

SUPREME COURT OF NEW HAMPSHIRE

City of Portsmouth v. Boyle

160 N.H. 534 (2010) · No. No. 2009-544 · Decided July 20, 2010

SUMMARY

The Supreme Court of New Hampshire affirmed an award of costs to a property owner who prevailed in a municipal zoning enforcement action involving alleged clear-cutting in a wetlands buffer zone. The court held that RSA 676:17 did not preclude an award of costs under Superior Court Rule 87 without a finding of municipal bad faith, and that the zoning enforcement action was an equitable civil proceeding to which Rule 87 applied. The court also upheld the trial court’s exercise of discretion in awarding deposition and expert-witness costs.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.; Conboy, J.
JURISDICTION	New Hampshire
DECIDED	July 20, 2010
DOCKET	No. 2009-544
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Portsmouth appealed the superior court's award of deposition-transcript and expert-witness costs to Boyle after the City lost a zoning-enforcement action.
STANDARD OF REVIEW	Statutory and rule interpretation are reviewed de novo. An award of costs is reviewed under the unsustainable exercise of discretion standard, under which the decision is upheld if the record provides some support for it.
PRECEDENTIAL VALUE	Published New Hampshire Supreme Court opinion; precedential.
PARTIES	City of Portsmouth v. James Boyle, Trustee, 150 Greenleaf Avenue Realty Trust

TOPICS

- municipal law
- ordinances
- statutory interpretation
- costs
- appellate procedure

PRACTICE AREAS

municipal law

zoning enforcement

civil procedure

appellate procedure

costs and attorney's fees

QUESTIONS PRESENTED

1. Whether RSA 676:17 prevents a prevailing defendant from recovering costs under Superior Court Rule 87 in a municipal zoning-enforcement action absent a finding of bad faith.
2. Whether a municipal zoning-enforcement action seeking injunctive relief and penalties is an equitable or civil proceeding to which Superior Court Rule 87 applies.
3. Whether the superior court unsustainably exercised its discretion by awarding Boyle costs despite finding that the City had not acted in bad faith.

HOLDINGS

1. RSA 676:17 does not preclude an award of costs to a prevailing defendant under Superior Court Rule 87, and neither RSA 676:17 nor Rule 87 requires a finding of municipal bad faith before costs may be awarded.
2. Superior Court Rule 87 applies to the City's zoning-enforcement action because the City sought equitable relief and penalties in an equity case.
3. The superior court did not unsustainably exercise its discretion by awarding Boyle costs.

KEY QUOTATIONS

"No such finding of bad faith is required under RSA 676:17, and we refuse to "add language that the legislature did not see fit to include."" (8 A.3d at 39)

"In practical terms, RSA 676:17 does not conflict with Rule 87 and, therefore, the two can be construed harmoniously." (8 A.3d at 40)

FACTUAL BACKGROUND

The City of Portsmouth commenced a zoning-enforcement action against Boyle, alleging that he had unlawfully clear-cut trees within a wetlands buffer zone. The City sought an injunction, restoration efforts, civil penalties, attorney's fees, and costs. After a bench trial, the court found that the City had not shown a violation of the zoning ordinance, and Boyle later obtained an award of most of his requested deposition-transcript and expert-witness costs.

PROCEDURAL HISTORY

The City brought a zoning-enforcement action alleging that Boyle unlawfully clear-cut trees in a wetlands buffer zone and sought injunctive relief, restoration, civil penalties, attorney's fees, and costs. After a bench trial, the superior court ruled for Boyle, and the Supreme Court affirmed that judgment in an earlier appeal. Boyle then moved for costs under Superior Court Rule 87, and the superior court awarded most of the requested costs. The Supreme Court affirmed that award.

DISPOSITION

affirmed

CASES CITED

- City of Portsmouth v. James Boyle, Trustee, 150 Greenleaf Avenue Realty Trust, No. 2007-0722 (N.H. July 2, 2008)
- White v. Francoeur, 138 N.H. 307, 638 A.2d 1250 (1994)
- Town of Windham v. Lawrence Savings Bank, 146 N.H. 517, 523-24, 776 A.2d 730 (2001)
- MacPherson v. Weiner, 158 N.H. 6, 9, 959 A.2d 206 (2008)
- Martinez v. Nicholson, 154 N.H. 397, 398-99, 911 A.2d 30 (2006)
- Taylor v. Town of Wakefield, 158 N.H. 35, 39, 959 A.2d 217 (2008)
- Dumont v. Town of Wolfeboro, 137 N.H. 1, 10-11, 622 A.2d 1238 (1993)
- Associated Press v. State of N.H., 153 N.H. 120, 144, 888 A.2d 1236 (2005)
- Bel Air Assocs. v. N.H. Dep't of Health & Human Servs., 154 N.H. 228, 234, 910 A.2d 1232 (2006)
- Bennett v. Town of Hampstead, 157 N.H. 477, 483, 953 A.2d 388 (2008)