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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2006-168

OCTOBER TERM, 2006

In re Appeal of Frederick LeBlanc	}	APPEALED FROM:
	}	
	}	
	}	Environmental Court
	}	
	}	
	}	DOCKET NO. 48-2-05 Vtec

Trial Judge: Thomas S. Durkin

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

Frederick LeBlanc appeals pro se from an Environmental Court judgment dismissing his appeal as untimely. He contends the court applied an erroneous standard of proof. We affirm.

This is the second appeal in this matter. The underlying dispute involves a decision, entered on January 26, 2005, by the Colchester Development Review Board (DRB) approving Mary Ann Wichmann=s application for a two-lot residential subdivision. LeBlanc appealed the DRB decision, but the environmental court dismissed the appeal as untimely, noting that it was filed with the court on February 28, several days beyond

the thirty-day deadline of February 25, 2005.

In In re LeBlanc, No. 2005-179 (Vt. December 1, 2005) (unreported mem.), however, we reversed the judgment of dismissal and remanded to the trial court for further proceedings to determine whether LeBlanc=s notice of appeal was timely filed with the Town of Colchester. See V.R.E.C.P. 5(b)(1) (if a notice of appeal is mistakenly filed with the tribunal appealed from, the appropriate officer shall note the date on which it was received and it shall be deemed filed with the environmental court on the date so noted). We observed, in this regard, that a copy of the notice of appeal received by the Town had a date stamp which was not entirely clear but could be read as either February 23 or February 28. We thus remanded to the trial court to determine whether the DRB had received the notice of appeal on or before the due date of February 25, 2005.

Following our remand, the trial court invited the parties to submit further memoranda and affidavits, and held an evidentiary hearing on March 30, 2006. Wichmann, through counsel, submitted a motion for summary judgment, with supporting affidavits, and presented documentary evidence and testimony at the subsequent hearing. LeBlanc submitted no further filings and did not appear at the hearing.

Following the hearing, the court issued a written decision, finding as follows. LeBlanc prepared a notice of appeal on February 24, 2005, and mailed it to the environmental court, the DRB, and Wichmann. The certificate of service indicates that he placed the notices in the mail on February 24, 2005, thereby refuting any inference that the date-stamp on the notice received by the Town was a A23" rather than a A28.@ The court also noted that the notice of appeal was transmitted to the Town in an envelope postmarked February 25, 2006. In addition, the court examined the original date-stamped notice of appeal from the Town=s files. Although the court observed that the date stamp was well worn, making it difficult to discern from copies whether it said A28" or A23,@ it found that the original was more legible and clearly read AFebruary 28, 2005.@ In addition, an employee of the Town=s planning and zoning department testified that she replied to LeBlanc=s appeal the day after it was received, on March 1, 2005, and her letter was received in evidence. The Town=s DRB coordinator also sent a letter to LeBlanc at the end of March, noting that the appeal had been received on February 28, 2005.

The court thus concluded that all of the evidence supported the conclusion that LeBlanc=s notice of appeal was received by the Town on February 28, 2005, beyond the thirty-day deadline of February 25, 2005, and therefore must be dismissed as untimely.

In his pro se appeal, LeBlanc suggests that his due process rights were violated by the court=s application of a Areasonable doubt,@ rather than a preponderance of the evidence, standard of proof. He appears to suggest, in other words, that the court applied a standard under which, if there was any reasonable doubt about the timeliness of his appeal, the court applied a presumption in favor of the Town. He premises his claim on the court=s reliance on circumstantial evidence. We find nothing in the court=s opinion, however, to support an inference that it applied an incorrect standard of proof. Furthermore, the law generally makes no distinction between the weight or significance accorded to direct evidence, such as eyewitness testimony, and circumstantial evidence, which is used to indirectly prove a fact. State v. Baird, 2006 VT 86, & 31. Indeed, circumstantial evidence is routinely admitted and relied upon in civil casesCwhich employ a preponderance of the evidence standardC to prove the essential elements of the claim. See, e.g., Travelers Ins. Cos. v. Demarle, Inc., USA, 2005 VT 53, & 10, 178 Vt. 570 (mem.) (noting that circumstantial evidence is sufficient to prove element of causation in tort action); Hall v. Miller, 143 Vt. 135, 140 (1983) (observing that A[c]ircumstantial evidence provides an appropriate basis from which to draw reasonable inferences.@). Accordingly, we discern no error, and no basis to disturb the judgment.

Affirmed.

BY THE COURT:

_____

Paul L. Reiber, Chief Justice

_____

John A. Dooley, Associate Justice

_____

Marilyn S. Skoglund, Associate Justice