

VERMONT SUPERIOR COURT
Environmental Division
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Docket No. 26-ENV-00024

ANR v. Moorcroft et al.

DECISION ON MOTION TO DISMISS

Title: Motion to Dismiss (Motion: #1)

Filer: James Moorcroft, Pro Se

Date: June 30, 2026

Agency of Natural Resources' Memorandum in Opposition to Respondent James Moorcroft's Motion to Dismiss, filed August 3, 2026, by John Zaikowski, Counsel for ANR

The Motion is DENIED.

This is an action for enforcement of an Administrative Order (AO) issued by the Agency of Natural Resources (ANR) against Respondents James Moorcroft, Stephen Severance, and W. John Severance (Respondents) concerning a property at 3979 Vermont Route 14, Brookfield, Vermont (the Property). ANR alleges Respondents have violated Salvage Yard Rule § 26-301(a)(1), which prohibits operation of a salvage yard without a permit. Respondent Moorcroft has moved to dismiss the AO. For the reasons discussed herein, the motion is denied.

As a preliminary matter, this is an environmental enforcement action commenced by the Secretary of ANR pursuant to 10 V.S.A. Chapter 201. Mr. Moorcroft timely requested a hearing on the AO. Our review of environmental enforcement orders is governed by Rule 4 of the Vermont Rules of Environmental Court Proceedings (V.R.E.C.P.). Those Rules expressly provide at V.R.E.C.P. 4(a)(3) that neither Rule 12 nor Rule 56 of the Vermont Rules of Civil Procedure shall apply to proceedings under Rule 4. Consequently, motions to dismiss under V.R.C.P. 12 and motions for summary judgment under V.R.C.P. 56 are unavailable in proceedings involving the Court's review of administrative orders. As ANR observes, however, V.R.E.C.P. 4(d)(4)(C) authorizes the Court to make "orders for the disposition of legal issues prior to hearing." V.R.E.C.P. 4(d)(4)(C). We construe this language as functionally authorizing the Court to dispose of pretrial legal issues using standards that are analogous, if not identical, to the standards employed under Rules 12 and 56. See Reporter's Notes, V.R.E.C.P. 4 ("The provision for the pretrial disposition of legal issues is the functional equivalent of summary judgment but does not carry with it the time limits and other specific requirements of V.R.C.P. 56.")

Mr. Moorcroft's motion to dismiss does not identify a procedural rule on which it is premised—he merely titles his filing "Motion to Dismiss" and requests dismissal in one of the 40

paragraphs set forth therein. Given his self-represented status, we will consider his motion as raising defenses similar to those available under V.R.C.P. 12(b)(1) (lack of jurisdiction over the subject matter), 12(b)(6) (failure to state a claim under which relief can be granted) and 56 (summary judgment).

When a V.R.C.P. 12(b)(1) motion is before this Court, we accept as true all uncontroverted facts set out by the nonmovant and construe them in the light most favorable to him or her. In re DeGraaf Change of Use, No. 62-5-14 Vtec, slip op. at 1 (Vt. Super. Ct. Envtl. Div. July 24, 2014) (Walsh, J.) (citing Rheume v. Pallito, 2011 VT 72, ¶ 2). Similarly, in reviewing a motion to dismiss under V.R.C.P. 12(b)(6), we “accept all facts as pleaded in the complaint [and] accept as true all reasonable inferences derived therefrom” Felis v. Downs Rachlin Martin PLLC, 2015 VT 129, ¶ 12. Motions to dismiss for lack of subject-matter jurisdiction, V.R.C.P. 12(b)(1), and for failure to state a claim, V.R.C.P. 12(b)(6), “may not be granted unless it appears beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief.” Wool v. Office of Prof'l Regulation, 2020 VT 44, ¶ 8 (quotation omitted).

Motions to dismiss for failure to state a claim are disfavored and should be rarely granted. Endres v. Endres, 2006 VT 108, ¶ 4 (mem.). The purpose of a Rule 12(b)(6) motion is to ensure the pleading “gives fair notice of the claim and the grounds upon which it rests.” Bressler v. Keller, 139 Vt. 401, 403 (1981). However, we are not required to accept as true “conclusory allegations or legal conclusions masquerading as factual conclusions.” Colby v. Umbrella, Inc., 2008 VT 20, ¶ 10 (quotation and punctuation omitted). Rather, our aim is to determine “whether the bare allegations of the complaint are sufficient to state a claim.” Kaplan v. Morgan Stanley & Co., 2009 VT 78, ¶ 7 (mem.).

Construing Mr. Moorcroft’s motion to dismiss liberally, it does not appear that his filing anywhere raises an issue regarding this Court’s subject matter jurisdiction over the AO. Further, Title 10, Chapter 201 expressly authorizes this Court to conduct hearings on and enforce administrative orders issued by the Secretary. See 10 V.S.A. §§ 8008, 8012–8014. Therefore, there is no basis to dismiss the AO for lack of subject matter jurisdiction.

Regarding potential dismissal for failure to state a claim, we must determine whether the bare allegations in the AO are sufficient to state a claim. Kaplan, 2009 VT ¶ 7. On its face, the AO specifically identifies the alleged violation.¹ It describes in detail the factual basis for that violation, the procedural history leading to the issuance of the AO, and ANR’s requested relief. As noted above, for the purpose of reviewing the motion to dismiss, we assume the truth of the facts alleged by ANR and make all reasonable inferences in its favor. Nowhere in his motion does Mr. Moorcroft allege that the AO fails to provide him with adequate notice of ANR’s claim, including both the underlying facts and controlling law, or of the relief that ANR seeks. Given that motions to dismiss for failure to state a claim are disfavored, a plaintiff’s low threshold to satisfy Vermont’s notice-pleading standard (which ANR easily satisfies here), and Mr. Moorcroft’s failure to state sufficient grounds for dismissal, we conclude that ANR has alleged sufficient facts to create an issue for trial regarding whether Mr. Moorcroft (and the other Respondents) have violated § 26-301(a) of the Vermont Salvage Yard Rule. Accordingly, the motion to dismiss, to the extent that it alleges failure to state a claim, is denied.

¹ i.e., Vermont Salvage Yard Rule § 26-301(a)(1): Unpermitted operation of a salvage yard

Notwithstanding our denial of Mr. Moorcroft's motion to dismiss, we consider whether summary judgment is appropriate in this case. Summary judgment will be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." V.R.C.P. 56(a); see also In re Estate of Fitzsimmons, 2013 VT 95, ¶ 13 ("An issue of fact is material only if it might affect the outcome." (quotation omitted)); Kelly v. Town of Barnard, 155 Vt. 296, 305 n. 5 (1990) ("Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial." (quotation omitted)). Although Rule 56 and its requirements do not strictly apply given the language of V.R.E.C.P. 4(a)(3), ANR correctly observes that Mr. Moorcroft's motion does not contain a "separate and concise statement of undisputed material facts." See V.R.C.P. 56(c)(1). Reading the allegations in his motion and exhibits together, we cannot conclude that he has identified (and clearly set forth) undisputed material facts that would entitle him to judgment as a matter of law. To the contrary, it appears from the AO (the factual basis of which is supported by affidavits) and ANR's Memorandum in Opposition that there are material facts in dispute that would preclude the Court from granting summary judgment in Mr. Moorcroft's favor.

The Court understands that Mr. Moorcroft has certain arguments that he wishes to make in opposition to the AO, including that he qualifies as an "automobile hobbyist," that his property is grandfathered from the Salvage Yard Rule and that ANR "revived the enforcement in 2017" of a matter he thought resolved in 2014 without notice to him that the salvage yard issues were ongoing. Mr. Moorcroft will be given a full and fair opportunity to present his arguments opposing the AO during the hearing on the merits and/or in any briefing authorized in connection with that hearing. For the reasons stated, however, his motion to dismiss the AO is **DENIED**.

Electronically signed on August 26, 2026, pursuant to V.R.E.F. 9(d).



Joseph S. McLean
Superior Court Judge
Environmental Division