

SUPREME COURT OF RHODE ISLAND

Gloria Nerney v. Town of Smithfield

Supreme Court No. 2020-138-Appeal (PC 19-10369) · No. No. 2020-138-Appeal (PC 19-10369) · Decided
March 4, 2022

SUMMARY

The Rhode Island Supreme Court affirmed the dismissal of Gloria Nerney’s amended complaint seeking a writ of mandamus directing the Town of Smithfield to remove trees and plants allegedly planted on municipal property without approval. The Court held that the Town’s decision regarding enforcement of its ordinances and permit conditions involved discretionary, rather than ministerial, functions, so mandamus was unavailable. The Court also noted that Nerney could pursue other potentially available remedies.

CASE DETAILS

COURT	Supreme Court of Rhode Island
WRITING FOR THE COURT	William P. Robinson III, Associate Justice; Frank A. Suttell, Chief Justice; Maureen McKenna Goldberg, Justice; William P. Robinson III, Justice; Lynch Prata, Justice; Long, Justice
JURISDICTION	Rhode Island
DECIDED	March 4, 2022
DOCKET	No. 2020-138-Appeal (PC 19-10369)
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the Providence County Superior Court's judgment granting the Town of Smithfield's Rule 12(b)(6) motion and dismissing Gloria Nerney's amended complaint seeking an order compelling the Town to remove trees and plants from a municipally owned right of way.
STANDARD OF REVIEW	The Supreme Court applies the same standard as the hearing justice when reviewing a Rule 12(b)(6) dismissal. Dismissal is proper only when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief under any set of facts that could be proven in support of the claim; the review is confined to the four corners of the complaint, with its allegations assumed true and viewed in the light most favorable to the plaintiff.

PRECEDENTIAL VALUE	published opinion; precedential Rhode Island Supreme Court decision
PARTIES	Gloria Nerney v. Town of Smithfield

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QUESTIONS PRESENTED

1. Whether the amended complaint sought a writ of mandamus requiring the Town to remove trees and plants from a municipally owned right of way.
2. Whether the Town had a ministerial duty, rather than discretionary authority, to remove the trees and plants or enforce the terms of the permit issued to the neighboring landowners.
3. Whether the Superior Court properly granted the Town's Rule 12(b)(6) motion to dismiss.

HOLDINGS

1. Mandamus does not lie because the decision how to address the trees and plants and how to enforce the Town's ordinances and permits rests within the Town's discretionary authority, not a ministerial duty.
2. The Superior Court properly dismissed the amended complaint because, even accepting its allegations as true and viewing the facts favorably to Nerney, the requested mandamus relief was unavailable.

KEY QUOTATIONS

“a writ of mandamus “will be issued only when: (1) the petitioner has a clear legal right to the relief sought, (2) the respondent has a ministerial duty to perform the requested act without discretion to refuse, and (3) the petitioner has no adequate remedy at law.”” (6)

“a decision as to how to deal with the very real problem posed by the location of the trees and plants and by the Andersens’ failure to adhere to the explicit terms of their permit falls within the Town’s discretionary authority concerning how to enforce its own ordinances and the permits it issues.” (9)

FACTUAL BACKGROUND

In 2010, Richard and Janice Andersen replaced a wall and planted thirty-two trees and plants immediately behind it on a municipally owned right of way in Smithfield, without the Town's approval to perform those actions on Town property. Although the Town had issued a soil erosion permit, the permit authorized the work only on the Andersens' own property. Nerney and other neighbors repeatedly complained to Town employees and sought removal of the trees and plants, but the Town did not take action satisfactory to them. A separate action by other neighbors resulted in a permanent injunction limiting the height of the disputed trees.

PROCEDURAL HISTORY

Nerney filed an amended complaint in the Providence County Superior Court seeking to require the Town to enforce laws, regulations, and ordinances by removing trees and plants planted on Town property by nonparty neighboring landowners. The Superior Court granted the Town's motion to dismiss, ruling that the requested removal decision involved discretionary executive functions rather than a ministerial duty enforceable by mandamus. The Rhode Island Supreme Court summarily affirmed after directing the parties to show cause why the appeal should not be decided without further briefing or argument.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The record may be returned to the Providence County Superior Court.

CASES CITED

- Chariho Regional School District v. Gist, 91 A.3d 783, 787-88 (R.I. 2014)
- Narragansett Electric Co. v. Minardi, 21 A.3d 274, 278 (R.I. 2011)
- Ho-Rath v. Rhode Island Hospital, 115 A.3d 938, 942 (R.I. 2015)
- Crenshaw v. State, 227 A.3d 67, 71 (R.I. 2020)
- City of Providence v. Estate of Tarro, 973 A.2d 597, 604-05 (R.I. 2009)
- Cheney v. United States District Court for the District of Columbia, 542 U.S. 367, 380-81 (2004)
- Muschiano v. Travers, 973 A.2d 515, 520-21 (R.I. 2009)
- New England Development, LLC v. Berg, 913 A.2d 363, 368-69 (R.I. 2007)
- Wilbur v. United States, 281 U.S. 206, 218 (1930)
- O'Neill v. Carr, 522 A.2d 1213, 1214-15 (R.I. 1987)
- Diorio v. Hines Road, LLC, 226 A.3d 138, 148 (R.I. 2020)