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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-042

AUGUST TERM, 2002

George Dunnett	}	APPEALED FROM:
v.	}	Town of Ludlow Zoning Board of Adjustment
Town of Ludlow Zoning Board of Adjustment	}	DOCKET NO. 227-5-00 Wrcv
	}	Trial Judge: Alan W. Cook

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

Plaintiff appears pro se and challenges the Windsor Superior Court's summary judgment order in favor of the Town of Ludlow on plaintiff's V.R.C.P. 75 complaint seeking invalidation of an interim zoning bylaw. We affirm.

The facts leading to plaintiff's complaint are undisputed. In October 1999, the District 2 Environmental Commission ruled that Okemo Mountain, Inc.'s plan to include condominium hotels in the company's master plan for development in Jackson Gore, located in Ludlow's Mountain Recreational District ("MRD"), was inconsistent with Ludlow's zoning because it was an impermissible use in the MRD. In April 2000, Okemo asked the Ludlow Planning Commission to recommend to the Ludlow Selectboard to adopt interim zoning to allow condominium hotels in the MRD. The Planning Commission, of which plaintiff was a member, thereafter voted five to two to make the requested recommendation.

The Ludlow Selectboard considered the interim zoning matter in meetings held on May 8 and May 15, 2000. Notice of those meetings appeared in the Black River Tribune on May 3 and May 10, 2000. At the May 15, 2000 meeting, the selectboard entered into executive session, and later, in open session voted three to two to enact interim zoning to allow condominiums, ski related services, and condominium hotels in the MRD on Okemo Mountain. Plaintiff participated extensively in the May 8 and May 15 meetings.

On May 23, 2000, plaintiff filed his complaint against the Town of Ludlow under V.R.C.P. 75. Plaintiff asked the court to invalidate the interim zoning bylaw because the Town did not strictly adhere to the public hearing notice requirements in 24 V.S.A. 4447, and the selectboard entered executive session without giving a reason for doing so as required by 1 V.S.A. 313(a). Plaintiff did not allege that he had suffered, or would suffer, any harm as a result of the Town's actions, however. Okemo Mountain intervened in the suit, and moved to dismiss. Okemo and plaintiff also filed cross motions for summary judgment. The Town took no position on any of the motions. The court granted Okemo's summary judgment motion, concluding that plaintiff had no standing to pursue the matter under 24 V.S.A. 4472 and 4464 because he is not an "interested person" as defined by 4464(b). Plaintiff appealed.

On appeal, we employ the same summary judgment standard the trial court used: if there are no genuine issues of material fact for trial and a party is entitled to judgment as a matter of law, summary judgment is proper. V.R.C.P. 56(c); Wentworth v. Fletcher Allen Health Care, 171 Vt. 614, 616 (2000) (mem.). Plaintiff concedes that he is not an interested person authorized to appeal under 24 V.S.A. 4472 and 4464. He nevertheless contends that V.R.C.P. 75 independently authorizes his challenge to the Ludlow Selectboard's adoption of the interim bylaw because his action is in the nature of mandamus, and his standing derives from his status as a Ludlow taxpayer. The trial court correctly rejected this argument.

Section 4472(a) of chapter 117 of Title 24 provides the exclusive remedy for challenges to "any decision or act taken, or any failure to act, . . . with respect to any one or more of the provisions of any plan or bylaw." 24 V.S.A. 4472(a). The exclusive remedy, which is available only to an "interested person" as defined by 24 V.S.A. 4464(b), is an "appeal to the board of adjustment or the development review board under section 4464" of Title 24, "and the appeal to the environmental court from an adverse decision upon such appeal under section 4471." Id. The exclusivity of that remedy is emphasized by 4473, which states that the purpose of chapter 117 of Title 24, is "to provide for review of all questions arising out of or with respect to the implementation by a municipality" of chapter 117, which includes the adoption of zoning bylaws. 24 V.S.A. 4473 (emphasis added).

An action in the nature of mandamus under V.R.C.P. 75 is not an exception to the standing limitations found in 4464(b). [(1)] In Garzo v. Stowe Board of Adjustment, 144 Vt. 298 (1984), we explained that a plaintiff pursuing mandamus must demonstrate that he has a legal right to the performance of the duty he seeks to compel, "for which there is no other adequate remedy." 144 Vt. at 300. In that case, the plaintiff filed an action in superior court to compel the Stowe Board of Adjustment to enforce a zoning bylaw. Like plaintiff in this action, Garzo was not an "interested person" under 4464(b), and therefore had no standing to compel enforcement. Id. at 302. Garzo argued that his standing to compel enforcement by way of an action in mandamus under V.R.C.P. 75 arose out of his status as a taxpayer and resident of the Town of Stowe. Id. at 300. We rejected his argument, holding that in zoning matters, the "proceedings in mandamus are not distinguished from, but are in fact controlled by, the standing criteria of 4464(b)." Id. at 302. The legislature lawfully determined the class of persons having a legal right to obtain relief in zoning matters and the Court may not enlarge that class. Id. The trial court thus properly granted summary judgment for Okemo because plaintiff admitted he is not an "interested person" under 4464(b) and therefore has no standing to pursue an action in superior court to invalidate the interim zoning bylaw.

Affirmed.

BY THE COURT:

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Jeffrey L. Amestoy, Chief Justice

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James L. Morse, Associate Justice

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Marilyn S. Skoglund, Associate Justice

1. Like the trial court, we need not, and do not decide whether plaintiff's complaint can be properly construed as an action in mandamus.