

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

RICHARD GALLIPEAU

v.

STATE OF RHODE ISLAND,
(RITT APPEALS PANEL)

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A.A. No. 24-82

JUDGMENT

This cause came before Trezvant, J. on Administrative Appeal, and upon review of the record and memoranda of counsel, and a decision having been rendered, it is

ORDERED AND ADJUDGED

The decision of the Appeals Panel is affirmed.

Dated at Providence, Rhode Island, this 26th day of March, 2026.

Enter:

By Order:

_____/s/_____

_____/s/_____

STATE OF RHODE ISLAND
PROVIDENCE, Sc.

DISTRICT COURT
SIXTH DIVISION

RICHARD GALLIPEAU
Appellant,

v.

RHODE ISLAND
TRAFFIC TRIBUNAL
Appellee.

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C.A. No. 6AA-2024-00082

DECISION

TREZVANT, J. This matter comes before the Court on appeal of Richard Gallipeau (“Appellant”) from the October 7, 2024 Decision of the Rhode Island Traffic Tribunal Appeals Panel (“the Panel”), which affirmed the Traffic Tribunal Trial Magistrate’s finding of a violation of G.L. 1956 § 20-2.2-4, “Saltwater Fishing Without a License – First Offense.” For the reasons set forth below, the Decision of the Panel is affirmed.

FACTS AND TRAVEL

The underlying facts are not in dispute. *See* Record (R.). On November 21, 2023, Officer Harold Guise (“Officer Guise”) of the Department of Environmental Management’s (“DEM”) Environmental Police observed Appellant fishing at State Pier #9 in Newport, Rhode Island. (R. at 16 (Decision).) After determining that Appellant did not possess a valid Rhode Island fishing license, Officer Guise cited Appellant and imposed a ten dollar (\$10) fine plus costs. *Id.* at 17; *See also* (R. at 107 (Summons).)

Appellant timely contested the charged violation before the Rhode Island Traffic Tribunal. Prior to trial, Appellant filed a Motion to Dismiss arguing that the licensing statute violates Article I, § 17 of the Rhode Island Constitution by infringing upon what he characterizes as “fundamental fishery rights and shore privileges” to fish from the shore free from state regulation. (R. at 83 (App.’s Mot. to Dismiss).) He further asserts that the licensing statute “violates his right to equal protection of the laws of the State of Rhode Island.” *Id.* at 84.

A
Trial Magistrate’s Findings

On May 1, 2024, the Traffic Tribunal conducted a hearing on Appellant’s Motion to Dismiss and on the charged violation. *See generally* Hr’g Tr. At that hearing, Appellant expressly conceded that he had been engaged in recreational saltwater fishing and that he did not possess a valid recreational saltwater fishing license at the time of the encounter. (R. at 40 (Hr’g Tr.))

The Trial Magistrate first addressed Appellant’s constitutional challenge. *Id.* at 42-43. Appellant argued that Article I, § 17 of the Rhode Island Constitution guarantees a fundamental right to fish from the shore and that the licensing requirement is an unconstitutional infringement of that right, subject to strict scrutiny. *Id.* at 41. The State, through DEM, argued that only minimal scrutiny applies and that Article I, § 17 expressly authorizes the General Assembly to regulate fisheries for conservation. *Id.* at 40.

The Trial Magistrate concluded that although fishing is a constitutional right, it is subject to regulation by the State to preserve natural resources and that the challenged statute did not trigger strict scrutiny. *Id.* at 42. The Trial Magistrate denied the Motion to Dismiss. *Id.* at 43. Having denied the constitutional challenge and in light of Appellant’s concession that he was fishing without a license, the Trial Magistrate sustained the violation of § 20-2.2-4 and imposed an eighty-five dollar (\$85) fine plus costs. *Id.* at 43, 45.

B
Appeals Panel's Findings

Appellant appealed the Trial Magistrate's Decision to the Panel of the Rhode Island Traffic Tribunal. The Panel heard argument on July 31, 2024 and issued a written Decision on October 7, 2024. (Decision at 16.)

The Panel noted that the operative facts were undisputed. *Id.* at 20. Appellant was recreationally fishing from the shore at State Pier #9 when he was cited for fishing without the required fishing license. *Id.* The Panel summarized Appellant's argument that Article I, § 17 confers a fundamental right to fish from the shore such that § 20-2.2-4 must satisfy strict scrutiny. *Id.* at 21.

