VERMONT SUPREME COURT
109 State Street
Montpelier VT 05609-0801
802-828-4774
www.vermontjudiciary.org

Case No. 26-AP-139

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

NOVEMBER TERM, 2026

Paul Michalski* v. Town of Weston } APPEALED FROM:
} Superior Court, Windsor Unit, Civil Division
} CASE NO. 25-CV-05330
Trial Judge: Kerry Ann McDonald-Cady

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

Plaintiff filed a complaint in the civil division for declaratory and injunctive relief against the Town of Weston seeking to correct the valuation of his property and for the return of excess taxes. The civil division dismissed the case, concluding that plaintiff failed to timely avail himself of the opportunity to appeal provided by statute and therefore had not exhausted his administrative remedies, and in addition, failed to state a claim upon which relief could be granted. On appeal, plaintiff raises numerous arguments in support of his assertion that he was not required to follow the statutory appeal process and was entitled to use the Declaratory Judgment Act to challenge the listers' valuation of his property. We affirm.

Plaintiff alleged the following in his complaint. We accept his assertions as true for purposes of resolving the motion to dismiss. Plaintiff owns property in the Town on the West River. The property experienced significant flooding on three occasions, causing damage to the interior and exterior of the property. In June 2025, plaintiff filed a grievance with the town listers seeking a reduction in the property's appraised value to account for the diminished market value caused by repeated flooding. Plaintiff presented his evidence regarding the home's condition but declined to allow the listers to conduct an inspection of his home. In response, the listers did not make any adjustment to the fair market value. On July 18, 2025, plaintiff appealed to the Board of Civil Authority (BCA), which conducted a hearing and took evidence regarding the property's value. Plaintiff again refused to allow the BCA to inspect the property, and the BCA therefore deemed the appeal to have been withdrawn. See 32 V.S.A. § 4404(c)(1) (providing that if appellant refuses to allow inspection, appeal is deemed withdrawn).

In September 2025, plaintiff filed a formal complaint with the Division of Property Valuation and Review (PVR), alleging that the listers had refused to perform their statutory duties. The PVR Director responded to the complaint, indicating that she had no authority to

address complaints outside of the appeals process. Plaintiff declined to convert his complaint into an appeal, which would provide the Town with a right to inspect the property. See 32 V.S.A. § 4467(c)(1).

On December 1, 2025, plaintiff filed a complaint in the civil division seeking declaratory and injunctive relief against the Town. Plaintiff alleged that the Town refused to properly appraise his property, did not use the best information available to determine fair market value, and violated his rights under Articles 9 and 11 of the Vermont Constitution by failing to appraise his property without an inspection. He sought a declaration that the Town violated its statutory duties and an order requiring the Town to reopen the grievance and appraise his property without the inspection.

The Town moved to dismiss for lack of subject-matter jurisdiction and for failure to state a claim upon which relief may be granted. The Town argued that plaintiff failed to exhaust his administrative remedies by declining to appeal his assessment and that he did not have a right to review of the assessment through an alternate means. The Town also argued that plaintiff failed to state a claim under Articles 9 and 11 of the Vermont Constitution.

The court granted the Town's motion to dismiss. The court held that plaintiff's grievance became final when he failed to appeal the BCA's decision to either the PVR director or the superior court and therefore any action under Vermont Rule of Civil Procedure 74 regarding his property-tax appeal was untimely. As to plaintiff's constitutional claims, the court further concluded that plaintiff failed to state a cause of action for violation of Articles 9 or 11 because this Court has already ruled that an inspection by the listers or BCA is not an unreasonable search and plaintiff failed to allege disparate treatment. The court denied plaintiff's subsequent motion to alter or amend the judgment. Plaintiff appeals.

On appeal, we review the dismissal for lack of subject-matter jurisdiction and for failure to state a claim without deference to the trial court. Jordan v. State Agency of Transp., 166 Vt. 509, 511 (1997). In assessing the merits of the motion, we construe the allegations in the complaint in the light most favorable to plaintiff. Id. "A motion to dismiss for failure to state a claim upon which relief can be granted should not be granted unless it is beyond doubt that there exist no facts or circumstances that would entitle the plaintiff to relief." Richards v. Town of Norwich, 169 Vt. 44, 48 (1999) (quotation omitted).

Plaintiff's suit sought to challenge the accuracy of his property's fair market value. The process for assessing fair market value for tax purposes and the mechanism for challenging a valuation is controlled by statute. The town listers are required to examine property and appraise it at fair market value. 32 V.S.A. § 4041. There is an opportunity for those "aggrieved by [the listers'] appraisals" to file objections and attend a meeting. Id. §§ 4111(g), 4221. A taxpayer may then appeal the listers' final valuation to the BCA. Id. § 4404(a). The BCA conducts a hearing and must inspect the property. Id. § 4404(c)(1). "If, after notice, the [taxpayer] refuses to allow an inspection of the property as required . . . , including the interior and exterior of any structure on the property, the appeal shall be deemed withdrawn." Id. A taxpayer "aggrieved by a decision of the" BCA can appeal to the PVR director or the superior court "by filing a notice of

appeal pursuant to Rule 74 of the Vermont Rules of Civil Procedure within 30 days after entry of the decision of the board of civil authority." Id. § 4461(a).[1]

The statutory process is important because "when administrative remedies are established by statute or regulation, a party must pursue, or exhaust, all such remedies before turning to the courts for relief." Jordan, 166 Vt. at 511 (quotation omitted). The exhaustion requirement "serves the dual purposes of protecting the authority of the administrative agency and promoting judicial efficiency." Id. A failure to exhaust administrative remedies "permits a court to dismiss the action for lack of subject matter jurisdiction." Vt. Coll. of Fine Arts v. City of Montpelier, 2017 VT 12, ¶ 12, 204 Vt. 215 (quotation omitted).

