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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-107

OCTOBER TERM, 2009

Town of Brookfield	}	APPEALED FROM:
	}	
v.	}	Environmental Court
	}	
James Moorcroft	}	DOCKET NO. 236-12-04 Vtec
		Trial Judge: Thomas S. Durkin
UniFirst Corporation	}	
	}	
v.	}	Orange Superior Court
	}	
James Moorcroft	}	DOCKET NO. 95-5-06 Oecv

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

James Moorcroft appeals pro se from the Environmental Court's order finding him in contempt of two court orders relating to the removal of hundreds of unregistered vehicles from his property. He argues that (1) he was not provided with proper notice of the issues to be addressed at the contempt hearing; and (2) the evidence presented does not support the court's conclusions. We affirm.

Moorcroft owns a large parcel of property in Brookfield, Vermont. He stores large numbers of unregistered vehicles on this property, apparently in connection with a used car business located elsewhere. In 2004, the Town of Brookfield brought a municipal enforcement action against Moorcroft for violating its zoning bylaws. In 2006, UniFirst brought an action in superior court to enforce a remediation easement that it held on Moorcroft's property. The easement provided specific restrictions on the property's use. In May 2007, the Environmental Court issued a judgment order mandating that Moorcroft remove the vehicles, with certain exceptions. The order included a compliance deadline of December 1, 2007. In September 2007, the superior court issued an order that, among other things, incorporated the Environmental Court's May 2007 order and provided Unifirst the right to enforce that order. The latter order also required Moorcroft to reimburse UniFirst $5681 by December 31, 2007, for its attorney's fees and costs expended to date in maintaining the enforcement action.

In February 2008, the Town moved to reopen the case due to Moorcroft's failure to comply with the May 2007 order. Among other requests, the Town asked the court to order Moorcroft to comply with its zoning bylaws, and to issue fines and penalties against him until

the matter was resolved. The court treated this motion essentially as one to hold Moorcroft in contempt. UniFirst moved to intervene and consolidate its case with the pending Town action, and in March 2008, following a hearing, the Environmental Court granted its request. UniFirst subsequently filed a motion, alleging that Moorcroft was in contempt of the superior court order. Moorcroft responded to this motion, asserting that he had complied with the May 2007 judgment order. He requested a status conference.

On July 8, 2008, the court issued an entry order denying Moorcroft's request. In doing so, the court referred the parties to a notice of hearing, attached to the entry order but sent on July 9, 2008, indicating that a hearing would be held on (1) Moorcroft's conformance with the Environmental Court proceeding (docket # 236-12-04 Vtec) and (2) UniFirst's motion for contempt in the superior court proceeding (docket # 96-5-06 Oecv). The July 9 "notice of hearing" included in its caption the Environmental Court case and docket number, and it indicated that a hearing would be held on the motion for contempt. The body of the entry order stated that "[t]his is a hearing on the motion for contempt in this docket number and in the Superior Court case Unifirst Corp. v. James Moorcroft docket #96-5-06 OeCv." Following a hearing in September 2008, the court made findings from the bench, and it later issued a written decision consistent with those findings. The court found Moorcroft in contempt with respect to both actions. Moorcroft appealed.

Moorcroft asserts that he was confused about the nature of the hearing and that he did not expect that he would need to address the Town's case. He suggests that his due process rights were violated. He also argues that the evidence presented at the hearing does not support the court's conclusions. He points to his own testimony that he removed about one-quarter of the vehicles from the property, and he asserts that no vehicles are visible on his property.* He again cites his own testimony as support for his claim that he was not conducting business on his property in violation of the May 2007 order.

These arguments are without merit. Moorcroft was plainly provided adequate notice as to what would be addressed at the hearing, and he was provided the opportunity to defend himself. See Rich v. Montpelier Supervisory Dist., 167 Vt. 415, 420 (1998) ("The essential elements of due process are notice and an opportunity to be heard."). The superior court and Environmental Court cases were consolidated by court order in March 2008. As the Environmental Court recognized, and as is evident from the record, Moorcroft's alleged failure to comply with the 2007 Environmental Court order underlies both cases. Moorcroft was mailed a notice of hearing from the court specifically stating that both cases would be heard; this was reiterated in an entry order from the court that was included with the notice of hearing. Moreover, it was clear from the outset of the hearing that both matters would be considered, and Moorcroft offered no objection at that time. To the contrary, he stated to the court that he was representing himself in both proceedings, and he indicated that he was prepared to proceed. While Moorcroft expressed some confusion toward the end of the hearing as to the nature of the motion for contempt, he went on to offer his defense to the Town action, including examination

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* In connection with this claim, Moorcroft attached materials to his brief that were not submitted at the hearing. UniFirst has moved to strike these materials, and we grant its request. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record).

of the Town's witnesses. Moorcroft's claim that he was not provided notice of the hearing and an opportunity to defend himself is unfounded.

Moorcroft's challenge to the court's conclusions is equally without merit. He points to his own testimony to show that the court erred. Yet the court expressly found the Town's witness more credible than Moorcroft. The court found it clear from the evidence, including Moorcroft's own testimony, that Moorcroft continued to conduct his business on the property after December 1, 2007, in violation of the 2007 order. As we have often stated, it is the role of the trial court to weigh the evidence and evaluate the credibility of witnesses. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995). We will not reweigh the evidence on appeal. Where, as here, the trial court's findings are supported by the record, they will stand on appeal. We find no error.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice