

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE
IN AND FOR NEW CASTLE COUNTY

HOME PARAMOUNT PEST :
CONTROL COMPANY, :
 :
Appellant :
 :
v. : C.A. No. 01A-01-011-SCD
 :
STATE OF DELAWARE, :
DEPARTMENT OF AGRICULTURE, :
 :
Appellee. :

Submitted: July 24, 2001
Decided: October 22, 2001

ORDER

On this 22nd day of October 2001, upon appellant's appeal, it appears that:

(1) A Delaware resident had a contract with appellant to treat his house for termites.

Appellant treated the house on May 5, 2000. This was done by digging a shallow trench around the entire house and applying a pesticide. A subsequent treatment was performed on May 25, 2000. Shortly after that treatment, the Delaware resident contacted the Department of Agriculture ("Department") complaining that pesticide had seeped through the wall of his home. A complaint was filed against appellant alleging violation of 3 *Del. C.* § 1224(a)(1), 3 *Del. C.* § 1224(c)(2), 3 *Del. C.* § 1224(c)(3), and 3 *Del. C.* § 1224(a)(10). The Department held a hearing on December 15, 2000. The hearing officer issued a decision that imposed a fine on appellant of \$1500 for violation of 3 *Del. C.* § 1224(a)(1) and a fine of \$1250 for violation of 3 *Del. C.* § 1224(a)(10) on December 21, 2000.

(2) On appeal, Appellant asserts that (1) the Department's decision was not supported by substantial evidence; and (2) the Department did not specify the standard of proof it applied it making its decision.

(3) The issue is whether the Superior Court has jurisdiction to consider an appeal from a decision by the Department of Agriculture that only imposed fines on the appellant.

(4) Title Three of the Delaware Code, Section 1222 Appeals states:

Any licensee, permit holder or certified applicator who feels aggrieved by an action of the Department in denying, suspending, modifying or revoking his license, permit or certification may take an appeal, within 30 days of such action, to the Superior Court, and after full hearing the Court shall make such decree as seems just and proper. Written notice of such appeal, together with grounds therefor, shall be served upon the Secretary of the Department.

(5) The appellate jurisdiction of Delaware courts is limited by the Delaware Constitution and statutes.¹ A party does not have a right of appeal from an administrative hearing unless the statute governing the matter has conferred a right to do so.² Statutes giving the right of appeal should be liberally construed in furtherance of justice.³ However, in the absence of any ambiguity, the language of a statute must be viewed as conclusive of the legislative intent.⁴ A court is required to give words of a statute or regulation their ordinary meaning.⁵ Courts may not engraft upon a statute language that has been clearly excluded by the legislature.⁶

(6) In the case at bar, the appellant does not have a statutory avenue of appeal. The statute only provides a licensee the right of appeal for "denying, suspending, modifying or

¹ *Capano Investments v. Levenberg*, Del. Supr., 564 A.2d 1130, 1131 (1989).

² *Oceanport Industries, Inc. v. Wilmington Stevedores, Inc.*, Del. Supr., 636 A.2d 892, 900 (1994).

³ *New Castle County v. Chrysler Corp.*, Del. Super., 681 A.2d 1077, 1081 (1995).

⁴ *Arnold v. Society for Sav. Bancorp., Inc.*, Del. Supr., 650 A.2d 1270, 1287 (1994).

⁵ *Arbern-Wilmington, Inc. v. Director of Revenue*, Del. Supr., 596 A.2d 1385, 1388 (1991).

⁶ *Alfieri v. Martelli*, Del. Supr., 647 A.2d 52, 54 (1994).

revoking his license, permit or certification.”⁷ Even under a liberal interpretation of the statute, I cannot conclude that the appeal of a fine is related to the denial, suspension, modification, or revocation of a license, permit, or certification. Therefore, since the plain meaning of the statute excludes fines from appellate review, the appellant’s appeal does not meet the criteria of 3 *Del. C.* § 1222.

(7) If a direct avenue of appeal is not available, then the Superior Court may grant a writ of certiorari under 10 *Del. C.* § 562 to review the record of an inferior court.⁸ “There are important threshold qualifications for certiorari review: for instance, the judgment below must be final, and there must be no other available basis for review.”⁹ “Moreover, only certain kinds of claims may be reviewed at all on certiorari.”¹⁰ A review requiring that this Court weigh evidence cannot be brought on certiorari.¹¹ When these threshold requirements are not met, the proceedings will be dismissed.¹² “Finally, even should review of the claims raised by the petition be appropriate, this Court’s scope of review will be strictly limited.”¹³ Review is generally confined to jurisdictional matters, error of law, or irregularity of proceedings that appear on the face of the record.¹⁴

(8) The issue argued by the appellant, in support of a writ of certiorari, relates to the standard of proof applicable to the charges levied against his client. The appellant was informed

⁷ 3 *Del. C.* § 1222.

⁸ 10 *Del. C.* § 562 states:

The Superior Court may frame and issue all remedial writs, including writs of habeas corpus and certiorari, or other process, necessary for bringing the actions in that Court to trial and for carrying the judgments of the Court into execution.

⁹ *Matter of Butler*, Del. Supr., 609 A.2d 1080, 1081 (1992) (citing *Shoemaker v. State*, Del. Supr., 375 A.2d 431, 438 (1977)).

¹⁰ *Id.* at 1081 (citing *Castner v. State*, Del. Supr., 311 A.2d 858, 858 (1973)).

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

that he was charged with subsections of 3 *Del. C.* § 1224. That section relates to various misdemeanors. It explicitly provides that actions initiated pursuant to the section are within the jurisdiction of both the Justice of the Peace Court and the Court of Common Pleas. The appellant seems to argue that since the decision of the Department does not state the standard of proof applied, and since the statute deals with a criminal charge, the standard must be beyond a reasonable doubt. Appellant argues that in the absence of a specific statement as to the standard of proof applied, it must be assumed that the Department erred and applied a beyond a reasonable doubt standard.

(9) The record does not support the notion that this was handled as a criminal charge. It was handled through an administrative process, not in either the Justice of the Peace Court or the Court of Common Pleas. This alternate mode of enforcement is rooted in 3 *Del. C.* § 1225, which specifically provides that “[I]n addition to proceeding under any other remedy available at law . . . for a violation of this chapter . . . the Secretary may assess a civil penalty not to exceed \$2,500” The subsection further provides that [n]o civil penalty . . . be assessed unless the person charged shall have been given notice and opportunity for a hearing”¹⁵

(10) The Department proceeded under its civil enforcement powers. It is not required to impose a "beyond a reasonable doubt" standard of proof, thus, failure to do so is not legal error. A writ of certiorari will not issue. There being no basis for appeal, the action is DISMISSED.

IT IS SO ORDERED.

Judge Susan C. Del Pesco

¹⁵ 3 *Del. C.* § 1225.

Original to Prothonotary

xc: Raymond W. Cobb, Esquire

James J. Hanley, Esquire, Deputy Attorney General