On appeal, plaintiff raises numerous arguments seeking to avoid the exhaustion requirement. He first contends that he was not required to exhaust his administrative remedies before filing this case because a statutory appeal was not available to him. Plaintiff asserts that § 4461(a), the statute providing for appeals from a BCA decision, did not apply here because the BCA considered plaintiff's appeal withdrawn and thus there was no decision on the merits that he could appeal. The plain language of the statute refutes plaintiff's claim. See Tarrant v. Dep't of Taxes, 169 Vt. 189, 197 (1999) (explaining that statutes are interpreted by looking at the plain meaning of the words used). Plaintiff had a remedy available to him if he was "aggrieved by a decision of the" BCA. 32 V.S.A. § 4461(a). By its terms, the statutory right to review was not dependent on the BCA making a decision on the merits. Here, the BCA made a decision to consider plaintiff's appeal withdrawn after he refused an inspection. Plaintiff had a remedy available to him by appealing that decision. Having failed to pursue that avenue for relief, he is precluded from attempting to challenge the valuation by filing a civil action.

Plaintiff's various other arguments to the contrary are unavailing. Plaintiff contends he could not obtain the relief he sought within the statutory appeal process because his claims were not about the valuation of his property. He asserts that an appeal under § 4467 would not allow him to challenge the "legality of a categorical inspection requirement applied at the appraisal and grievance stages." Plaintiff's complaint is at odds with his characterization of his claims on appeal. His complaint seeks to establish the fair market value of his property and asserts that the listers erred in conducting the grievance process. These are exactly the types of issues that are resolved through the statutory property-tax appeal process.[2] See Dewey v. Town of Waitsfield, 2008 VT 41, ¶ 2, 184 Vt. 92 (explaining that one purpose of property-tax appeals is to determine correct valuation of property). To the extent that plaintiff contends that he is not seeking to challenge his property valuation and is instead raising generalized claims about the listers'

[1] On appeal, plaintiff contends that the trial court interpreted this statutory provision incorrectly to require multiple steps instead of a choice of appeal. The text of the court's order does not support plaintiff's assertion.

[2] Despite plaintiff's assertion that he could not bring a claim based on Article 11, this Court has previously addressed a claim that the inspection of property by the listers was an "unreasonable search" in the context of a property-tax appeal. Rasmussen v. Town of Fair Haven, 2016 VT 1, ¶ 12, 201 Vt. 88. Moreover, even accepting plaintiff's assertion that some claims could not be adjudicated in an appeal under 32 V.S.A. § 4467, this Court has held that exhaustion of administrative remedies is still required. See Vt. Coll. of Fine Arts, 2017 VT 12, ¶ 12.

inspection policy, he has not demonstrated that he has standing to challenge such a policy because he has not identified an actual injury to any protected interest. Hous. Our Seniors in Vt. Inc. v. Agency of Com. & Cmty. Dev., 2024 VT 12, ¶ 15, 219 Vt. 80.

Plaintiff further argues that the Declaratory Judgment Act provides a cumulative remedy to a Rule 74 appeal. 12 V.S.A. § 4711. We have rejected this assertion in the past, stating that "proceedings under various declaratory judgment statutes cannot be substituted for adequate and available remedies of review." In re State Aid Highway No. 1, Peru, 133 Vt. 4, 8 (1974). Because there was a method for appellate review of plaintiff's property-tax issues, when properly and timely invoked, there was no alternate path for review using a declaratory-judgment action. Id.

Because we conclude that plaintiff's case was properly dismissed for failure to exhaust his administrative remedies, we do not reach the remainder of plaintiff's arguments regarding the merits of his claims or the Town's assertion that plaintiff's complaint failed to state a claim.

Finally, plaintiff argues that the court erred in denying his motion to alter or amend by employing an incorrect standard and not sufficiently addressing all his arguments. A review of the court's decision reveals that it utilized a proper standard to evaluate plaintiff's motion by considering whether to "rectify its own mistakes in the period immediately following the entry of judgment." N. Sec. Ins. Co. v. Mitec Elecs., Ltd., 2008 VT 96, ¶ 41, 184 Vt. 303 (quotation omitted). "We review the trial court's decision on a Rule 59(e) motion to amend judgment for an abuse of discretion." Sutton v. Purzycki, 2022 VT 56, ¶ 67, 217 Vt. 326.

The court here properly reviewed its decision and plaintiff's arguments and concluded that there was no basis to amend its prior order. The court was not required to explain why it rejected each of plaintiff's arguments. The court acted within its discretion in denying the motion in that plaintiff essentially sought to reiterate prior arguments that had been unsuccessful. See Sutton, 2022 VT 56, ¶ 68 (explaining that there is no abuse of discretion if court denies motion "because the movant reiterates earlier failed arguments").

Affirmed.

BY THE COURT:

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Paul L. Reiber, Chief Justice

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Nancy J. Waples, Associate Justice

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Christina E. Nolan, Associate Justice