

DENNIS COYNE et al.

v.

TOWN OF BRUNSWICK

Submitted on Briefs May 25, 2022
Decided July 7, 2022

Panel: STANFILL, C.J., and JABAR, HORTON, CONNORS, and LAWRENCE, JJ.

MEMORANDUM OF DECISION

Dennis Coyne and Elizaveta Ragulin Coyne appeal from a judgment of the Superior Court (Cumberland County, *MG Kennedy, J.*) affirming, pursuant to M.R. Civ. P. 80B, the decision of the Brunswick Rivers and Coastal Commission agreeing with its harbor master that the Coynes were not entitled to a mooring assignment pursuant to Brunswick, Me., Municipal Code of Ordinances § 11-4 (Feb. 23, 2015) and 38 M.R.S. §§ 3, 11 (2022).

The Coynes argue that they are entitled to a mooring assignment because in August 2020, they purchased a home on an island off the coast of Brunswick from The David S. White Living Trust, the Joanne W. White Living Trust, Cynthia Brown and Andrew White (collectively “the Whites”); the home is benefitted by a fifteen-foot-wide easement across a parcel of land on the mainland with more than one hundred feet of shore frontage;¹ the Whites obtained an assignment

¹ The Coynes’ fifteen-foot easement does not entitle them to a mooring assignment independent of the Whites’ assignment because the easement does not satisfy the ordinance’s or statute’s requirements that an applicant possess a “parcel of land” that is a buildable lot with shore rights of

for a mooring off the mainland parcel in 2007; and the Coyne's are entitled to a transfer of the Whites' mooring assignment based on grandfathering provisions contained in the Ordinance. Under these Ordinance provisions, to retain grandfathered status, the owner (White) of the parcel associated with the mooring assignment must file a mooring registration form with the harbor master each year, and it is undisputed that this did not occur by the deadline for doing so in 2020. Brunswick, Me., Code § 11-4(d). The Coyne's argue that this failure is excused by another provision in the Ordinance providing that the harbor master "shall" send a notice to mooring owners informing them of the deadline to submit their registration forms. *Id.*

Even if the harbor master did not send the notice, the Coyne's are not entitled to a grandfathered mooring assignment because the harbor master's failure to send the notice did not excuse the owners of the mooring assignment from their obligation to re-register to maintain the mooring assignment and thus make it possible for the assignment to be grandfathered.

In *Doe v. Bd. Osteopathic Licensure*, 2020 ME 134, ¶ 11, 242 A.3d 182, we held that the use of mandatory language like "shall" in a governmental notice requirement is ordinarily directory, not mandatory. When a statute (or ordinance) is silent as to the consequences of the governmental authority's failure to send a notice or otherwise fulfill procedural requirements, the consequence depends upon context and the purpose of the requirement. See *George D. Ballard, Builder, Inc. v. City of Westbrook*, 502 A.2d 476, 482 (Me. 1985) (stating that the consequences of a governmental omission are determined by discerning the purpose of the requirement).

Here, the purpose of the Ordinance provision is to provide a reminder. The failure to send such a reminder does not excuse the mooring assignee from nonetheless being aware of its obligation to re-register. See *State v. Nisbet*, 2018 ME 113, ¶ 25, 191 A.3d 359 (stating that ignorance of the law is generally deemed no excuse for failure to comply with the law); *F.S. Plummer Co. v. Town of Cape Elizabeth*, 612 A.2d 856, 861 (Me. 1992) (stating that no individualized notice is required as to the contents of a legislative act).

at least one hundred feet of frontage. Brunswick, Me., Municipal Code of Ordinances § 11-4 (Feb. 23, 2015); 38 M.R.S. §§ 3, 11 (2022)

Furthermore, “[a] right to a mooring is a personal right vested only in the individual assigned the mooring by the harbor master.” *See* 38 M.R.S. §§ 3, 7, 7-A; *Ogunquit v. Young*, 543 A.2d 359, 360-61 (Me. 1988).

The entry is:

Judgment affirmed.

Dennis Coyne, appellant pro se

Elizaveta Ragulin Coyne, appellant pro se

Kristin M. Collins, Esq., and Cameron A. Ferrante, Esq., Preti Flaherty Beliveau & Pachios LLP, Augusta, for appellee Town of Brunswick

Cumberland County Superior Court docket number AP-2021-15
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