

SUPREME COURT OF VERMONT

In re Richard H. Joyce

197 A.3d 378 (Vt. 2018) · No. 2017-440 · Decided August 17, 2018

SUMMARY

The Vermont Supreme Court affirmed dismissal of Richard H. Joyce’s appeal from an Office of Professional Regulation disciplinary decision. The Court held that the appellate officer did not abuse his discretion by requiring a statement of questions and a transcript, and by dismissing the appeal when Joyce failed to comply with those procedural requirements. The Court did not reach the merits of the underlying professional-discipline decision.

CASE DETAILS

COURT	Supreme Court of Vermont
WRITING FOR THE COURT	Carroll, J.; Reiber, C.J.; Skoglund, J.; Robinson, J.; Eaton, J.
JURISDICTION	Vermont
DECIDED	August 17, 2018
DOCKET	2017-440
DISPOSITION	affirmed
PROCEDURAL POSTURE	Joyce appealed to the Vermont Supreme Court from an OPR appellate officer's dismissal of his administrative appeal for failing to file a statement of questions and complete the appellate record with a transcript.
STANDARD OF REVIEW	The Court reviews an agency's procedural rulings for abuse of discretion, including rulings applying judicially adopted procedural rules. An abuse of discretion exists where the agency declines to exercise discretion or acts on untenable or unreasonable grounds.
PRECEDENTIAL VALUE	Published Vermont Supreme Court opinion; precedential.
PARTIES	Richard H. Joyce v. Office of Professional Regulation

TOPICS

- appellate procedure
- administrative law
- agency adjudication
- standard of review
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the OPR appellate officer properly denied Joyce's request for summary review based on the filings.
2. Whether the OPR appellate officer properly dismissed Joyce's administrative appeal for failure to file a statement of questions and complete the record with a transcript.

HOLDINGS

1. The OPR appellate officer acted within his discretion in requiring Joyce to file a statement of questions because the applicable OPR rules require one and Joyce's conflicting filings did not give the officer or the State adequate notice of the issues on appeal.
2. The OPR appellate officer acted within his discretion in requiring Joyce to order a transcript because his filings appeared to raise factual and mixed questions of fact and law, and a transcript was necessary to complete the record and permit informed appellate review.
3. The OPR appellate officer did not abuse his discretion by denying summary review and dismissing Joyce's appeal for failure to comply with procedural requirements that were necessary to permit appellate review.

KEY QUOTATIONS

“we will find an abuse of discretion where an agency has declined to exercise its discretion or has done so on untenable or unreasonable grounds.” (§ 12)

“They are designed and required to see that appellate issues governed through the Office of Professional Regulation are grounded in due process and focused analysis of the facts under law.” (§ 27)

FACTUAL BACKGROUND

Joyce, a licensed surveyor, completed a boundary survey in 2014, after which a property owner filed a complaint with the Office of Professional Regulation. OPR initially closed the investigation but later reopened it after stating that new evidence warranted further investigation. Following a hearing, OPR found four violations, imposed a \$750 fine, and conditioned Joyce's license on completion of additional training. Joyce appealed within OPR but submitted conflicting filings, did not file a statement of questions, and did not obtain a transcript of the hearing.

PROCEDURAL HISTORY

The Office of Professional Regulation found that Joyce violated four provisions governing professional surveying standards, fined him \$750, and placed a two-year condition on his surveying license. Joyce filed a notice of appeal within OPR, but did not file the required statement of questions, order a transcript, or file a brief. The OPR appellate officer denied summary review and dismissed the appeal, and the Vermont Supreme Court affirmed.

DISPOSITION

affirmed

CASES CITED

- In re B.M., 165 Vt. 194, 196 n.3, 679 A.2d 891, 893 n.3 (1996)
- In re Stowe Cady Hill Solar, LLC, 2018 VT 3, ¶ 17, __ Vt. __, 182 A.3d 53
- In re Atwood Planned Unit Dev., 2017 VT 16, ¶¶ 13-14, 204 Vt. 301, 167 A.3d 312
- In re Jolley Assocs., 2006 VT 132, ¶¶ 8-9, 181 Vt. 190, 915 A.2d 282
- In re Estates of Allen, 2011 VT 95, ¶¶ 8-11, 190 Vt. 301, 30 A.3d 662
- In re Estate of Johnson, 158 Vt. 557, 559, 613 A.2d 703, 704 (1992)
- Evans v. Cote, 2014 VT 104, ¶¶ 7-13, 197 Vt. 523, 107 A.3d 911
- Airi v. Nagra, 2017 VT 42, ¶ 5, __ Vt. __, 169 A.3d 1317
- State v. Dolley, 124 Vt. 376, 376, 205 A.2d 572, 573 (1964) (per curiam)
- Appliance Acceptance Co. v. Stevens, 121 Vt. 484, 488-89, 160 A.2d 888, 891-92 (1960)
- State v. Synnott, 2005 VT 19, ¶ 25, 178 Vt. 66, 872 A.2d 874
- State v. Gadreault, 171 Vt. 534, 538, 758 A.2d 781, 786 (2000) (mem.)
- Merrilees v. Treasurer, 159 Vt. 623, 623, 618 A.2d 1314, 1315 (1992) (mem.)