

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2012-0816, Deborah Sumner v. State of New Hampshire, the court on April 25, 2013, issued the following order:

Having considered the briefs and record submitted on appeal, we conclude that oral argument is unnecessary in this case. See Sup. Ct. R. 18(1). We affirm.

The petitioner, Deborah Sumner, appeals an order of the superior court dismissing her petition against the respondent, the State of New Hampshire, for injunctive relief and costs pursuant to the Right-to-Know Law, see RSA chapter 91-A (2001 & Supp. 2012), and Part I, Article 8 of the New Hampshire Constitution. She challenges the trial court's ruling that a statute exempting ballots cast in an election from RSA chapter 91-A, see RSA 659:95, II (Supp. 2012), is valid and does not otherwise violate the New Hampshire Constitution.

In reviewing the trial court's order granting the State's motion to dismiss, our task is to determine whether the factual allegations in the petition are reasonably susceptible of a construction that would permit recovery. See Kilnwood on Kanasatka Condo. Unit Assoc. v. Smith, 163 N.H. 751, 752 (2012). We assume the well-pleaded allegations of fact in the petition to be true, and construe all reasonable inferences from them in the petitioner's favor. See id. We also consider documents referenced in the petition, the authenticity of which the parties do not dispute. See Beane v. Dana S. Beane & Co., 160 N.H. 708, 711 (2010). We do not, however, credit those allegations that are not well-pleaded, "including the statement of conclusions of fact and principles of law." ERG Inc. v Barnes, 137 N.H. 186, 190 (1993). We then test the well-pleaded facts against the applicable law. Id.

The record reflects that in May 2012, the petitioner submitted a request to the Secretary of State, ostensibly under the Right-to-Know Law and Part I, Article 8, to review "ballots cast in Jaffrey for the November 2010 general election." In response, the Secretary of State notified the petitioner that "this office does not have possession of the ballots" she was seeking (Jaffrey ballots), and that, even if it had possession of the ballots, RSA 659:95 prohibits "the viewing of ballots outside of a formal recount or court order." The petitioner then filed the present petition solely against the State, requesting that the trial court "order all Jaffrey ballots from the November 2, 2010 election to be preserved," "allow her to review these ballots," "allow her to review ballots in future elections without need for a court order," and "order the state's reimbursement for whatever costs she has incurred in bringing this action." She asserted that the Jaffrey ballots were within the custody of the Town Clerk for the Town of Jaffrey.

In dismissing the petition, the trial court reasoned that, to prevail, the petitioner was required to establish both that: (1) the Jaffrey ballots were in the State's possession, custody, or control; and (2) her review of the Jaffrey ballots was not otherwise prohibited by statute. Because the petitioner conceded that neither the State nor any of its agencies had possession, custody, or control of the Jaffrey ballots, the trial court ruled that the petition was not susceptible of a construction that would permit recovery. The trial court further ruled that the petitioner's review of the Jaffrey ballots was barred by RSA 659:95, II, and rejected her challenges to the constitutionality of the statute and to whether it had been passed in violation of the legislature's own procedures.

On appeal, the petitioner challenges the trial court's determination that RSA 659:95, II is valid. She has not argued, however, that the trial court erred by ruling that she was required to establish the State's possession, custody, or control of the Jaffrey ballots to survive its motion to dismiss. See State v. Blackmer, 149 N.H. 47, 49 (2003) (issues not raised in the notice of appeal or adequately developed in the brief are waived). Because the trial court's ruling on that issue supports its decision to dismiss the petition, and because the petitioner has waived any argument that the trial court erred by dismissing the petition on that basis, see id., we need not address her arguments that RSA 659:95, II and similar statutes are invalid, see Hathorn v. Loftus, 143 N.H. 304, 311 (1999) (affirming where valid alternative ground supported trial court's decision); State v. Berrocales, 141 N.H. 262, 264 (1996) (noting our long-standing policy not to address constitutional issues unless absolutely necessary).

Affirmed.

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

**Eileen Fox,
Clerk**

Distribution:

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✓ Ms. Deborah Sumner

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