

SUPREME COURT OF NEW HAMPSHIRE

State v. Lake Winnepesaukee Resort, LLC

159 N.H. 42 (2009) · No. No. 2008-724 · Decided June 17, 2009

SUMMARY

The New Hampshire Supreme Court affirmed the denial of respondents' motion to dismiss the State's action seeking civil monetary penalties for alleged violations of wetlands and water pollution statutes. The court held that the common-law doctrine of nullum tempus occurrit regi generally protects the State from statutes of limitations unless the legislature clearly provides otherwise, and that RSA 508:4 did not clearly apply to the State's penalty action. The court also declined to reach an unpreserved due process claim based on delay in initiating the proceedings.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Hicks, J.; Broderick, C.J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	June 17, 2009
DOCKET	No. 2008-724
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Interlocutory appeal from the denial of respondents' motion to dismiss a State enforcement action seeking civil monetary penalties for alleged violations of New Hampshire wetlands and water-pollution statutes.
STANDARD OF REVIEW	The court reviewed the statute-of-limitations ruling de novo because the trial court rejected the defense as a matter of law. On a motion to dismiss, the court generally considers whether the petition's allegations are reasonably susceptible of a construction permitting recovery.
PRECEDENTIAL VALUE	Published precedential opinion of the Supreme Court of New Hampshire
PARTIES	Lake Winnepesaukee Resort, LLC, Peerless Golf, Inc. v. State of New Hampshire

TOPICS

- interlocutory appeal
- appellate procedure
- statutory interpretation
- wetlands
- environmental law

PRACTICE AREAS

Appellate procedure

Environmental law

Statutory interpretation

Civil procedure

Constitutional law

QUESTIONS PRESENTED

1. Whether the State's civil action for monetary penalties under RSA chapters 482-A and 485-A was subject to the three-year limitations period in RSA 508:4.
2. Whether the State had an unlimited period to bring an enforcement action under statutes that contained no specific limitations period.
3. Whether the common-law doctrine of *nullum tempus occurrit regi* exempted the State from RSA 508:4.
4. Whether the respondents' constitutional and due-process arguments concerning pre-petition delay were within the scope of the interlocutory appeal and properly preserved.

HOLDINGS

1. *Nullum tempus* remains a recognized New Hampshire common-law doctrine that generally exempts the State from statutes of limitations unless the legislature clearly provides otherwise.
2. RSA 508:4, I does not clearly and expressly apply its three-year limitations period to the State's civil penalty action under RSA chapters 482-A and 485-A.
3. The court did not decide the merits of the constitutional claims because the speedy-trial argument was outside the scope of the interlocutory appeal, and any due-process argument was raised for the first time on appeal and inadequately briefed.

KEY QUOTATIONS

"We follow the doctrine that unless a statute of limitations expressly waives nullum tempus by making a limitations period specifically applicable to the State, the sovereign remains immune from general statutes of limitations." (977 A.2d at 478)

"Affirmed and remanded." (977 A.2d at 479)

FACTUAL BACKGROUND

Lake Winnepesaukee Resort, LLC sought to construct a golf course in New Durham and retained Peerless Golf, Inc. as general contractor in May 2001. The New Hampshire Department of Environmental Services investigated environmental problems during construction and issued an August 2001 order requiring mitigation and cessation of soil disturbance; the order was later lifted and permits were issued allowing completion. In August 2006, the State sought civil monetary penalties for alleged violations of RSA chapters 482-A and 485-A arising from conduct occurring no later than 2002.

PROCEDURAL HISTORY

The State petitioned the superior court in August 2006 for civil monetary penalties based on conduct occurring no later than 2002. Peerless asserted a statute-of-limitations defense and moved to dismiss. The trial court denied the motion and approved an interlocutory appeal under Supreme Court Rule 8.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The denial of the respondents' motion to dismiss was affirmed, and the matter was remanded for further proceedings in the superior court.

CASES CITED

- Thorndike v. Thorndike, 154 N.H. 443, 446, 910 A.2d 1224 (2006)
- Glines v. Bruk, 140 N.H. 180, 181, 664 A.2d 79 (1995)
- Kelleher v. Marvin Lumber & Cedar Co., 152 N.H. 813, 830, 891 A.2d 477 (2005)
- United States v. Hoar, 26 F. Cas. 329, 329-30 (C.C.D. Mass. 1821) (No. 15,373)
- United States v. Thompson, 98 U.S. 486, 489, 25 L. Ed. 194 (1878)
- In re Dockham Estate, 108 N.H. 80, 227 A.2d 774 (1967)
- Reconstruction &c. Corporation v. Faulkner, 100 N.H. 192, 122 A.2d 263 (1956)
- Town of Seabrook v. Vachon Management, 144 N.H. 660, 745 A.2d 1155 (2000)
- State v. Tallman, 139 N.H. 223, 226, 652 A.2d 134 (1994)
- State v. Company, 49 N.H. 240 (1870)
- Webber v. Chapman, 42 N.H. 326, 336-37 (1861)
- State, Department of Transportation v. Sullivan, 38 Ohio St. 3d 137, 527 N.E.2d 798, 800 (1988)
- Lorenz v. N.H. Administrative Office of the Courts, 152 N.H. 632, 634, 883 A.2d 265 (2005)
- Fennelly v. A-1 Machine & Tool Co., 728 N.W.2d 163, 169 n. 3 (Iowa 2006)
- Com., Department of Transportation v. J.W. Bishop & Co., 497 Pa. 58, 439 A.2d 101, 104-05 (1981)
- In re Estate of Raduazo, 148 N.H. 687, 693, 814 A.2d 147 (2002), cert. denied, 539 U.S. 942 (2003)
- Wisniewski v. Gemmill, 123 N.H. 701, 705-06, 465 A.2d 875 (1983)
- State ex rel. Smith v. Kermit Lumber, 200 W. Va. 221, 488 S.E.2d 901, 913 (1997)
- United States v. Mine Workers, 330 U.S. 258, 272-73, 67 S. Ct. 677, 91 L. Ed. 884 (1947)
- Gibson v. Chouteau, 13 Wall. 92, 80 U.S. 92, 99, 20 L. Ed. 534 (1871)
- Board of Education v. A, C and S, Inc., 131 Ill. 2d 428, 137 Ill. Dec. 635, 546 N.E.2d 580, 603 (1989)
- Krzyształowski v. Fortin, 108 N.H. 187, 189, 230 A.2d 750 (1967)
- Town of Nottingham v. Newman, 147 N.H. 131, 134-35, 785 A.2d 891 (2001)
- State v. Stow, 136 N.H. 598, 600, 602, 620 A.2d 1023 (1993)
- State v. Fitzgerald, 137 N.H. 23, 26, 622 A.2d 1245 (1993)
- State v. Philibotte, 123 N.H. 240, 244, 459 A.2d 275 (1983)
- United States v. Marion, 404 U.S. 307, 320-21, 92 S. Ct. 455, 30 L. Ed. 2d 468 (1971)
- State v. Varagianis, 128 N.H. 226, 228, 512 A.2d 1117 (1986)

- Chadwick v. CSI, Ltd., 137 N.H. 515, 520, 629 A.2d 820 (1993)
- Mortgage Specialists v. Davey, 153 N.H. 764, 792-93, 904 A.2d 652 (2006)

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