

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

ENTRY ORDER

SUPREME COURT DOCKET NO. 2007-146

AUGUST TERM, 2007

Leon Beliveau	}	APPEALED FROM:
	}	
v.	}	Chittenden Superior Court
	}	
City of Burlington	}	DOCKET NO. S0308-05 CnC
	}	
		Trial Judge: Matthew I. Katz

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

Plaintiff Leon Beliveau appeals pro se from the trial court’s dismissal of his petition for relief in this public-records case. We affirm.

This case is before the Court for a second time. In the first appeal, plaintiff sought information regarding the establishment of residential districts in the City of Burlington, including a copy of a 1965 zoning-ordinance book that supposedly contained authorization for the City to enforce its minimum housing-standard ordinance. See Beliveau v. City of Burlington, No. 2005-404, slip op. at 1 (Vt. August 30, 2006). The City responded that there was no 1965 zoning book, and in any event, its authority to enforce the minimum housing standards was statutory. The City thus moved to dismiss plaintiff’s complaint for failure to state a claim upon which relief could be granted. The trial court granted its request. On appeal, we reversed and remanded, concluding that plaintiff had in fact stated a viable claim—the production of a certain document—and thus, dismissal under V.R.C.P. 12(b)(6) was inappropriate. We explained that on remand, the trial court must consider, and if necessary hold a hearing and take evidence on, whether the public record plaintiff sought in fact existed and could be produced by the City. Beliveau, No. 2005-404, slip op. at 2-3.

The court held an evidentiary hearing, and in March 2007, it issued an order dismissing plaintiff’s petition. As the court explained, plaintiff sought an order directing City officials to release to him ordinance provisions from 1965 showing density limitations for different residential zones. He also sought documents showing when density requirements were enacted. City officials made substantial efforts to find documents related to plaintiff’s first request. They also allowed plaintiff to search their files and records, providing him assistance in the search process. No relevant documents were found. The court thus concluded that the City did not possess any particular document showing zoning-density limitations effective in 1965, and in fact, such zoning-density limitations did not actually exist.

Turning to plaintiff’s second request—information on when density requirements were enacted—the court concluded that the City was not obligated under the public-records statute to

engage in research to answer legal questions from the public. Rather, its only obligation was to make its records available. Insofar as the City had made all of its records available, the court found that plaintiff was not entitled to any further legal relief. It thus dismissed his petition. This appeal followed.

Plaintiff raises numerous arguments, most of which are outside the scope of this appeal. We do not address plaintiff's arguments regarding the legality of the City's occupancy limits, nor any other issues that were not raised before the trial court, such as the outcome of plaintiff's post-trial research efforts. See Hoover v. Hoover, 171 Vt. 256, 258 (2000) (Supreme Court's review on appeal is confined to the record and evidence adduced at trial; Court cannot consider facts not in the record). Plaintiff's attempt to relitigate the case below is equally unavailing. The trial court found that the documents plaintiff sought do not exist. This finding is based on credible evidence in the record, and we will not disturb it on appeal. Kanaan v. Kanaan, 163 Vt. 402, 405 (1995) (trial court's findings entitled to wide deference on review because it is in unique position to assess the credibility of witnesses and weigh the evidence presented). The court's conclusion that the City was not obligated to conduct legal (or "historical") research for plaintiff is equally sound. See 1 V.S.A. §§ 316-319. Plaintiff's petition for relief was therefore properly dismissed.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

John A. Dooley, Associate Justice

Denise R. Johnson, Associate Justice