THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2011-0793, Harriet E. Cady v. Town of Deerfield & a., the court on May 3, 2012, issued the following order:

Having considered the brief filed by the petitioner, Harriet E. Cady, the memorandum of law filed by respondent, Town of Deerfield, and the record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). The petitioner appeals the trial court's order dismissing her petition filed under New Hampshire's Right-to-Know Law. See RSA ch. 91-A (2001 & Supp. 2011). We affirm in part, reverse in part, and remand.

In March 2011, the petitioner filed her petition, alleging, inter alia, that the Town's conservation and open space committees failed to post their meetings properly. See RSA 91-A:2, II (Supp. 2011). The Town denied the allegations pertaining to the conservation committee, but admitted those pertaining to the open space committee. However, the Town averred that on November 8, 2010, "at a properly noticed public meeting," the open space committee had "reviewed all actions and votes taken during its existence and voted to ratify and confirm all such actions and votes."

Subsequently, the trial court held a hearing on the matter at which the Town admitted "that some of its municipal boards were not posting their meetings properly." The Town stated that it would continually remind its boards of their responsibilities under the Right-to-Know Law. Ultimately, the trial court dismissed the petitioner's petition on the ground that she had failed to meet her burden of proving that the Town had willfully violated the Right-to-Know Law. This appeal followed.

On appeal, the petitioner argues, inter alia, that the trial court erred by requiring her to prove that the Town's admitted violation of the Right-to-Know Law was willful in order to prevail upon her petition. Resolving this issue requires interpreting the Right-to-Know Law; this is a question of law, which we examine de novo. ATV Watch v. N.H. Dep't of Resources & Econ. Dev., 155 N.H. 434, 437 (2007). We apply the ordinary rules of statutory construction to our review of the Right-to-Know Law, and, accordingly, we first look to the plain meaning of the words used. Ettinger v. Town of Madison Planning Bd., 162 N.H. 785, 788 (2011). Words and phrases are construed according to the common and approved usage of the language unless from the statute it appears that a different meaning was intended. Id.; see RSA 21:1, 2 (2000).

We resolve questions regarding the Right-to-Know Law with a view to best effectuate the statutory objective of facilitating open access to the actions and decisions of public bodies. Ettinger, 162 N.H. at 788.

RSA 91-A:2, II provides, in pertinent part:

> Except in an emergency . . . , a notice of the time and place of each . . . meeting [of a public body], including a nonpublic session, shall be posted in 2 appropriate places one of which may be the public body's Internet website, if such exists, or shall be printed in a newspaper of general circulation in the city or town at least 24 hours, excluding Sundays and legal holidays, prior to such meetings.

RSA 91-A:7 (Supp. 2011) provides that "[a]ny person aggrieved by a violation" of the Right-to-Know Law may bring a petition for injunctive relief. Such a "petition shall be deemed sufficient if it states facts constituting a violation of this chapter." RSA 91-A:7. To remedy any violation, the court "may issue an order to enjoin future violations" of the Right-to-Know Law, "may invalidate any action of a public body or agency taken at a meeting held in violation of" the Right-to-Know Law and may, under certain circumstances, award reasonable attorney's fees and costs. RSA 91-A:8 (Supp. 2011). Costs "shall" be awarded if the court finds that the public body "refuse[d] to provide a governmental record or refuse[d] access to a governmental proceeding to a person who reasonably requests the same" and that "such lawsuit was necessary in order to make the information available or the proceeding open to the public." RSA 91-A:8, I; see ATV Watch, 155 N.H. at 439. Reasonable attorney's fees, on the other hand, shall be awarded only if the requisites for costs are established and the court finds that the public body "knew or should have known that the conduct engaged in was a violation of" the Right-to-Know Law. RSA 91-A:8, I; see ATV Watch, 155 N.H. at 439; see also Ettinger, 162 N.H. at 792.

These provisions establish that in order to find that a public body has violated the Right-to-Know Law, a court need not find that the public body did so "willfully." Thus, the trial court erred when it dismissed the petitioner's petition pertaining to the failure of certain of the Town's boards to comply with RSA 91-A:2, II based upon her failure to show a willful violation. We, therefore, reverse the court's dismissal of this part of the petitioner's petition. We remand for the trial court to consider whether to grant the petitioner's requests for injunctive relief and/or costs for this violation. See ATV Watch, 155 N.H. at 437-41.

We reject the Town's request that we dismiss the petitioner's appeal for failure to provide an adequate record on appeal, since the trial court's error is apparent from the face of its order. See Atwood v. Owens, 142 N.H. 396, 397

(1997) (absent a trial transcript, we review the trial court's order for errors of law only). Likewise, we reject the Town's request for an award of attorneys' fees under Rule 23.

We have reviewed the petitioner's remaining arguments and conclude that they warrant no extended consideration. See Vogel v. Vogel, 137 N.H. 321, 322 (1993).

Affirmed in part; reversed in part; and remanded.

Dalianis, C.J., and Hicks, Conboy and Lynn, JJ., concurred.

Eileen Fox,
Clerk

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