

Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE

ENTRY ORDER

JUL 23 2009

SUPREME COURT DOCKET NOS. 2008-011 & 2008-393

JULY TERM, 2009

Janet Cote	}	APPEALED FROM:
	}	
v.	}	Environmental Court
	}	
Town of St. Albans	}	DOCKET NO. 273-11-06 Vtec
		Trial Judge: Thomas S. Durkin
Town of St. Albans	}	
	}	
v.	}	
	}	
Janet Cote	}	DOCKET NO. 165-8-07 Vtec

In the above-entitled causes, the Clerk will enter:

Defendant Janet Cote appeals pro se from separate Environmental Court orders upholding a notice of zoning violation issued by the Town of St. Albans and granting the Town's request for injunctive relief and civil penalties. We affirm.

The evidence and findings may be summarized as follows. In July 2006, the Town sent defendant a notice of zoning violations, alleging that she had dug a drainage ditch and placed an underground pipe across her property, resulting in an alteration of water flow and additional drainage onto her neighbor's property, and had also placed over 100 cubic yards of fill on the property, all without the requisite permits under the Town's zoning regulations. The Development Review Board upheld the notice of violation, and defendant appealed to the Environmental Court.

The matter was originally scheduled for a merits hearing on November 20, 2007, but was rescheduled to December 19, 2007, at defendant's request. On the morning of the hearing, defendant—appearing pro se—filed a handwritten motion for a continuance, alleging an illness. The court sent a note back through court staff indicating that it would consider the motion at the start of the hearing. Although defendant sent a note back thanking the judge, she left the courthouse shortly thereafter and did not return, offering no explanation for her departure. In its subsequent written decision on the merits, the court explained that it had determined to hold the hearing without defendant, finding that her claim of illness was not credible; that she had been afforded ample notice and opportunity to be heard; and that the Town and other neighbors had incurred time and expense to appear. On the merits, the court found ample evidence to support the violations. Defendant appealed the court's ruling.

Defendant filed a motion for a new trial the following day. In denying the motion, the court explained that it had informed defendant her motion for a continuance would be heard at

the start of the hearing; that court staff had signaled defendant to remain in the courtroom when she started to leave; but that she had left regardless. The court thus found, as earlier, that defendant's claimed inability to participate in the hearing was not credible.

While the notice-of-violation matter was pending, the Town filed a separate enforcement proceeding, seeking injunctive relief and civil penalties. Following an evidentiary hearing in which defendant appeared pro se, the court issued a written decision, setting forth extensive findings, in which it reviewed the history and facts surrounding the violations. The court found that, despite the Town's efforts to suggest remedies and procedures for addressing the water flow problems on her property, defendant chose to implement her own improvements without the required permits; refused to obtain permits for the work or the remedial efforts necessary to address the violations; and failed to recognize the damage caused to neighboring properties. The court further found that the Town had incurred considerable time, costs, and attorney's fees, totaling nearly \$22,000, in dealing with the violations.

As to the Town's request for civil penalties, the court found that defendant had committed three separate offenses for the unauthorized ditch work, piping, and fill, each of which carried a maximum fine of \$100 per day, thus exposing defendant to a potential fine of \$300 per day for each of the 618 days from the date of the notice of violation to the date of trial. The court determined, however, that a fine of \$35 per day, for a total of \$21,630, was sufficient to compensate the Town for its costs and expenses, and further concluded that injunctive relief was warranted in view of the calculated nature of the violations and defendant's ongoing refusal to acknowledge the need for a permit. Defendant appealed separately from this decision. We consolidated the two appeals for purposes of review.

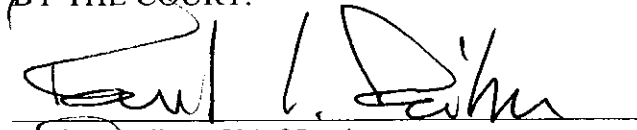
Although defendant's brief fails to identify separate claims, contains virtually no citations to the record, and sets forth no separate and coherent arguments with supporting cases and authorities we will address her arguments in deference to the "leeway" traditionally afforded pro se litigants. Sandgate Sch. Dist. v. Cate, 2005 VT 88, ¶ 9, 178 Vt. 625 (mem.). Defendant claims that she left the violations hearing when a member of the court staff allegedly "motioned for me to leave the court" and implies that the court erred in proceeding in her absence. Defendant provides nothing to support the claim or to refute the court's findings that defendant was clearly informed that her continuance motion would be heard at the start of the hearing, that she was directed to stay, and that her claim of illness was not credible. Thus, we find no basis to disturb the court's findings. See In re Shantee Point, Inc., 174 Vt. 248, 263 (2002) (we will not disturb the trial court's findings unless, viewed in the light most favorable to the prevailing party, they are clearly erroneous).

Similarly deficient are defendant's additional claims that the Town's zoning administrator and members of the Development Review Board had conflicts of interest and unfairly targeted her property; that the Town authorized illegal improvements to neighboring properties causing additional flooding on her land; that she placed less than 30 cubic yards of fill on her property; that witnesses at the enforcement hearing lied; and that the evidence was insufficient to support the finding of zoning violations or the imposition of civil penalties. As noted, these claims are unsupported by any citations to the record or supporting authorities. Defendant has entirely failed to demonstrate that Town officials were biased, that the trial court clearly erred in finding that defendant had committed the zoning violations in question, or that the court abused its discretion in awarding civil penalties and injunctive relief. See In re Shantee Point, Inc., 174 Vt. at 263 (we will not disturb the trial court's findings unless, viewed in the light most favorable to the prevailing party, they are clearly erroneous); Town of Hinesburg v. Dunkling, 167 Vt. 514, 528-29 (1998) (holding that the trial court did not abuse its discretion in

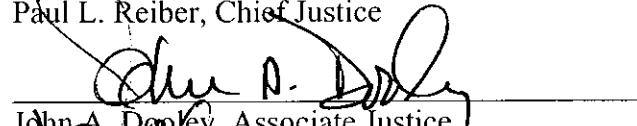
awarding civil penalties for zoning violations in an amount sufficient to defray the attorney's fees and costs incurred by the Town in prosecuting the action).

Affirmed.

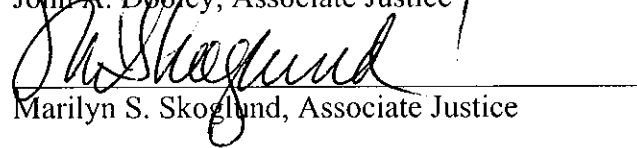
BY THE COURT:



Paul L. Reiber, Chief Justice



John A. Dooley, Associate Justice



Marilyn S. Skoglund, Associate Justice