

ENTRY ORDER

Jeffrey Rivard* v. Town of Brattleboro et al. } APPEALED FROM:
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 } Superior Court, Windham Unit,
 } Civil Division
 } CASE NO. 26-CV-00740
 } Trial Judge: John Treadwell

Plaintiff appeals the dismissal of his complaint for review of governmental action. We affirm.

Defendants moved to dismiss plaintiff's complaint for lack of standing and failure to state a claim upon which relief could be granted. The trial court granted the motion, concluding that plaintiff did not allege injury in fact and therefore failed to establish standing. Plaintiff moved for reconsideration, which the court denied. This appeal followed.

We review the trial court’s decision granting a motion to dismiss de novo. Wool v. Off. of Pro. Regul., 2020 VT 44, ¶ 8, 212 Vt. 305. “Motions to dismiss for lack of subject-matter jurisdiction and for failure to state a claim under Vermont Rules of Civil Procedure 12(b)(1) and (6) may not be granted unless it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” Id. (quotation omitted). “[W]e assume as true the nonmoving party’s factual allegations and accept all reasonable inferences that may be drawn from those facts.” Murray v. City of Burlington, 2012 VT 11, ¶ 2, 191 Vt. 597 (mem.).

“[S]tanding is rooted in constitutional principles requiring actual controversies between adverse litigants and is a jurisdictional prerequisite.” Wool, 2020 VT 44, ¶ 10. “To satisfy constitutional standing, a plaintiff must allege facts on the face of the complaint that show (1) injury in fact, (2) causation, and (3) redressability.” Id. (quotation omitted). The plaintiff “must have suffered a particular injury that is attributable to the defendant and that can be redressed by a court of law.” Parker v. Town of Milton, 169 Vt. 74, 77 (1998).

We agree with the trial court that, accepting the facts alleged in plaintiff’s complaint as true and drawing all reasonable inferences in his favor, plaintiff failed to establish that he had standing to bring his challenge to the Town’s trespass notice. While plaintiff alleged that he “has been personally issued warnings using this template and has attempted to invoke the provided appeal process,” but “the Town failed to respond,” his complaint did not seek review of those warnings or the Town’s alleged failure to respond in his specific case. Rather, he sought to enjoin the Town’s future use of its trespass notice, as a member of the public. Cf. Ladd v. Valerio, 2005 VT 81, ¶ 4, 178 Vt. 614 (mem.) (affirming dismissal for lack of standing where plaintiff speculated about possible impact of policy and raised broad challenges to Defender General’s directive but did not establish that he personally was threatened with injury from directive); Town of Cavendish v. Vt. Pub. Power Supply Auth., 141 Vt. 144, 148 (1982) (“[I]llegality alone is insufficient to confer standing in a declaratory judgment action.”). The remedy plaintiff seeks is untethered to the specific trespass notices he received. We therefore affirm the court’s dismissal of his complaint for lack of standing.

Because plaintiff failed to establish standing to bring this complaint, we do not reach his claims that the trespass notice exceeds the Town’s municipal authority or violates the Common Benefits Clause.*

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice

* We would not address plaintiff’s Common Benefits claim in any event, because he failed to preserve it by raising it below. Progressive Ins. Co. v. Brown ex rel. Brown, 2008 VT 103, ¶ 6, 184 Vt. 388 (“[I]n order to rely upon an argument on appeal, an appellant must properly preserve it by presenting it to the trial court with specificity and clarity.” (quotation omitted)).