



Note: In the case title, an asterisk () indicates an appellant and a double asterisk (**) indicates a cross-appellant. Decisions of a three-justice panel are not to be considered as precedent before any tribunal.*

ENTRY ORDER

AUGUST TERM, 2026

Thomas Fuss* v. Assistant Attorney	}	APPEALED FROM:
General Patrick T. Gaudet et al.	}	
	}	Superior Court, Orleans Unit, Civil Division
	}	CASE NO. 25-CV-04826
		Trial Judge: Rory T. Thibault

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

Plaintiff appeals a civil division order dismissing his complaint for declaratory relief. On appeal, plaintiff argues that the court misconstrued the basis for his claims and that he is entitled to relief. We conclude that plaintiff lacks standing and affirm dismissal on this basis.

In October 2025, plaintiff filed a complaint in the civil division against an Assistant Attorney General,* the Attorney General, and Commissioners of the Public Utility Commission (PUC) seeking declaratory and injunctive relief. Plaintiff sought to prevent the PUC from effectuating a certificate of public good (CPG) that the PUC granted to applicant Industrial Tower Wireless to construct a cell tower near plaintiff's home. Plaintiff alleged that the CPG was obtained through false pretenses and that the Attorney General neglected her duty by refusing to prosecute the applicant for the crime of forgery. The allegations of misrepresentation and forgery stemmed from plaintiff's allegations that the applicant's CPG application to the PUC indicated that it was planning to construct a "Telecommunications Facility," whereas in subsequent litigation in federal district court, the applicant stated that it had applied for a "personal wireless service facility." Plaintiff alleged that he notified the Attorney General of this false claim, but the Attorney General did not prosecute, explaining that she was not persuaded that the applicant had misled the PUC. Plaintiff sought a declaration that the Attorney General was negligent in representing the PUC and in enforcing the laws.

* While the appeal was pending, plaintiff sought "discovery" in this Court, asserting that the assistant attorney general named as a defendant in this case was no longer employed by the Attorney General's Office and seeking details regarding the termination. The motion is denied. The record on appeal is limited to the filings made in the trial court. V.R.A.P. 10(a).

Defendants moved to dismiss on several grounds pursuant to Vermont Rule of Civil Procedure 12(b)(1) and (6). Defendants alleged that plaintiff lacked standing because he alleged no particularized injury, plaintiff's claims fell outside of the writs available under Vermont Rules of Civil Procedure 74 and 75, defendants were protected by absolute immunity, and plaintiff failed to state a claim upon which relief can be granted. Plaintiff opposed the motion.

The trial court granted the motion to dismiss. The court concluded that plaintiff lacked standing because he had not asserted any injury to himself personally. The court explained that plaintiff's claims about the applicant's behavior or the impact of the CPG were generalized and did not amount to a direct injury to plaintiff. The court further found that it lacked jurisdiction over the claim because although Rule 75 allows for judicial review of governmental action, the review must be as "otherwise available by law," and here plaintiff had not asserted any basis for his claims. V.R.C.P. 75(a). Moreover, plaintiff did not identify any statute providing for review and the review sought did not fit into any common law writ. Finally, the court concluded that plaintiff failed to state a claim upon which relief could be granted because plaintiff had not demonstrated that there were any grounds that would entitle him to relief. The court explained that plaintiff was seeking declaratory relief and sanctions against the Attorney General for failing to initiate criminal prosecutions but the court had no authority to order the Attorney General to initiate criminal proceedings. Plaintiff appeals.

"We review the trial court's disposition of a motion to dismiss de novo, and may affirm on any appropriate ground." Bock v. Gold, 2008 VT 81, ¶ 4, 184 Vt. 575 (mem.). "Dismissal under Rule 12(b)(6) is proper only when it is beyond doubt that there exist no facts or circumstances, consistent with the complaint that would entitle the plaintiff to relief." Id.

On appeal, plaintiff challenges each basis for the trial court's dismissal. Plaintiff contends that the applicant in the PUC proceeding misrepresented facts on a public document and this falsehood caused the PUC to approve the CPG application under false pretenses. He claims that this Court is empowered to oversee the Attorney General and the Court must declare that the CPG is invalid to remedy the alleged wrong.

We conclude that even accepting the allegations in complaint as true, plaintiff fails to demonstrate that he has standing to bring this claim, and we therefore do not reach the other issues. "Standing is a constitutional doctrine, grounded in the Article III limitation of federal-court jurisdiction to actual cases and controversies." Hous. Our Seniors in Vt. Inc. v. Agency of Com. & Cmty. Dev., 2024 VT 12, ¶ 12, 219 Vt. 80; see Paige v. State, 2018 VT 136, ¶ 7, 209 Vt. 379 (explaining that Vermont has adopted case-or-controversy requirement). "To establish standing, plaintiffs must at an irreducible minimum demonstrate the following constitutional elements: (1) injury in fact, (2) causation, and (3) redressability." Hous. Our Seniors in Vt. Inc., 2024 VT 12, ¶ 13 (quotation omitted). This requirement applies to requests for declaratory relief. Town of Cavendish v. Vt. Pub. Power Supply Auth., 141 Vt. 144, 147 (1982).

As to the first element, plaintiff asserts that that he is harmed by the alleged misrepresentation on the CPG application because it caused the PUC to erroneously grant the CPG and this in turn allowed placement of a cell tower that will impact the natural beauty of the area. "The availability of declaratory relief 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. Therefore, to show standing plaintiff must demonstrate that there is an actual injury fairly traceable to defendants and that a favorable judicial decision will prevent or redress the injury. Id. Plaintiff's complaint failed to meet this standard in that it alleged that

the tower impacted the natural landscape but did not allege an impact on him personally. See Summers v. Earth Island Inst., 555 U.S. 488, 494 (2009) (explaining that “generalized harm to the forest or the environment will not alone support standing,” and plaintiff must show how harm affects plaintiff’s personal recreation or other interest); 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). Plaintiff has speculated on harm that will result from the alleged misrepresentation but has not sufficiently linked that alleged wrongdoing to any injury to himself.

Plaintiff strongly asserts that he presented evidence of malfeasance and unlawful behavior, which he claims requires this Court’s intervention. Even accepting his allegations as true, they are insufficient to provide standing. This Court does not issue advisory opinions and “illegality alone is insufficient to confer standing in a declaratory judgment action.” Town of Cavendish, 141 Vt. at 148. Because we conclude that plaintiff has not demonstrated an injury in fact, we do not reach the causation and redressability elements of standing, or the other grounds for dismissal of plaintiff’s claim.

Affirmed.

BY THE COURT:

Paul L. Reiber, Chief Justice

Harold E. Eaton, Jr., Associate Justice

Nancy J. Waples, Associate Justice