The Panel did not agree with the argument suggesting that "recreational fishing is an unregulated constitutional right, immune from the legislative authority to impose necessary regulations." *Id.* at 22. Relying on *Cherenzia v. Lynch*, 847 A.2d 818, 822 (R.I. 2004), which interpreted Article I, § 17, the Panel determined that the right of fishery is subject to reasonable regulation by the General Assembly "in the interest of conservation and resource management." *Id.* at 21-22. The Panel concluded that "the right to fish without a license is not a fundamental right that requires a strict scrutiny analysis" and that § 20-2.2-4 is a constitutional regulatory measure. *Id.* at 22. It therefore affirmed the Trial Magistrate's denial of the Motion to Dismiss and the finding of a violation.

The Panel also raised Appellant's failure to provide notice to the Attorney General under G.L. 1956 § 9-30-11 in connection with his constitutional challenge. *Id.* at 23. The Panel explained that the Attorney General is "an interested party because he is charged with representing the public interest in the enforcement and defense of state statutes." *Id.* at 24. As such, the Panel concluded that Appellant's failure to provide such notice is "fatal" to his case. *Id.*

STANDARD OF REVIEW

This Court possesses appellate jurisdiction over an appeal from a decision of the Appellate Panel of the Traffic Tribunal pursuant to G.L. 1956 § 31-41.1-9. Section 31-41.1-9(d) provides in pertinent part:

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

- “(1) In violation of constitutional or statutory provisions;
- “(2) In excess of the statutory authority of the appeals panel;
- “(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.” G.L. § 31-41.1-9(d).

The aforementioned standard is essentially the same standard of review delineated in the State Administrative Procedures Act. *See* G.L. 1956 § 42-35-15(g). This Court is not entitled to substitute its judgment for that of the agency on questions of fact “even in a case in which the court ‘might be inclined to view the evidence differently and draw inferences different from those of the agency.’” *Johnston Ambulatory Surgical Ass’n, Inc. v. Nolan*, 755 A.2d 799, 805 (R.I. 2000) (citations omitted). However, a decision can be vacated where it is “clearly erroneous in view of the reliable, probative, and substantial evidence contained in the whole record.” *Costa v. Registrar of Motor Vehicles*, 543 A.2d 1307, 1309 (R.I. 1988).

This Court notes that its review is a second-tier review, as the Appellate Panel’s review is itself appellate in nature. The standard of review utilized by the Appellate Panel is almost identical

to the standard of review utilized by this Court. Thus, in considering an appeal from the decision of the Appellate Panel, this Court engages in a limited review.

ANALYSIS

Article I, § 17 of the Rhode Island Constitution states in relevant part:

“The people shall continue to enjoy and freely exercise all the rights of fishery, and the privileges of the shore...including but not limited to fishing from the shore...and they shall be secure in their rights to the use and enjoyment of the natural resources of the state with due regard for the preservation of their values; and 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 to protect the natural environment of the people of the state by providing adequate resource planning for the control and regulation of the use of the natural resources of the state and for the preservation, regeneration, and restoration of the natural environment of the state.”

This Court must determine whether the Appeals Panel committed reversible error when it affirmed the Trial Magistrate’s denial of Appellant’s constitutional challenge to § 20-2.2-4.

Appellant argues that:

- (1) the recreational saltwater fishing license requirement operates as an unconstitutional prior restraint;
- (2) Article I, § 17 creates a fundamental right to fish that triggers strict scrutiny;
- (3) the statute therefore cannot survive strict scrutiny review but also fails rational basis review; and
- (4) the Panel improperly relied on Appellant’s alleged failure to notify the Attorney General under § 9-30-11. *See App Mem.*

A Prior Restraint

The doctrine of prior restraint applies to regulations that suppress expressive activity protected under the First Amendment. *Thomas v. Chicago Park District*, 534 U.S. 316, 320 (2002). The United States Supreme Court has consistently distinguished between regulations of speech and of conduct, emphasizing that regulations of conduct do not trigger prior-restraint analysis even when it involves licensing. *Id.* at 322. In *Thomas v. Chicago Park District*, the Court upheld a

permit requirement governing large-scale park events because the ordinance is not “directed to communicative activity” but rather to “*all* activity conducted in a public park.” *Id.* The Court held that where the permit scheme is “not subject-matter censorship but content-neutral time, place, and manner regulation of the use of a public forum,” the statute or regulation do not implicate prior-restraint concerns. *Id.*

