

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Dennis S. Sabot, Sr.,	:	
	:	
Petitioner	:	
	:	
v.	:	No. 456 C.D. 2009
	:	SUBMITTED: October 16, 2009
Department of Environmental	:	
Protection,	:	
	:	
Respondent	:	

BEFORE: **HONORABLE BONNIE BRIGANCE LEADBETTER**, President Judge
 HONORABLE MARY HANNAH LEAVITT, Judge
 HONORABLE JOSEPH F. McCLOSKEY, Senior Judge¹

OPINION NOT REPORTED

**MEMORANDUM OPINION BY
PRESIDENT JUDGE LEADBETTER**

FILED: January 13, 2010

Dennis S. Sabot, Sr. (Sabot) appeals *pro se* from the January 26, 2009 order of the Environmental Hearing Board (EHB) that dismissed his appeal from the May 22, 2007 administrative order of the Department of Environmental Protection (Department) directing him to restore a small area of wetlands on the shore of Canadohta Lake in Crawford County pursuant to Section 20 of the Dam Safety and Encroachments Act (Dam Safety Act).² We affirm.

¹ The decision in this case was decided before Senior Judge McCloskey retired on December 31, 2009.

² Act of November 26, 1978, P.L. 1375, *as amended*, 32 P.S. § 693.20.

In 1999, Sabot purchased property located on the shores of Canadohta Lake and primarily composed of wetlands. In March 2000, Sabot proceeded, without a permit, to construct a new seawall off a pre-existing wall. The Department issued an April 2000 notice of violation (NOV), requesting that he remove the new seawall and restore the site. In spring 2001, Sabot complied with that directive.

In March 2002, the Crawford County Conservation District issued Sabot a general permit to construct a boat dock extending from his property and into the lake. Again without a permit, Sabot rebuilt the seawall and placed fill in the area that was the subject of the 2001 restoration. In December 2004, the Department issued Sabot a second NOV requesting that he once again restore the site. The Department conducted several inspections between 2005 and 2007. Those inspections revealed that not only had Sabot failed to restore the site, but that he had engaged in additional encroachment activity within the wetland and without a permit. Accordingly, the Department in April 2007 issued Sabot a third NOV, including a suggested restoration plan.

When Sabot persisted in his failure to restore the site, the Department issued the May 22, 2007 order at issue, requiring Sabot “to cease and desist all filling of the wetlands and construction of water obstructions, submit a site restoration plan (including a revegetation plan), implement the plan upon Departmental approval, and submit a site restoration report and annual monitoring reports until the Site [is] shown to be successfully revegetated.” EHB’s January 26, 2009 Adjudication, Finding of Fact No. 15. In June 2007, Sabot appealed the Department’s order. In November 2007, the Department filed a civil complaint

seeking civil penalties for failure to comply with its order. The EHB eventually consolidated the two matters.³

Upon Sabot's failure to respond to its complaint, the Department filed a December 2007 motion for default judgment with the EHB. The EHB granted the Department's motion in January 2008, concluding that "all of the material facts set forth in the complaint for civil penalties were admitted and that Sabot had, based upon those facts, violated the Dam Safety Act." EHB's Adjudication at 4-5. In addition, the EHB noted that because the material facts of the complaint included the same ones that formed the basis for the May 22, 2007 Department's order, "the facts supporting the Order are beyond dispute at this point." EHB's Adjudication at 5. The EHB did, however, agree with Sabot that, notwithstanding his default on the facts, he retained the ability to contest the reasonableness of the Department's order.

Accordingly, the EHB concluded as follows:

2. The modification of the seawall and addition of fill on Sabot's property constitute "water obstructions" as that term is defined in [Section 3 of] the Dam Safety . . . Act. 32 P.S. § 693.3.

3. No person shall construct, operate, maintain, modify, enlarge or abandon any dam, water obstruction or encroachment without the prior written permit of the Department. [Section 6 of the Dam Safety Act,] 32 P.S. § 693.6.

³ In its adjudication, the EHB indicated that it *sua sponte* unconsolidated the case involving Sabot's appeal, EHB Docket No. 2007-158-L, from the case involving the Department's complaint, EHB Docket No. 2007-255-CP-L.

4. The Department has the authority to issue orders that are necessary to aid the enforcement of the Dam Safety . . . Act. 32 P.S. § 693.20.

5. The Department's May 22, 2007 order was reasonable.

EHB's Conclusions of Law Nos. 2-5.

