

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

ENTRY ORDER

**VERMONT SUPREME COURT
FILED IN CLERK'S OFFICE**

SUPREME COURT DOCKET NO. 2008-131

MAY 29 2009

MAY TERM, 2009

Wallace Nolen	}	APPEALED FROM:
	}	
v.	}	Washington Superior Court
	}	
State of Vermont, William Sorrell, Jeb Spaulding and Elizabeth Pearce	}	DOCKET NO. 510-7-07 Wncv
	}	

Trial Judge: Dennis R. Pearson

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

Plaintiff appeals pro se from the trial court's final judgment order, granting partial summary judgment to the State and dismissing his remaining claim with prejudice for lack of standing. We affirm.

In May 2007, plaintiff requested information about abandoned property from the Office of the State Treasurer pursuant to the Access to Public Records Act, 1 V.S.A. §§ 315-320. The State Treasurer informed plaintiff that it would provide him with a computer disc that contained information about unclaimed property, but pursuant to 27 V.S.A. § 1253(c), it would not provide him the names of the owners of property that had been in the possession of the unclaimed property division for less than twenty-four months. Section 1253(c) provides in relevant part that the Treasurer may "deny requests for lists of owners in any format for 24 months after the date the property is paid or delivered to the treasurer." Plaintiff filed a complaint in superior court challenging the Treasurer's decision and also alleging that the Unclaimed Property Act, 27 V.S.A. §§ 1241-1270, was unconstitutional. The State moved for partial summary judgment on the first issue, and the court granted its request. The court found that 27 V.S.A. § 1253(c) plainly and unambiguously allowed the Treasurer to withhold the documents in question, and it found no genuine disputed facts had been submitted that would create a question of abuse of discretion.

The court later granted summary judgment to the State on plaintiff's remaining constitutional claim, agreeing with the State that plaintiff lacked standing. The court explained that while plaintiff obviously believed that the Treasurer had not implemented the Act effectively, plaintiff did not allege that he had any pending claim before the Treasurer to retrieve allegedly abandoned property, or that he had otherwise been harmed by any such actions of the Treasurer. Thus, it concluded that plaintiff failed to allege or submit any evidence of any injury suffered by him personally, which was causally connected to any of the Treasurer's conduct complained of, insofar as it related to the abandoned property statutes in general. To the extent that there was any cognizable controversy in this case, the court continued, it was limited to the access-to-public-records issue, which had already been resolved. The court therefore granted judgment to the State and dismissed plaintiff's complaint. Plaintiff appealed.

Plaintiff first challenges the court's decision regarding his public records request, although he does not directly address the court's rationale. Plaintiff asserts that he may not be able to locate unclaimed property on the Treasurer's website due to typographical errors. He also suggests that he is entitled to a computer file containing the information he seeks. These arguments appear irrelevant to the issue decided, and plaintiff fails to show that the trial court erred. As the trial court found, 27 V.S.A. § 1253(c) plainly allows the Treasurer to withhold the information at issue here. See Leno v. Meunier, 125 Vt. 30, 33 (1965) (“[W]here the meaning of a statute is plain there is no necessity for construction, and the courts must enforce it according to its terms.” (citation omitted)). Indeed, plaintiff does not appear to argue otherwise, nor does he show that the Treasurer abused his discretion by following the plain language of the statute. We find no error in court's conclusion that the State was entitled to summary judgment on this claim.

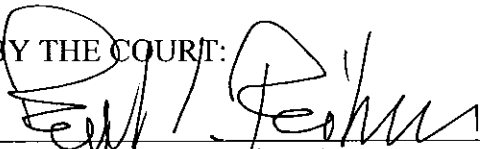
Plaintiff next argues that the court erred in dismissing his constitutional claim for lack of standing. He asserts that he does have an interest in property held by the Treasurer, and he also indicates that he was the victim of two seizures of his property by New York State officials. He maintains that his failure to present proof of these interests should not have resulted in dismissal, and that he should have been provided additional time to obtain the necessary proof. Plaintiff also argues that the current statutes are unconstitutional.

As an initial matter, we do not consider any evidence that was not presented to the trial court below. 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). This includes plaintiff's assertion that he has now filed a claim with the Treasurer to recover certain funds.

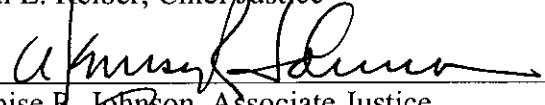
We agree with the trial court that, based on the evidence presented, plaintiff lacked standing to pursue his challenge to the Unclaimed Property Act. A court has the power only to “determine actual controversies arising between adverse litigants, duly instituted in courts of proper jurisdiction.” Parker v. Town of Milton, 169 Vt. 74, 77 (1998). One element of the case or controversy requirement is that a plaintiff “must have standing, that is, [he or she] must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law.” Id. The existence of an actual controversy “turns on whether the plaintiff is suffering the threat of actual injury to a protected legal interest, or is merely speculating about the impact of some generalized grievance.” Id. (quotation omitted). In this case, as the trial court found, plaintiff failed to allege an actual injury. In fact, he averred in his complaint that he had not filed a claim with the Treasurer's office to reclaim any abandoned property. It is not apparent how the alleged seizure of plaintiff's property in New York demonstrates how plaintiff has standing to pursue a challenge to the Vermont statutes. To the extent that he alleges that certain Vermont property was seized, he made no attempt to recover this property, as set forth above. Plaintiff did not request an extension of time to discover additional proof to support his claim; in fact, plaintiff filed a motion for summary judgment. The court did not err in failing to provide plaintiff additional time sua sponte. Because plaintiff failed to demonstrate any actual injury, he cannot pursue his claim. Plaintiff's reliance on Roe v. Wade, 410 U.S. 113 (1973), is misplaced. The Supreme Court did not abandon basic principles of standing in that case. Instead, it recognized a well-established exception to the mootness doctrine for cases that are “‘capable of repetition, yet evading review.’” Id. at 125. Mootness is not at issue here, and even if it were, this case is not one that is capable of repetition yet evading review. Because

plaintiff lacks standing, we do not consider the merits of his challenge to the Vermont statutes. We find no error in the court's decision.

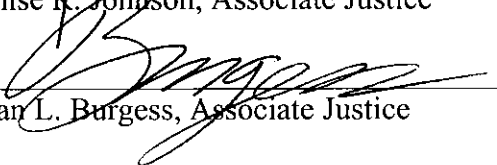
Affirmed.

BY THE COURT: 

Paul L. Reiber, Chief Justice



Denise E. Johnson, Associate Justice



Brian L. Burgess, Associate Justice