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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2002-340

JUNE TERM, 2003

In re K.M.	}	APPEALED FROM:
	}	Department of Education
	}	DOCKET NO. 0207

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

This pro se appeal follows a decision by a hearing officer for the Vermont Department of Education (DOE) denying a request by K.M.' s parents, appellants Barbara and Dennis McCarty, to home school the child in accordance with 16 V.S.A. § 166b. We affirm.

On May 21, 2002, the DOE Commissioner notified the McCartys by letter that he was convening a hearing on their plan to home school K.M. because the Commissioner had significant doubts about the proposed program and Barbara' s competence to provide coherent instruction to K.M., then seven-years old. See 16 V.S.A. § 166b(a)(5), (e) (requiring that home study enrollment notice describe minimum course of study and allowing for hearing if Commissioner has doubts that program will provide that minimum course of study). The Commissioner appointed a hearing officer, who convened an evidentiary hearing on June 21, 2002. Barbara McCarty represented herself pro se and appeared as the sole witness in support of the home study program. The DOE presented testimony from two witnesses, a guidance counselor at the elementary school K.M. had previously attended and the DOE' s home study consultant.

After hearing testimony and reviewing the exhibits entered into the record, the hearing officer concluded that the McCartys' program would not provide K.M. with a minimum course of study. The hearing officer also concluded that Barbara is not able to give her son age- and ability-appropriate instruction. This appeal followed.

The McCartys challenge the hearing officer' s order on grounds that it lacks support in the evidence, and they point to several factual findings with which they disagree. We will not disturb the findings if, viewing the evidence in the light most favorable to the prevailing party and excluding any modifying evidence, the findings are not clearly erroneous. Gilbert v. Davis, 144 Vt. 459, 461 (1984). The credibility of witnesses and the weight to accord the evidence are matters exclusively within the province of the tribunal below. Id. Even where substantial evidence to the contrary exists, we will affirm the decision so long as credible evidence supports the findings. Id.

In this case, the McCartys have failed to demonstrate that the hearing officer' s findings lack credible evidentiary support. They accuse DOE' s witnesses of lying and misstating facts, and allege that the hearing officer was biased. In essence, the McCartys challenge the order because it does not conform to their view of the evidence. It was the hearing officer' s responsibility to resolve differences in the conflicting evidentiary record, and the record supports his findings. We therefore find no legal basis to disturb the decision.

K.M.' s parents next allege that the Commissioner was without authority to call a hearing on their notice of enrollment. The argument has no merit. Under 16 V.S.A. § 166b(e), the Commissioner may convene a hearing on a proposed home study program when " the [C]ommissioner has information that creates a significant doubt about whether a home study

program can or will provide a minimum course of study for a student who has not yet enrolled." Here, the record reflects that the Commissioner had significant and justifiable doubts about both K.M' s home study program and his mother' s ability to provide instruction consistent with the child' s age and abilities. For example, the enrollment notice that the McCartys submitted to DOE is rambling, confusing, and incoherent. The home study curriculum lacks a sequence and organization for the material' s presentation. Barbara is the sole instructor for K.M., and the hearing officer found that her distorted view of reality and her inability to communicate without jumping from topic to topic were barriers too great to overcome to allow the proposed home study program. We therefore find no error in the Commissioner' s decision to exercise his authority under § 166b(e).

Finally, we note that the McCartys' submissions to this Court lack clarity and coherence. Thus, to the extent that they raise other issues in this appeal, we decline to address them because their briefs are wholly inadequate to aid our review. See Johnson v. Johnson, 158 Vt. 160, 164 n.1 (1992) (Supreme Court will not consider arguments not adequately briefed).

Affirmed.

BY THE COURT:

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John A. Dooley, Associate Justice

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Marilyn S. Skoglund, Associate Justice

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Frederic W. Allen, Chief Justice (Ret.)

Specially Assigned