

STATE OF RHODE ISLAND
RHODE ISLAND TRAFFIC TRIBUNAL

STATE OF RHODE ISLAND	:	
	:	
v.	:	C.A. No. T24-0011
	:	23417500867
RICHARD GALLIPEAU	:	

DECISION

PER CURIAM: Before this Panel on July 31, 2024—Magistrate Abilheira (Chair), Magistrate Landroche, and Magistrate Welch—is the appeal of Richard Gallipeau (Appellant) from a decision of Magistrate DiChiro (Trial Magistrate) of the Rhode Island Traffic Tribunal, sustaining the charged violation of G.L. 1956 § 20-2.2-4, “Saltwater Fishing Without a License – First Offense.” The Appellant appeared with his attorney, Robert G. Flanders, Jr., before this Panel. Jurisdiction is pursuant to G.L. 1956 § 31-41.1-8. For reasons set forth in this Decision, Appellant’s appeal is denied.

I

Facts and Travel

On November 21, 2023, Officer Harold Guise (“Officer Guise”) of the Department of Environmental Management’s (“DEM”) Environmental Police charged Appellant with violating § 20-2.2-4, “Saltwater Fishing Without a License – First Offense.” (Summons No. 23417500867.) Appellant contested the violations, and the matter proceeded to trial on May 1, 2024. *See* Docket.

In their filings, both the DEM and Appellant state that, on November 21, 2023, Officer Guise observed Appellant fishing at State Pier #9 on Long Wharf in Newport, RI. *See* Def.’s Mot.

to Dismiss; *see also* Pl.’s Mem. of Law in Supp. of Obj. to Def.’s Mot. to Dismiss. After a brief conversation, Officer Guise became aware that Appellant did not have the requisite saltwater fishing license and so, cited Appellant. *Id.*

On March 26, 2024 Appellant filed a Motion to Dismiss, stating that the licensing statute infringes on Appellant’s fundamental right to fish. *See* Docket; *see also* Def.’s Mot. to Dismiss. Appellant also filed an objection and affirmative defenses to the charge. *See* Docket. Appellant asserts that the Licensing Statute violates his substantive rights to fish from the shore as guaranteed by the Rhode Island Constitution (“R.I. Constitution”). *See* Def.’s Obj. & Affirmative Defenses. He further asserts that the licensing requirement violates his right to equal protection of the law. *Id.*

At trial and in his pleadings, Appellant’s counsel admitted that his client was saltwater fishing without a license. (05/01/2024 Tr. 6:7-8.) Appellant’s counsel argued that Appellant has a fundamental right to fish in the waters of Rhode Island under the R.I. Constitution, Article 1, Section 17. *Id.* at 6:24-28. They further argue that, because it is a fundamental right, strict scrutiny applies, and, under strict scrutiny, the licensing statute fails. *See* Def.’s Mot. to Dismiss, Sec. C. The DEM argued that only minimal scrutiny applies and that the General Assembly has broad plenary powers to regulate the fisheries as stated in the R.I. Constitution. *Id.* at 6:9-12.

The Trial Magistrate did not agree that the matter should be reviewed under strict scrutiny. *Id.* at 8:22-24. He stated that, while fishing is a constitutional right, it is subject to regulation by the State to preserve our state’s natural resources. *Id.* at 8:24-28. As such, the Trial Magistrate denied Appellant’s Motion to Dismiss. *Id.* at 9:10-11. Based on Appellant’s admission to fishing without a license, the Trial Magistrate found Appellant guilty.

Aggrieved by the decision, Appellant filed this appeal.

II

Standard of Review

Pursuant to § 31-41.1-8, the Appeals Panel of the Rhode Island Traffic Tribunal possesses appellate jurisdiction to review an order of a judge or magistrate. Section 31-41.1-8(f) provides in pertinent part:

“The appeals panel shall not substitute its judgment for that of the judge or magistrate as to the weight of the evidence on questions of fact. The appeals panel may affirm the decision of the judge or magistrate, or it may remand the case for further proceedings or reverse or modify the decision if the substantial rights of the appellant have been prejudicial because the judge’s findings, inferences, conclusions or decisions are:

- (1) In violation of constitutional or statutory provisions;
- (2) In excess of the statutory authority of the judge or magistrate;
- (3) Made upon unlawful procedure;
- (4) Affected by other error of law;
- (5) Clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.”

In reviewing a hearing judge or magistrate’s decision pursuant to § 31-41.1-8, this Panel “lacks the authority to assess witness credibility or to substitute its judgment for that of the hearing judge [or magistrate] concerning the weight of the evidence on questions of fact.” *Link v. State*, 633 A.2d 1345, 1348 (R.I. 1993) (citing *Liberty Mutual Insurance Co. v. Janes*, 586 A.2d 536, 537 (R.I. 1991)). “The review of the appeals panel is confined to a reading of the record to determine whether the judge’s [or magistrate’s] decision is supported by legally competent evidence or is affected by an error of law.” *Id.* (citing *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 208 (R.I. 1993)). “In circumstances in which the appeals panel determines that the decision is ‘[c]learly erroneous in view of the reliable, probative, and substantial evidence on the

whole record,’ or is affected by ‘error of law,’ it may remand, reverse, or modify the decision.” *Id.* “Otherwise, it must affirm the hearing judge’s [or magistrate’s] conclusions” on appeal. *Id.*; *see Janes*, 586 A.2d at 537.

By its construction, the RITT oversees traffic cases and exercises original jurisdiction over all civil motor vehicle and traffic offenses in the state and has the authority to exercise authority over some Department of Environmental Management violations. § 8-8.2-2(a). “Notwithstanding any inconsistent provision of law, . . . all violations of . . . the department of environmental management . . . shall be heard and determined by the traffic tribunal.” *Id.* The RITT has clear jurisdiction over violations of recreational over violations of recreational saltwater fishing without a license pursuant to § 20-2.2-8(b).

The General Assembly has conferred upon the RITT the authority, expertise, and competency necessary to determine the constitutionality of statutes. *See State v. Robinson*, 972 A.2d 150 (R.I. 2009). Litigants are required to raise and pursue constitutional claims through lower courts and all levels of the judicial process, and the Traffic Tribunal is no exception. *See McKenna v. Guglietta*, 185 A.3d 1248 (R.I. 2018). As a result, this panel is “expressly authorized to consider whether the challenged decision [of a lower court] was made in violation of constitutional or statutory provisions.” § 31-41.1-8(b), (f)(1).

III

Analysis

As grounds for this Appeal, Appellant argues that the Trial Magistrate erred when he (1) denied Appellant’s Motion to Dismiss finding that the Licensing Statute was a reasonable regulation of Appellant’s fundamental right to fish, (2) found Appellant Guilty of the charged

violation, and (3) fined him \$85.00 and court costs rather than the \$10.00 to which the fine amounted.

A

Trial Magistrate's Findings

The trial magistrate was required to determine whether the Appellant violated G.L. 1956 § 20-2.2-4 "Saltwater Fishing Without a License – First Offense." This statute required proof that Appellant was saltwater fishing without a license. Here, in both the Appellant's pleadings and at his trial, he admitted to fishing on State Pier #9 on Long Wharf in Newport on November 21, 2023 without a license. The trial magistrate made no error in properly determining that the Appellant violated § 20-2.2-4.

This Appeals Panel acknowledges that the eighty-five (\$85) fine assessed in this matter was improper and was modified to the correct amount of ten dollars (\$10), to comport with G.L. 1956 § 20-2.2-8(a)(1). The modification was processed on the day Appellant's Appeal was heard. Thus, the fine portion of the Appeal has been rendered moot.

B

Plenary Authority

General Laws 1956 § 20-2.2-1 clearly states that the General Assembly "finds and declares that the constitution of the state places plenary authority and responsibility in the general assembly to provide for the conservation of the natural resources of the state, including its marine fisheries." § 20-2.2-1(1).

Further, Article I, § 17 of the R.I. Constitution states that "it shall be the duty of the general assembly to provide for the conservation of the air, land, water, plant, animal, mineral, and other natural resources of the state, and to adopt all means necessary and proper by law." Our Supreme

Court expanded upon this language in *Cherzenia v. Lynch*, stating, “within the constitution’s broad grant of legislative power to the General Assembly lies its plenary power to regulate the fishing resources of the state.” 847 A.2d 818, 822 (R.I. 2004). This principle also was affirmed in *Opinion to the Senate*, 137 A.2d 525, 526 (1958), in which the Court recognized that the Legislature has the plenary power to “regulate public or private fisheries,” and that it may even “prohibit free fishing for a time and for such times as in their judgment it is for the best interest of the state [to do so].” *Id.* at 39.

Rhode Island Supreme Court opined in 1958 that “[w]e find no limitation, in the Constitution, of the powers of the General Assembly to legislate in this regard and they may delegate the administration of their regulations to such officers or boards as they may see fit.” *Id.* at 39-40. However, the Court cautioned that, although the General Assembly holds broad regulatory authority over fisheries, it may not enact laws that treat different classes of citizens unequally, such as commercial versus recreational fishers, because “a statute of such purport would be invalid as discriminatory.” *Id.* at 39.

Our Supreme Court further qualified the legislative powers given to the General Assembly by the R.I. Constitution in *Kennedy v. State*, stating, “the General Assembly may exercise any such powers, subject only to those limitations expressly or implicitly found in the Constitution of the United States or the Constitution of the State of Rhode Island.” 654 A.2d 708, 711 (R.I. 1995) (citing *Kass v. Retirement Board of the Employees Retirement System of the State of Rhode Island*, 567 A.2d 358, 360 (R.I. 1989); *In re Advisory Opinion to the House of Representatives*, 485 A.2d 550, 553 (R.I. 1984)).

