

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2004-227

JANUARY TERM, 2005

	}	APPEALED FROM:
	}	
Stephen Brooks	}	Chittenden Superior Court
	}	
v.	}	DOCKET NO. S1011-03 CnC
	}	
Town of Charlotte	}	Trial Judge: Matthew I. Katz
	}	
	}	

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

Plaintiff appeals from a summary judgment entered against him on his claim against the Town of Charlotte for damages resulting from plaintiff's reliance on a zoning permit. We affirm.

In In re Charlotte Farm & Mills, the full Court considered plaintiff' s challenge to an environmental court judgment that plaintiff's zoning permit for agricultural and forestry uses did not authorize him to operate a portable sawmill for logs originating offsite. 172 Vt. 607, 609 (2001) (mem.). Plaintiff did not challenge the merits of the environmental court' s opinion that found his use exceeded his permit. He limited his appeal to the question of subject matter jurisdiction, which the Court decided against him. Id. at 608. At the end of its decision, the Court addressed a separate claim that the zoning board of adjustment for the Town of Charlotte and the environmental court were estopped from revisiting the scope of plaintiff's zoning permit:

Charlotte Farm also states in a brief footnote that there is no merit to the trial court' s determination that the ZBA and the court were not estopped from reviewing the zoning administrator' s November 24, 1998 decision. To the extent that the statement can be construed as a claim of error, it is inadequately briefed. Charlotte Farm neither explains how the court erred in concluding that at least two of the elements of estoppel were not met in this case, nor even discusses the elements of estoppel.

Id. at 609 (internal citation omitted).

In August 2003, plaintiff sued the Town of Charlotte, claiming that he relied on the zoning permit and suffered damages as a result. Plaintiff claimed damages equal to the amount of his investment in the sawmill, lost profits, and litigation costs.

The Town moved to dismiss the complaint. The superior court treated the motion as a motion for summary judgment, relying on the proceedings in the environmental court. The court determined that plaintiff litigated the issue of his reliance on the permit in the earlier proceeding and that his efforts were unsuccessful. This appeal followed the superior court' s entry of judgment for the Town.

Our standard of review is the same as the trial court's. Dulude v. Fletcher Allen Health Care, Inc., 174 Vt. 74, 79 (2002). If no genuine issue of material fact exists, and any party is entitled to judgment as a matter of law, summary judgment is proper. Id.; V.R.C.P. 56(c)(3). In this case, we conclude that the trial court properly dismissed plaintiff' s claims on grounds that they are barred from relitigation.

Plaintiff claims on appeal that he did not raise the issue of estoppel before the environmental court and therefore the issue of his reliance on the permit may be litigated in superior court. We disagree. Collateral estoppel bars a party from relitigating an issue that was resolved by a final judgment on the merits in an earlier proceeding involving the same issue where the party had a full and fair opportunity to litigate the issue in the earlier proceeding. Trepanier v. Getting Organized, Inc., 155 Vt. 259, 266 (1990). Collateral estoppel applies to issues of fact and law. Mellin v. Flood Brook Union Sch. Dist., 173 Vt. 202, 209 (2001). The record establishes that the issue of plaintiff's reliance on the permit was litigated and decided against plaintiff by the environmental court. This Court's opinion in plaintiff's appeal from the environmental court's decision reflects that fact. The superior court's decision to enter summary judgment for the Town on collateral estoppel grounds was, therefore, proper.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice