-enforcement order to the Environmental Division, which upheld the violation and reduced the penalty. The defendants then appealed to the Vermont Supreme Court.
STANDARD OF REVIEW	The Supreme Court applies deferential review to Environmental Division factual findings and will not reverse findings that are not clearly erroneous when viewed in the light most favorable to the prevailing party. The trial court determines witness credibility and the weight and persuasiveness of evidence.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion
PARTIES	Hugh McGee, Eileen McGee v. Agency of Natural Resources

TOPICS

- wetlands
- environmental law
- administrative law
- statutory interpretation
- standard of review

PRACTICE AREAS

environmental law

administrative law

wetlands

statutory interpretation

QUESTIONS PRESENTED

1. Whether the wetland area qualified for the statutory and regulatory farming exemption based on intermittent brush-hogging and grazing horses.
2. Whether the farming exemption had expired because the area was not continuously used to grow food or crops, or in ordinary rotation, since 1990.
3. Whether placing dredged fill in the wetland constituted an allowed use under the Wetlands Rules.

HOLDINGS

1. The court affirmed without deciding whether intermittent brush-hogging and grazing horses could otherwise satisfy the farming exemption because the evidence supported the Environmental Division's finding that the area had not been consistently used to grow food or crops in ordinary rotation since 1990.
2. Placing fill in the wetland was not an allowed use under the Wetlands Rules because the allowed-use provision expressly excludes activities involving draining, dredging, filling, or grading.

KEY QUOTATIONS

“Thus, under the statute and applicable regulations, only those areas that have been used for farming activities continuously since 1990 are exempt from regulation as a wetland.” (¶ 2)

“The farming exemption, like all exemptions, is to be read narrowly and only applied when the facts support the exemption’s application.” (¶ 13)

FACTUAL BACKGROUND

The Agency of Natural Resources alleged that Hugh and Eileen McGee placed dredged material into a Class II wetland on their Vermont property without a permit. The McGees used portions of the property for farming-related activities, including raising and grazing horses, but the wetland area at issue was only intermittently brush-hogged and was otherwise allowed to become overgrown. An environmental investigator observed thick, chest-high brush and no signs of cultivation in the wetland area. The Environmental Division found that the area had not been consistently used to grow food or crops since 1990 and that the placement of fill was not an allowed use.

PROCEDURAL HISTORY

The Agency of Natural Resources issued an administrative order finding that defendants had placed fill in a Class II wetland without a permit and imposed a \$10,000 penalty. After a site visit and evidentiary hearing, the Environmental Division found that the property did not qualify for the farming exemption, upheld the violation, and reduced the penalty to \$3,647. The Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re Carrigan Conditional Use & Certificate of Compliance, 2014 VT 125, ¶ 9, 198 Vt. 438, 117 A.3d 788
- In re Goddard Coll. Conditional Use, 2014 VT 124, ¶ 4, 198 Vt. 85, 111 A.3d 1285
- In re Ochs, 2006 VT 122, ¶ 12, 181 Vt. 541, 915 A.2d 780 (mem.)
- In re Eastview at Middlebury, Inc., 2009 VT 98, ¶ 10, 187 Vt. 208, 992 A.2d 1014
- Sec'y, Vt. Agency of Nat. Res. v. Irish, 169 Vt. 407, 412, 738 A.2d 571, 578 (1999)

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