Rhode Island law parallels this framework. The Rhode Island Supreme Court has recognized the General Assembly’s broad authority to regulate natural resources pursuant to both its plenary authority and its constitutional mandate under Article I, § 17. *Riley v. Rhode Island Department of Environmental Management*, 941 A.2d 198, 206 (R.I. 2008). In *Riley*, the Court emphasized that the “goals of conservation and concern for the viability of the fishing industry” are part of the “General Assembly’s constitutional duty as the guardian of Rhode [Island’s] natural resources.” *Id.* at 212-13. Accordingly, “the General Assembly’s power to regulate marine fisheries is broad and plenary.” *Id.* at 206. Moreover, Article I, § 17 of the Rhode Island Constitution expressly authorizes the Legislature to enact laws to preserve, regenerate, and restore the State’s natural resources.

Appellant asserts that § 20-2.2-4 functions as a prior restraint because it requires “individuals to first apply for and acquire a governmental license to exercise that enumerated right.” (App. Mem. 8.) Appellant’s reliance on *Murdock v. Commonwealth of Pennsylvania*, 319 U.S. 105 (1943) is misplaced because *Murdock* involved a municipal ordinance that imposed a licensing fee on religious solicitation, a core expressive activity protected by the First Amendment. The Supreme Court invalidated the ordinance because it functioned as a tax on the dissemination of religious ideas. *Murdock*, 319 U.S. at 116.

Here, the licensing statute bears no resemblance to the ordinance in *Murdock*. Recreational fishing is conduct, not expressive activity, and the licensing requirement is not directed at speech or religious exercise. Prior-restraint doctrine does not extend to generally applicable, content-neutral licensing schemes regulating conduct. See *Thomas v. Chicago Park District*, 534 U.S. at 322. Moreover, unlike the ordinance in *Murdock*, § 20-2.2-4 is not a revenue-raising tax imposed on constitutional expression, but a regulatory measure enacted pursuant to the General Assembly's express constitutional authority under Article I, § 17 to conserve and manage natural resources.

Accordingly, the recreational fishing license requirement does not constitute an unconstitutional prior restraint. Because prior-restraint doctrine is inapplicable, the Court must next determine whether the challenged statute implicates a fundamental right.

B **Fundamental Right**

The Rhode Island Supreme Court has long recognized that the public fishery is subject to the General Assembly's regulatory authority, emphasizing that the Legislature may enact measures governing the fishery for the common benefit. *State v. Cozzens*, 2 R.I. 561, 564 (1850). This principle was reaffirmed in *State v. Nelson*, 77 A. 170, 172 (1910), where the Supreme Court held that the "Legislature may delegate the execution of their regulations in regard to the fisheries of the state to any board or body they deem advisable."

The Supreme Court has continued to treat the right to fish as a regulated public right rather than a fundamental constitutional liberty. *Riley*, 941 A.2d at 211. In *Riley*, the Court held that "the General Assembly has a constitutional duty to enact legislation necessary to preserve fisheries for the good of the whole." *Id.* The Court did not suggest that the right to fish is fundamental; rather, the Court makes clear that the Legislature's authority to manage the resource is firmly rooted in the Constitution. *Id.*

Here, Appellant asserts that because the “right to fish from the shore is a specific, enumerated right in the Constitution . . . it should be considered a fundamental right.” (App. Mem. 9.) Appellant relies on *Cherenzia* to argue that the recreational fishing license implicates a fundamental right and triggers strict scrutiny. *Id.* However, this argument misapprehends the structure and purpose of Article I, § 17. Rather than conferring an unregulated individual liberty, Article I, § 17 expressly grants the General Assembly authority to “provide for the conservation” of natural resources, including fisheries.

Moreover, although *Cherenzia* did not find a fundamental right implicated by the statute at issue there, the absence of strict scrutiny in *Cherenzia* is not dispositive here. The relevant question is whether *this* statute, § 20-2.2-4, implicates a fundamental right. The licensing requirement is a neutral regulatory measure enacted pursuant to the General Assembly’s express constitutional authority under Article I, § 17. As the Court addressed in *Riley*, the right of fishery is by a duty imposed on the General Assembly to preserve, regenerate, and conserve natural resources through resource planning. *Riley*, 941 A.2d at 208.

G.L. 1956 § 20-2.2-4 applies uniformly to all recreational fishers and regulates only the manner of access to a public resource in furtherance of conservation and resource-management objectives expressly contemplated by the Constitution. Because the statute does not categorically deny access to fishing or target a protected class, it does not implicate a fundamental right. The Court in *Cherenzia* confirms that such fishery regulations are subject to minimal scrutiny. *Cherenzia*, 847 A.2d at 825.

