

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 16, 2006

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2005AP1686

Cir. Ct. No. 2002CV206

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-APPELLANT,

V.

MATT VANDELAC,

DEFENDANT-RESPONDENT,

**HAYWARD GOLD COURSE DEVELOPMENT
COMPANY, INC., HAYWARD GOLF LIMITED
PARTNERSHIP, DAVID J. WEBER, JED A. LUND,
BOB THOMPSON AND SONS, INC., PETE DYE
AND TIMOTHY LIDDY,**

DEFENDANTS.

APPEAL from a judgment of the circuit court for Sawyer County:
NORMAN L. YACKEL, Judge. *Affirmed.*

Before Lundsten, P.J., Dykman and Higginbotham, JJ.

¶1 PER CURIAM. The State appeals from a judgment dismissing its civil forfeiture action against Matt Vandelac for the alleged violation of a number of environmental regulations during the construction of a golf course. We affirm for the reasons discussed below.

¶2 Vandelac was an employee of Hayward Golf Course Development, which undertook construction of a golf course. The State filed a civil lawsuit against Hayward Golf and Vandelac, among others, alleging forfeiture violations of WIS. STAT. § 30.19(1g) (2003-04)¹ (prohibiting grading of more than 10,000 square feet on the bank of any navigable water without a permit); WIS. STAT. § 30.12(1) (prohibiting the deposit of material on the bed of a navigable water without a permit); WIS. STAT. § 30.20(1) (prohibiting the removal of material from the bed of a navigable water without a permit); WIS. STAT. § 283.33(1) (requiring those engaged in construction activities to obtain coverage under and comply with the general permit for storm water discharges); and WIS. STAT. § 281.17 (requiring DNR approval for the construction of high capacity wells). Vandelac did not dispute that the violations had occurred but denied that he was personally liable for them.

¶3 Vandelac was not an owner of Hayward Golf at the time the violations occurred and did not personally perform any of the work resulting in the violations, which was done by various contractors. The trial court found that David Weber, an officer and shareholder of Hayward Golf, was “completely in

¹ All references to the Wisconsin Statutes are to the 2003-04 version unless otherwise noted.

charge” of the project. It further found that Vandelac acted as a coordinator for the project, “trying to keep all these experts from violating DNR regulations,” and urging Weber to hire a wetlands expert, which Weber refused to do for monetary reasons. The court concluded that Vandelac should not be held responsible for the violations because he had no actual control over them.

¶4 The State first argues that the trial court misapplied the relevant law by not recognizing that, as a project manager, Vandelac was a “person” within the definitions of WIS. STAT. §§ 30.40(9) and 281.01(9). However, we do not see how the trial court’s decision in any way denies that Vandelac was a person to whom the statutes *could* apply. Rather, the court’s decision is premised on its factual finding that Vandelac did not actually exercise sufficient control over the project to be considered a participant in the violations.

¶5 The State next contends that the trial court’s finding that Vandelac lacked control over the project is clearly erroneous. We may set aside factual findings of the trial court if they are clearly erroneous. WIS. STAT. § 805.17(2). However, a trial court “may choose to believe some assertions of the witness and disbelieve others” and can properly reject even uncontroverted testimony. *State v. Kimbrough*, 2001 WI App 138, ¶29, 246 Wis. 2d 648, 630 N.W.2d 752. Moreover, because the trial court is the ultimate arbiter of credibility when acting as fact finder, we will defer to factual findings which resolve conflicts in the testimony. *State v. Oswald*, 2000 WI App 3, ¶47, 232 Wis. 2d 103, 606 N.W.2d 238.

¶6 Here, there was conflicting evidence in the record about how much control Vandelac actually exercised over the golf course project. The trial court was entitled to credit the testimony of Hayward Golf’s officers Dave Weber and

Jed Lund that they controlled all the decisions of Hayward Golf Course Development, as well as Vandelac's own testimony that he was "more of a go-fer" for Weber and did not hire or supervise anyone else. The mere fact that Vandelac acted as an agent for Hayward Golf by signing certain permits and other documents at Weber's request does not compel the conclusion that Vandelac himself was responsible for the violation of environmental regulations by directing or approving any of the actions taken by the contractors.

By the Court.—Judgment affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

