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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2009-399

MARCH TERM, 2010

In re Leon Beliveau	}	APPEALED FROM:
	}	
	}	Franklin Superior Court
	}	
	}	
	}	DOCKET NO. S486-08 Fc
		Trial Judge: A. Gregory Rainville

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

Taxpayer appeals from the trial court's order granting summary judgment to the Town in this property tax dispute. We affirm.

Taxpayer owns two contiguous parcels of improved real estate in Fairfax, Vermont. The Town listed these properties as a single entry in the Town's 2008 grand list. The notice to taxpayer indicated that the property valuations were combined "per State request," a reference to 32 V.S.A. § 4152(a)(3). Taxpayer, then pro se, filed a grievance with the listers. He did not contest the valuation of his properties, but rather questioned the listers' authority to list both properties as one entry in the grand list. The listers denied his grievance. Taxpayer then appealed to the town Board of Civil Authority, which upheld the listers' valuation as well as their decision to list the two parcels as a single entry. Taxpayer appealed to the superior court. Following discovery, the Town moved for summary judgment. Taxpayer opposed this request, although he did not file a statement of disputed material facts. Following a hearing, the court made findings on the record and later issued a written order granting summary judgment to the Town. The court found that by statute, the Town was directed to list taxpayer's contiguous properties as a single entry in the grand list. Taxpayer, now represented by counsel, appealed.

On appeal, taxpayer argues that material facts remain in dispute. He suggests that the court failed to reach the issue he sought to appeal, namely, whether the Town's voters needed to authorize the listers to list his property as one entry in the grand list. Taxpayer maintained below that the listers had no legal authority to grant the State of Vermont's request to combine the assessment of these parcels. Taxpayer also indicates that he has not yet been able to secure information from the Town that might be helpful to his case.

We review a grant of summary judgment using the same standard as the trial court. Richart v. Jackson, 171 Vt. 94, 97 (2000). Summary judgment is appropriate when, taking all allegations made by the nonmoving party as true, there are no genuine issues of material fact, and the movant is entitled to judgment as a matter of law. Id.; V.R.C.P. 56(c).

Summary judgment was properly granted to the Town here. As an initial matter, it is difficult to discern how taxpayer has suffered any cognizable injury, and therefore, how he has standing to

pursue this claim. He does not challenge the assessed value of his property, only the mere fact that both lots are listed as one parcel on the grand list. What harm has he suffered as a result of the Town's action? In any event, as the trial court found, the Town's action is supported by the plain language of 32 V.S.A. § 4152(a)(3). That statute requires that a town's grand list contain a "brief description of each parcel of taxable real estate in the town," and the term "parcel" is defined as "all contiguous land in the same ownership, together with all improvements thereon." Id. Taxpayer's property plainly fits within this definition.

While taxpayer argues that his property was not combined in earlier grand lists, he fails to demonstrate that he offered any evidence to this effect below. Thus, we do not consider this argument on appeal. See id.; see also Hoover v. Hoover, 171 Vt. 256, 258 (2000) (this Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). Taxpayer also erroneously argues that contiguity of land is but a "factor" in deciding if taxpayer's property should be considered as one "parcel." He relies on Neun v. Town of Roxbury, 150 Vt. 242 (1988), where this Court interpreted an earlier version of 32 V.S.A. § 4152(a)(3). The earlier statute did not contain a definition of the word "parcel," however, and this Court thus identified certain factors for determining when property should be assessed as a single parcel. Neun, 150 Vt. at 243-44. The statute has since been amended, and the term "parcel" is now specifically defined to mean "contiguous land in the same ownership." It is undisputed that taxpayer here owns both lots at issue and that the lots are contiguous. Thus, the Town's action was plainly authorized by statute. See Comm. to Save Bishop's House, Inc. v. Med. Ctr. Hosp. of Vt., Inc., 137 Vt. 142, 153 (1979) (where legislative intent clear from language, this Court will enforce statute according to its terms without resorting to statutory construction).

None of taxpayer's remaining arguments persuade us to a contrary conclusion. Notwithstanding taxpayer's suggestion, the superior court plainly decided the issue raised by taxpayer. By citing the statute above, the court implicitly rejected taxpayer's position that the listers lacked legal authority to take the action they did. Second, taxpayer did not request additional time for discovery below, and thus, we do not address this issue for the first time on appeal. See Bull v. Pinkham Eng'g Assocs., 170 Vt. 450, 459 (2000) ("Contentions not raised or fairly presented to the trial court are not preserved for appeal."). We note, however, that over seven months elapsed between the filing of the notice of appeal and the Town's motion for summary judgment, during which time the parties exchanged interrogatories and requests to produce. We find no error in the court's decision.

Affirmed.

BY THE COURT:

Denise R. Johnson, Associate Justice

Marilyn S. Skoglund, Associate Justice

Brian L. Burgess, Associate Justice