As an initial matter, we address the Department's argument that Sabot failed to preserve any issues on appeal by reviewing the history of what issues he raised during the course of the litigation. In his post-hearing brief submitted to the EHB, Sabot conceded that his "liability for civil penalties for violating the Dam Safety Act has been established through granting the Department's Motion for Default Judgment pertaining to Count I of the Complaint for Civil Penalties."⁴ Sabot's Post-Hearing Brief at 4; Certified Record, Item No. 4. Sabot asserted, however, his disagreement with the Department that the doctrines of *res judicata* and collateral estoppel prevented him from challenging the reasonableness of the Department's order. In that regard, he specifically maintained that the order was an unreasonable exercise of discretion because 1) the Department's restoration plans would render his dock inaccessible; 2) the Department, without explanation, unilaterally expanded the scope of the restoration to require him to convert previously identified upland to wetland; and 3) the Department mandated that he revegetate the site in the absence of such a requirement for a wetland.

Before this Court, Sabot averred in his petition for review that the EHB's order should be reversed for the following reasons:

It is evident that there is no right or wrong way to build a dock at Canadohta Lake as there is no rules on building a Sea Wall that is safe and environmentally [sic] safe. *It is*

⁴ At that time, Sabot was represented by counsel.

evident that the rules and regulations are not structured and consistent [sic]. It is nearly impossible to comply with unwritten rules and regulations that seem to change at the whim of the agent of the day. First I am in compliance then next visit I am not. I did what I was asked to do and in compliance the next visit I was a destructive [sic] and out of control person. Read the transcripts I had a permit, I applied for others[.] It didn't matter. I pray that the court weight [sic] the evidence they [sic] way it was gathered and presented and then present a fair and just proper solution in this matter.

Sabot's Petition for Review, Paragraph 3 (emphasis added). In his brief, Sabot offered the following issues for this Court's review: 1) whether Sabot's constitutional rights were violated in that the rules and regulations were not consistently enforced and structured; and 2) whether the EHB's decision was against the weight of substantial evidence. For the reasons that follow, we conclude that Sabot failed to preserve any issues for our review.

An appellate petition for review is a notice pleading document such that a petitioner need only make a general statement of the objections to the order sought to be reviewed. *McGuire v. State Ethics Comm'n*, 657 A.2d 1346 (Pa. Cmwlth. 1995). In addition, the statement of objections will be deemed to include every subsidiary question fairly comprised therein. *Id.* In the present case, however, the issue that Sabot raised in his post-hearing brief as to the reasonableness of the Department's order is a separate and distinct issue from the issues he raised in his petition for review concerning rules and regulations not being structured and consistent and the impossibility of complying with unwritten rules and regulations. *See Ludwowski v. Workers' Comp. Appeal Bd. (Dubin Paper Co.)*, 910 A.2d 99 (Pa. Cmwlth. 2006) (questions of credibility and competency are separate issues with distinct standards such that the Court cannot

conclude that objecting to the credibility of a witness in the statement of objections includes as a subsidiary question the issue of the competency of a witness).

Moreover, Sabot unfortunately changed gears again when he asserted issues in his brief concerning constitutional rights and substantial evidence. *See Jimoh v. Unemployment Comp. Bd. of Review*, 902 A.2d 608 (Pa. Cmwlth. 2006) (claimant waived issue that he addressed in his brief but failed to include in his petition for review). Accordingly, we are compelled to conclude that Sabot failed to preserve any issues on appeal for this Court's review and, therefore, affirm the EHB's order.⁵

BONNIE BRIGANCE LEADBETTER,
President Judge

⁵ Assuming that Sabot has preserved the reasonableness of the Department's order, we conclude that the EHB did not err in determining that the order was reasonable. With regard to the order necessarily depriving Sabot of access to his dock, for example, the EHB found that the restoration plans attached to the Department's NOV's were conceptual and suggestive only and that Sabot was responsible for designing his own plan. Also regarding the dock, the EHB noted that "[w]alkways and access ramps are not necessarily incompatible with wetlands, and we fail to see why a reasonable accommodation cannot be designed at this Site." EHB's Adjudication at "5". In addition, although the EHB did not make specific findings as to whether the Department erroneously expanded the size of the restoration or unreasonably required revegetation, the EHB made a general determination that it discerned nothing unreasonable in the Department's order. Given the fact that Sabot failed to preserve the reasonableness issue on appeal, we find that determination to be sufficient for purposes of affirming the EHB's order.

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Department of Environmental	:	
Protection,	:	
	:	
Respondent	:	

ORDER

AND NOW, this 13th day of January, 2010, the order of the Environmental Hearing Board in the above-captioned matter is hereby AFFIRMED.

BONNIE BRIGANCE LEADBETTER,
President Judge