The Trial Magistrate was unpersuaded by the Appellant’s argument that fishing without a license was subject to strict scrutiny, and this Panel similarly finds that argument unconvincing.

(05/01/2024 Tr. 8:22-24.) Strict scrutiny requires showing that either a fundamental right or a suspect classification is implicated. *Riley v. Rhode Island Department of Environmental Management*, 941 A.2d 198, 206 (R.I. 2008). If neither is demonstrated, the statute instead is analyzed under minimal scrutiny, in which the Court examines whether a “rational relationship exist[s] between the [statute] and a legitimate state interest.” *Cherenzia*, 847 A.2d at 825. Under this lower standard, “if [the Court] can conceive of any reasonable basis to justify the [statute], [the court] will uphold the statute as constitutional.” *Id.* (emphasis added). Furthermore, article 1, section 17 of the R.I. Constitution explicitly grants the General Assembly the authority to “provide for the conservation” of the state’s waters and enact regulations that are “necessary and proper” for the “regulation [and] use of the natural resources of the state.” *R.I. Const. art. 1, § 17.*

Given this constitutional framework, the right to fish without a license is not a fundamental right that requires a strict scrutiny analysis. Instead, it is a right that is subject to regulation by the General Assembly in the interest of conservation and resource management. Therefore, rational basis review is the proper standard to apply because it is reasonable request “by the state” to require the Appellant to obtain a free fishing license. (05/01/2024 Tr. 9:3-5.) The regulation of fishing falls well within the state’s authority to legislate in areas concerning natural resource use and conservation. *See R.I. Const. art 1, sec 17; Opinion to the Senate*, 137 A.2d at 40.

Ultimately, our Supreme Court long has recognized that “. . . notwithstanding the provisions of sec. 17, the power of the legislature to regulate fisheries in the waters of this state is plenary and is no longer open to question.” *Opinion to the Senate*, 137 A.2d at 526. This Panel is unpersuaded by any argument suggesting that recreational fishing is an unregulated constitutional right, immune from the legislative authority to impose necessary regulations.

C

Attorney General Did Not Receive Notice

Further, Appellant cannot succeed on such a constitutional challenge because he failed to give proper notice to the Attorney General. General Laws 1956 § 9-30-11 provides in pertinent part:

“In any proceeding . . . **if the statute**, ordinance, or franchise **is alleged to be unconstitutional**, the **attorney general** of the state **shall also be served** with a copy of the proceeding and be entitled to be heard.” § 9-30-11 (emphasis added).

Our Supreme Court has held that when a party “both fail[s] and neglect[s] to comply with its clear obligation when challenging the constitutionality of a state statute to ‘serve the attorney general with a copy of the proceedings,’ . . . [w]e do not believe that this Court should undertake to determine the constitutionality of a state statute in a given case without first affording the Attorney General the opportunity to intervene and be heard.” *See Global Waste Recycling, Inc. v. Mallette*, 762 A.2d 1208, 1214 (R.I. 2000). Although Appellant attacked the constitutionality of § 20-2.2-4, there is no evidence that Appellant complied with the statutorily required notification of the Attorney General at any time during these proceedings, including prior to trial or during his appeal to this Court.

When a party challenges the “constitutionality of [an] act” and questions “any action [where] the state, or an officer, agency, or employee . . . is not a party, the party asserting the unconstitutionality of the act shall serve the attorney general with a copy of the proceeding.” Super. Ct. R. Civ. P. 24. In his Supplemental Memorandum, Appellant argues that, although the Attorney General’s office had not been notified before trial, RITT Rules of Procedure do not require such notification. He claims that, since the DEM is an “agency” of the State, it already has received notice. (Def.’s Supp. Mem. of Law.)

However, Appellant’s claim misinterprets the statutory requirements under § 9-30-11. The Rhode Island Supreme Court explicitly has stated that a party’s “failure to join all persons who

have an interest that would be affected . . . is fatal.” *See Burns v. Moorland Farm Condo. Ass’n*, 84 A.3d 354, 358 (R.I. 2014). The Attorney General is unquestionably an interested party because he is charged with representing the public interest in the enforcement and defense of state statutes. The failure to notify the Attorney General separately from the DEM constitutes a serious procedural defect. The Attorney General’s involvement is essential to any constitutional challenge, and Appellant’s failure to provide such notice is “fatal” to his case.

IV

Conclusion

This Panel has reviewed the entire record in this matter. Having done so, the members of this Panel are satisfied that the Trial Magistrate’s decision was neither clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record nor arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. The substantial rights of Appellant have not been prejudiced. Accordingly, Appellant’s appeal is denied.

ENTERED:

_____/S/
Magistrate Allison C. Abilheira (Chair)

_____/S/
Magistrate Norman Landroche, Jr.

_____/S/
Magistrate Mark Welch

DATE: October 7, 2024