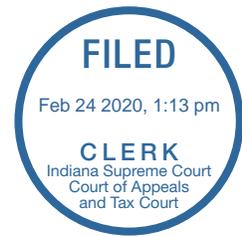


In the
Indiana Supreme Court



Indiana Department Of Natural Resources,
Appellant(s),

v.

Kevin Prosser,
Appellee(s).

Court of Appeals Case No.
18A-MI-02644

Trial Court Case No.
25C01-1706-MI-355

Published Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 2/24/2020.

A handwritten signature in black ink that reads "Loretta H. Rush".

Loretta H. Rush
Chief Justice of Indiana

All Justices concur.

Slaughter, J., concurs in the denial of transfer with separate opinion.

Slaughter, J., respecting the denial of transfer.

I join my colleagues in voting to deny transfer. Under prevailing administrative law, the court of appeals was right to reinstate the agency's judgment denying Prosser's application for a permit to build a concrete seawall on his property. After hearing competing testimony, the administrative-law judge found that Prosser failed to show a 1940s-era dredging operation had increased the overall length of Lake Manitou's shoreline, meaning that the area was not "developed" and requiring that Prosser build his seawall with material other than concrete.

To prevail on judicial review, Prosser had to show the agency's factual findings were "unsupported by substantial evidence." See Ind. Code § 4-21.5-5-14(d)(5). Unfortunately for Prosser, what qualifies as "substantial" evidence is not substantial at all—requiring nothing more than a mere "scintilla" of evidence. See *Ind. High Sch. Athletic Ass'n, Inc. v. Watson*, 938 N.E.2d 672, 680–81 (Ind. 2010). And under Indiana's Administrative Orders and Procedures Act, if there is sufficient evidence in the record, a reviewing court must defer to an agency's factfinding. Here, there was enough evidence to support the agency's findings, so the trial court should have afforded the agency the deference AOPA requires. Thus, the court of appeals properly reversed the trial court's contrary judgment.

I write separately to note my deep concerns with prevailing administrative law as codified in AOPA and interpreted by our courts. Under the current system, a government agency both finds the facts and interprets the statutes that supply the rules of decision, and the courts' only role (as we have interpreted AOPA) is to defer to all aspects of the agency's decision-making. Neither judge nor jury finds facts. And no court gives a fresh, plenary interpretation to the agency's determination of law or to its application of law to the facts.

In a future case, where the issues are raised and the arguments developed, I am open to entertaining legal challenges to this system for adjudicating the legal disputes that our legislature assigns agencies to resolve in the first instance, subject only to a highly circumscribed right of judicial review as set forth in AOPA.