DOCKET NO: HHBCV226076363S

SUPERIOR COURT

OLSON, MATTHEW
V.
FREEDOM OF INFORMATION COMMISSION

JUDICIAL DISTRICT OF NEW BRITAIN
AT NEW BRITAIN

8/30/2024

ORDER

The following order is entered in the above matter:

ORDER:

The court concludes that there is substantial evidence in the record to support the November 23, 2023 decision (decision), see Return of Record (ROR), at 1385-1416, of the defendant, the Freedom of Information Commission (commission), that the plaintiff, Matthew Olson, is a vexatious requester under General Statutes § 1-206(b)(5). The court therefore dismisses this appeal.

Mr. Olson challenges the decision on three grounds: (1) that the commission misinterpreted the statutory meaning of "vexatious requester" under § 1-206(b)(5); (2) that the term "vexatious requester" under § 1-206(b)(5) is unconstitutionally vague; and (3) that § 1-206(b)(5) constitutes unconstitutional viewpoint discrimination under the Connecticut constitution. See Docket No. 125.00, at 1.

This court's "review of the commission's decision 'is governed by the Uniform Administrative Procedure Act General Statutes § 4–166 et seq. ... and the scope of that review is very restricted.... With regard to questions of fact, it is neither the function of the trial court nor of this court to retry the case or to substitute its judgment for that of the administrative agency.... Even as to questions of law, the court's ultimate duty is only to decide whether, in light of the evidence, the agency has acted unreasonably, arbitrarily, illegally, or in abuse of its discretion." Lash v. Freedom of Info. Comm'n, 300 Conn. 511, 517, 14 A.3d 998, 1002 (2011). "[R]eview of an administrative agency decision requires a court to determine whether there is substantial evidence in the administrative record to support the agency's findings of basic fact and whether the conclusions drawn from those facts are reasonable. . . . Neither this court nor the trial court may retry the case or substitute its own judgment for that of the administrative agency on the weight of the evidence or questions of fact. . . . Our ultimate duty is to determine, in view of all of the evidence, whether the agency, in issuing its order, acted unreasonably, arbitrarily, illegally or in abuse of its discretion." (Internal quotation marks omitted.) Wheelabrator Lisbon, Inc. v. Dept. of Public Utility Control, 283 Conn. 672, 690-91, 931 A.2d 159 (2007).

"Substantial evidence exists if the administrative record affords a substantial basis of fact from which the fact in issue can be reasonably inferred. . . . Such a standard of review allows less room for judicial scrutiny than does the 'weight of the evidence' rule or the 'clearly erroneous' rule. . . . In conducting its review, a court must defer to the agency's assessment of the credibility of the witnesses and to its right to believe or disbelieve the evidence presented by any witness, even an expert, in whole or in part." (Citations omitted; internal quotation marks omitted.) Connecticut Light & Power Co. v. Dept. of Public Utility Control, 216 Conn. 627, 639-40, 583 A.2d 906 (1990).

With respect to the first issue, the commission determined the meaning of the term "vexatious," by using the common dictionary definition of the term. See City of Meriden v. FOIC, 191 Conn. App. 648, 657–58 (2019) aff'd 339 Conn. 310, 320-321 (2021) (In the absence of defined statutory terms, the Commission may "presume… that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use.... Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary."); see also § 1-1(a) ("In the

construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly."). The record makes plain that the commission adopted the definition of the term "vexatious" for purposes of § 1-206(b)(5) as "causing vexation;" "distressing;" and "intended to harass." See ROR, at 1387. The commission derived this definition from the Merriam-Webster's Collegiate Dictionary (11th Ed. 2003). Id. Because the commission adopted the ordinary and plan meaning to the statutory term "vexatious" as expressed in a dictionary, the court concludes that the commission did not misinterpret the meaning of that statutory term. Additionally, the court concludes that the commission's detailed and extensive recitation of facts as set forth at ROR 1387-1413 plainly provide substantial evidence in the record supporting the commission's conclusion that Mr. Olson is a vexatious requester as that term is used in § 1-206(b)(5).

As to Mr. Olson's second issue – that the term "vexatious requester" is unconstitutionally vague, the court adopts its analysis on the same issue as set forth in Godbout v. Freedom of Info. Comm'n, No. HHB-CV-22-5032223-S, 2024 WL 686904, at *5 (Conn. Super. Ct. Feb. 16, 2024) and concludes that General Statutes § 1-206(b)(5) is not unconstitutionally vague as applied to Mr. Olson for the same reasons as set forth in the Godbout decision.

As to Mr. Olson's third issue, the court concludes that the parties did not adequately brief the issue under Article First § 5 of the Connecticut constitution and therefore the court declines to consider this claim. "We repeatedly have stated that we are not required to review issues that have been improperly presented to this court through an inadequate brief. ... Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. ... For this court judiciously and efficiently to consider claims of error raised on appeal ... the parties must clearly and fully set forth their arguments in their briefs. ... The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited. Roman v. Comm'r of Correction, 223 Conn. App. 111, 121–22, 307 A.3d 934, 943 (2023), cert. denied, 348 Conn. 952, 308 A.3d 1039 (2024). Here, Mr. Olson cited only general Connecticut constitutional law that was admittedly from a "slightly different context," see Docket No. 125.00, at 14. Mr. Olson cited no substantive law whatsoever that was directly applicable to his argument that § 1-206(b)(5) is improper viewpoint discrimination under Article First § 5 of the Connecticut constitution. The court therefore declines to review this claim as inadequately briefed.

Judicial Notice (JDNO) was sent regarding this order.

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Judge: MATTHEW JOSEPH BUDZIK

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