

DENNIS BLANCHET et al.

v.

TOWN OF WALDOBORO et al.

Argued June 13, 2012
Decided August 16, 2012

Panel: SAUFLEY, C.J., and ALEXANDER, LEVY, SILVER, MEAD,
GORMAN, and JABAR, JJ.

MEMORANDUM OF DECISION

Dennis Blanchet and other residents of the Town of Waldoboro, known collectively as Blanchet, appeal from the judgment of the Superior Court (Lincoln County, *Hjelm, J.*) granting the Town of Waldoboro's motion to dismiss pursuant to M.R. Civ. P. 12(b)(6). Blanchet argues that the trial court erred when it determined that there was no claim upon which relief could be granted for Blanchet's action challenging the legality of the Town's budget appropriations that were not enacted by secret ballot, which Blanchet maintains is required by a Town ordinance. The trial court determined that, pursuant to 30-A M.R.S. § 2501 (2011), "the 2008 [secret ballot] ordinance that purports to establish a voting procedure for municipal elections is of no effect, because it is not one of the ways that such a format can be enacted."

Blanchet contends that the ordinance was a valid exercise of the Town's municipal home rule authority pursuant to 30-A M.R.S. § 3001 (2011). Contrary to Blanchet's contention, the trial court did not err when it determined that the municipal voting process is controlled by the provisions of Titles 21-A and 30-A unless a town charter provides for a different method. *See* 30-A M.R.S. § 2501 ("Except as otherwise provided by this Title or by charter, the method of voting

and the conduct of a municipal election are governed by Title 21-A.”) The parties do not dispute that the Town does not have a charter, and no provision of either Title 21-A or Title 30-A prohibits the Town’s use of open meeting voting in this situation. Blanchet’s complaint, in which he seeks to enforce a provision that was not legally enacted, was properly dismissed on this basis. M.R. Civ. P. 12(b)(6); *see also Wright v. Dep’t of Def. & Veterans Servs.*, 623 A.2d 1283, 1285-86 (Me. 1993) (affirming the trial court’s dismissal, for failure to state a claim entitling the plaintiff to some relief, of a freedom of access request that was unenforceable pursuant to statute).

The entry is:

Judgment affirmed.

On the briefs:

Clifford H. Goodall, Esq., Dyer Goodall and Denison, P.A., Augusta, for appellants Dennis Blanchet, Travis Reed, Michael G. Robitaille, John W. Higgins, Doreen P. Weiss, Wallace L. Walton, Patricia L. Chapman, Duncan Morrell, and Scott Dupuis

William S. Kelly, Esq., and Kristin M. Collins, Esq., Kelly & Collins, LLC, Belfast, for appellee Town of Waldoboro

At oral argument:

Clifford H. Goodall, Esq., for appellants Dennis Blanchet, Travis Reed, Michael G. Robitaille, John W. Higgins, Doreen P. Weiss, Wallace L. Walton, Patricia L. Chapman, Duncan Morrell, and Scott Dupuis

Kristin M. Collins, Esq., for appellee Town of Waldoboro