

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

**ENTRY ORDER**

VERMONT SUPREME COURT  
FILED IN CLERK'S OFFICE

SUPREME COURT DOCKET NO. 2009-087

NOV 18 2009

NOVEMBER TERM, 2009

Agency of Natural Resources

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APPEALED FROM:

v.

Environmental Court

John R. Wellman

DOCKET NO. 83-4-08 Vtec

Trial Judge: Thomas S. Durkin

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

Respondent John R. Wellman appeals pro se from an Environmental Court decision upholding the issuance of an administrative order by the Secretary of the Agency of Natural Resources (ANR) finding violations of the Vermont Wetland Rules and a prior emergency order. We affirm.

Respondent owns approximately 1.6 acres of land located along Route 5, also known as the Coolidge Highway, in Guilford, Vermont. The property contains a wetland identified on the National Wetlands Inventory Maps and is therefore a Class II wetland under the Wetlands Rules. See Lake Bomoseen Ass'n v. Vermont Water Resources Bd., 2005 VT 79, ¶ 3, 886 A.2d 355 (under the Vermont Wetlands Rules, all wetlands shown on the National Wetlands Inventory Maps are presumptively significant and designated as Class II). The wetland in question is connected to, and part of, a larger wetland complex located to the north of the property. A small stream runs along the eastern border of respondent's property.

In May 2004, the Environmental Court issued an emergency order, at the request of ANR, finding that respondent had violated the Wetlands Rules by placing dog kennels and fill on the property without prior conditional use approval from ANR. The order directed respondent to refrain from placing any more fill, or excavating, dredging, or undertaking any other prohibited activity within the wetland area of his property without prior conditional use approval or a reclassification of the wetland. This Court affirmed. Agency of Natural Resources v. Wellman, No. 2004-314, 2004 WL 5582103 at \*1, slip op. at 1 (Vt. Nov. 19, 2004) (unreported mem.). In May 2005, the Environmental Court issued a contempt order, finding that respondent had failed to comply with the emergency order. Respondent subsequently applied for, and was granted, a conditional use permit approving the placement of respondent's dog kennels and fill.

In April 2007, ANR issued another administrative order based upon evidence that respondent had undertaken substantial dredging and channeling of the stream and wetland area on his property, in violation of Wetlands Rules and the prior emergency order. The work had caused the wetland to partially drain. Respondent appealed to the Environmental Court, which held an evidentiary hearing at which several ANR officials testified to their observations of dredging and channeling on the property and the resulting damage to the wetland. Respondent

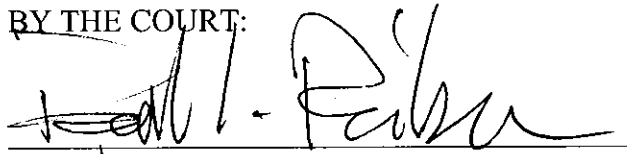
testified in his own behalf. The court issued a written decision in February 2009, finding that the evidence amply supported the alleged violations. The court imposed a penalty totaling \$8,050 and ordered respondent to undertake certain remediation measures. This pro se appeal followed.

Respondent's brief does not approach the minimal requirements of V.R.A.P. 28(a), as it fails to set forth a clear and concise statement of the case and the arguments presented, to demonstrate how the issues were preserved, or to provide any citations to authorities, statutes, or parts of the record relied on. Nevertheless, respondent appears to raise several discrete claims, including allegations that the 2004 emergency proceeding was predicated upon an unconstitutional search of his property, and that the property is not a protected wetland. Claims relating to the final 2004 judgment, however, are barred. See Bennett Estate v. Travelers Ins. Co., 140 Vt. 339, 343 (1981) (judgments regularly obtained are conclusive upon the parties and cannot be collaterally attacked) (overruled on other grounds). As for the status of respondent's property, the trial court here expressly found that it was a Class II wetland. The court's finding was based upon the official Wetlands Inventory Maps and specific testimony from ANR officials that the channeling and dredging had occurred within a Class II wetland. Although respondent claims that a revised wetlands map demonstrates otherwise, this does not appear from the exhibit, and respondent's argument does not support the claim. We thus find no basis to disturb the ruling. See In re Eastview at Middlebury, Inc., 2009 VT 98, ¶ 10, \_\_ Vt. \_\_ (this Court will not overturn the Environmental Court's factual findings unless clearly erroneous).

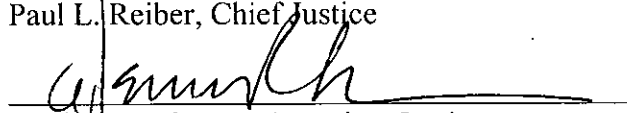
Respondent also appears to assert that the evidence did not support the court's findings that he had committed the violations. Ample testimony and exhibits adduced at the hearing, however, demonstrated to the contrary, and respondent has adduced no evidence or persuasive argument to disturb the court's findings. Id. Finally, respondent appears to argue that the charges were groundless because other property owners in the area had allegedly engaged in similar behavior; but the trial court correctly noted that the argument had no bearing on the charges against respondent. Accordingly, we find no basis to disturb the judgment.

Affirmed.

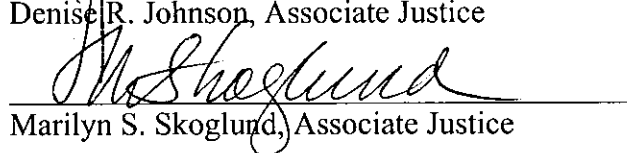
BY THE COURT:



Paul L. Reiber, Chief Justice



Denise R. Johnson, Associate Justice



Marilyn S. Skoglund, Associate Justice