SETH BERNER

v.

TOWN OF FREEPORT

Submitted on Briefs November 28, 2012
Decided November 29, 2012

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

MEMORANDUM OF DECISION

Seth Berner appeals from a judgment of the Superior Court (Cumberland County, *Warren, J.*) dismissing his M.R. Civ. P. 80B appeal taken from a parking violation notice issued by the Town of Freeport, and declining to issue a declaratory judgment construing the applicable provision of the Town's parking ordinance. Contrary to Berner's contention, the court correctly dismissed his appeal because the Town had not taken an enforcement action pursuant to M.R. Civ. P. 80H, and therefore the determinations of the Freeport Police Department and the Town's attorney concerning the proper construction of the ordinance were only advisory in nature. *See Eliot Shores, LLC v. Town of Eliot*, 2010 ME 129, ¶ 10, 9 A.3d 806.

Furthermore, the court did not abuse its discretion in declining to issue a declaratory judgment because it too would be simply advisory until the Town pursues an enforcement action. *See Linnehan Leasing v. State Tax Assessor*, 2006 ME 33, ¶ 30, 898 A.2d 408 ("A trial court's refusal to address the merits and issue a declaratory judgment in a matter is reviewed for a reasonable exercise of the court's discretion."); *Perry v. Hartford Accident & Indem. Co.*, 481 A.2d 133, 136 (Me. 1984) ("The initial inquiry facing a court confronted by an action seeking

declaratory relief is whether the controversy between the parties is sufficiently 'real' to avoid the constitutional prohibition against rendering advisory opinions except as required by Me. Const. art. VI, § 3.").

The entry is:

Judgment affirmed.

On the briefs:

Seth Berner, appellant pro se

Geoffrey Hole, Esq., and N. Joel Moser, Esq., Bernstein Shur Sawyer & Nelson, Portland, for appellee Town of Freeport