C Rational Basis

Legislative classifications that do not affect a fundamental right or a suspect class, are examined under a “minimal-scrutiny” analysis. *Riley*, 941 A.2d at 211. Under this standard, “the

Legislature has a wide scope of discretion to enact laws, which will be upheld so long as they bear a reasonable relationship to public health, safety, or welfare.” *Id.* Article I, § 17 explicitly mandates that the Legislature shall “provide for the conservation of the . . . natural resources of the state.” This constitutional instruction itself supplies the legitimate governmental purposes needed to satisfy rational-basis scrutiny.

In *Cherenzia*, the Court applied minimal scrutiny to uphold restrictions on SCUBA-assisted shellfishing because the regulation was “reasonably related to the legitimate conservation” and resource-management goals. *Cherenzia*, 847 A.2d at 826. The Court in *Riley* likewise affirmed the DEM’s statutory authority to impose licensing requirements, holding that “General Assembly had legitimate goals to ‘[p]reserve, enhance, and allow for any necessary regeneration of the fisheries of the state . . .’” that satisfy rational-basis review. *Riley*, 941 A.2d at 204.

Here, the licensing statute satisfies rational-basis review because it represents a reasonable regulation enacted pursuant to the General Assembly’s plenary power, as recognized by the Court in *Riley*. Article I, § 17 expressly directs the General Assembly to regulate natural resources “for the preservation, regeneration and restoration of the natural environment of the state,” and the licensing statute directly advances those constitutionally grounded purposes by facilitating conservation and compliance with federal fishery management programs. *See* § 20-2.2-2.

Appellant asserts that the statute relates primarily to “commercial industry of fishing, not to recreational fishing.” (App. Mem. 12.) However, the Court in *Riley* recognized that the “goals of conservation and concern for the viability of the fishing industry are legitimate” and are “part of the General Assembly’s constitutional duty as the guardian of Rhode [Island’s] natural resources.” *Riley*, 941 A.2d at 212-13. Both licensing programs – commercial and recreational –

serve the legitimate goal of conserving fisheries to ensure their long-term economic viability and preservation for future generations. *Id.* at 213. As such, the licensing statute is rationally related to legitimate governmental objectives.

D
Attorney General Notice

G.L. 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.” G.L. § 9-30-11.

G.L. 1956 § 9-30-11 requires notice to the Attorney General whenever a party challenges the constitutionality of a state statute. The Rhode Island Supreme Court recently clarified in *Mill Road Realty Associates, LLC v. Town of Foster*, 326 A.3d 1085, 1089 (R.I. 2024), that failure to serve the Attorney General is not jurisdictional and does not automatically invalidate a proceeding. Instead, the appropriate remedy for failure to serve the Attorney General with notice is to remand the case to the trial court “with instruction to permit the parties to present evidence on the issue of compliance with § 9-30-11.” *Id.*

Here, DEM has conceded that it had notice of Appellant’s constitutional challenge to the licensing statute. (State Mem. 12.) Further, the appropriate remedy here would have been remand, rather than dismissal. *See Mill Road Realty*, 326 A.3d at 1089. However, these errors are harmless because the Panel did consider and reject Appellant’s constitutional arguments on the merits, independent of the § 9-30-11 discussion (Decision at 16.) In *Environmental Scientific Corp. v. Durfee*, 621 A.2d 200, 203 (R.I. 1993), the Rhode Island Supreme Court has explained that it is not necessary to address all the issues where a disposition is warranted on independent grounds, and a Court “need not reach the merits” of remaining arguments once the outcome is otherwise

supported. Thus, because the Panel's decision rests on sufficient and independent grounds, Appellant suffered no prejudice under § 31-41.1-9, and reversal is not required.

CONCLUSION

After a careful review of the record, the Court finds that the Traffic Tribunal Appeals Panel's Decision is not erroneous. G.L. 1956 § 31-41.1-9(d). The Panel properly determined that Appellant conceded the factual basis for the violation, correctly rejected his constitutional challenges under established Rhode Island precedent, and applied the appropriate level of scrutiny. Furthermore, the licensing statute constitutes a valid exercise of the General Assembly's regulatory authority under Article I, § 17 and satisfies rational-basis review. Accordingly, the decision of the Traffic Tribunal Appeals Panel is AFFIRMED.