

**BEFORE THE STATE OF ALASKA OFFICE OF ADMINISTRATIVE HEARINGS
ON REFERRAL BY THE COMMISSIONER OF
THE DEPARTMENT OF REVENUE**

IN THE MATTER OF)	
)	
M N, D)	
N & Z B)	Case No. OAH 04-0152-PFD
)	Previous Case No. 04040753
<u>2004 Permanent Fund Dividend</u>)	

DECISION & ORDER

I. Introduction

M N, D N and Z B timely applied for 2004 permanent fund dividends. The Permanent Fund Dividend Division determined that the applicants were not eligible, and it denied the applications initially and at the informal appeal level. The applicants requested a formal hearing by written correspondence. The administrative law judge affirms the division’s decision.

II. Facts

Most of the material facts are not in dispute. M N and Z B are not married, but their relationship is analogous to that of a married couple. D N is M’s daughter. D turned eighteen and became a legal adult on July 10, 2003. For clarity, M and D N will be referred to herein by their first names. Although she was a minor for the first part of the qualifying year, D filed her 2004 PFD application as an adult. The applicants live as a family, and they were all close to M’s mother.

When M’s mother fell ill in Missouri in September 2002, all three of the applicants went there to be with her. Tragically, the illness proved to be terminal, and M’s mother passed away just a few weeks later on September 24, 2002. The applicants stayed in Missouri until the following summer. D returned to Alaska on August 8, 2003, and M and Mr. B returned on August 18, 2003.

Upon the death of M’s mother, M’s surviving stepfather was executor of the estate. Her stepfather, however, was advanced in age himself and unable to take care of all the necessary details without assistance. M advised him and then actively took care of things in his presence. The applicants have not stated what it was that needed to be done to settle the estate, but they concede that it was a small estate. The applicants explain that for the last three months of 2002 they “could not financially afford to return” to Alaska, and that “dire financial circumstances” were the reason they terminated their lease in Alaska before leaving, taking with them their essential belongings and pets, while storing a great number of other belongings in Alaska for their return. While they were

in Missouri, the applicants helped each other deal with their loss, took care of M's teenage brother, and took care of M's stepfather. M worked while in Missouri, Z and D did not.

III. Discussion

(a) Mr. B's absence was not allowable as an accompanying spouse under AS 43.23.008(a)(13).

Although they are not married, the applicants argue that Mr. B should be regarded for purposes of AS 43.23.008 as a "spouse" accompanying M on her absence from the state. In interpreting the meaning of the statutory language, the applicants correctly cite AS 01.10.040 for the proposition that

Words and phrases shall be construed according to the rules of grammar and according to their common and approved usage. Technical words and phrases and those which have acquired a peculiar and appropriate meaning, whether by legislative definition or otherwise, shall be construed according to the peculiar and approved usage.

The applicants argue that

For the State of Alaska to attempt to define the familial bonds existing between M, D N and Z B is less than commendable. If M N and Z B refer to themselves as "fiancé," but a[c]t as though they are married (to the extent that M N's mother referred to Z as her son-in-law), then, for all intents and purposes, Z B should be treated as M N's husband for the purpose of determining his permanent fund eligibility status.

Commendable or not, familial bonds are in fact defined by the state, at least for legal purposes.

According to AS 25.05.011,

- (a) Marriage is a civil contract entered into by one man and one woman that requires both a license and solemnization. The man and the woman must be at least one of the following:
- (1) 18 years of age or older and otherwise capable;
 - (2) qualified for a license under AS 25.05.171; or
 - (3) a member of the armed forces of the United States while on active duty.

(b) a person may not be joined in marriage in this state until a license has been obtained for that purpose as provided in this chapter. A marriage performed in this state is not valid without solemnization as provided in this chapter.

The Alaska Supreme Court has cited with approval the following language from the Minnesota Supreme Court:

However, "spouse" is commonly known to mean husband or wife. "The legal, as well as the ordinary, meaning of 'spouse' is one's wife or husband." (citations omitted.) We realize that unmarried couples are increasingly cohabiting and that many of these relationships are permanent and analogous to marital relationships. But they are not spousal relationships within the meaning of Minnesota law. Although Minnesota historically recognized common

law marriage, it has been specifically abolished by the legislature. (citation omitted.) We cannot ignore that pronouncement.¹

In spite of the way they feel and act toward each other, or are regarded by their community, Mr. B and M are not each other's spouses for most legal purposes, including the laws regarding PFD eligibility. Mr. B accompanied M during her absence from Alaska, but he was not her spouse. Besides accompanying M as her spouse, the applicants have not suggested any other reason that Mr. B's absence would be allowable under AS 43.23.008. Whether or not M's absence was allowable, Mr. B's was not.

(b) M's absence exceeded the maximum time allowable to settle an estate.

According to AS 43.23.008(a), "an otherwise eligible individual who is absent from the state during the qualifying year remains eligible for a current year permanent fund dividend if the individual was absent... (8) settling the estate of the individual's deceased parent... provided the absence does not exceed 220 cumulative days." The applicants argue that

AS 43.23.008 applies only to absences incurred within a calendar year. In 2003, we (M and Z) were absent from the State of Alaska from January 1 through August 18, and D from January 1 through August 8. This absence for calendar year 2003, totaled 230 days for M and Z, while the absence for D totaled 220 days. As stated above, although I was not the named executrix, I was administering the estate of my mother, I am allowed the 220 cumulative days under AS 43.23.008(8).

The division counters that

Although Ms. N argues in her Request for Formal Hearing that the 220 day time limit on an absence to settle an estate applies to a specific calendar year, the statute actually states that in order to be allowable the absence may not exceed 2002 cumulative days. Ms. N's mother died on September 24, 2002, and therefore Ms. N would have been unallowably absent from Alaska for more than 220 cumulative days while settling her mother's estate.

There is room for discussion of the meaning of AS 43.23.008(a)(8), but I find the division's reading to be correct. Generally, the kinds of absences listed in AS 43.23.008(a) refer to times the applicant is "absent from the state during the qualifying year." Subsection (a)(8) differs from the other kinds of absences in that it only applies "provided the absence does not exceed 220 cumulative days." "Cumulative" means "made up of accumulated parts" or "increasing by successive additions."² If the word "cumulative" were not included in the statute, the applicants' reading would be correct, and under the right circumstances an applicant could be absent for up to 220 days during consecutive years, working on settling a single estate. But the actual wording of the statute shows

¹ *Serradell v. Hartford Accident and Indemnity Co.*, 843 P.2d 639 (Alaska 1992), fn. 6.

² MERRIAM-WEBSTER'S COLLEGIATE DICTIONARY 305, (11th ed. 2004).

that the legislature intended to allow just one absence of up to 220 days to settle an estate, not 220 days each year.

In this case, it is not at all clear that M spent a full 220 days in both years combined actually settling the estate. The term “settling the estate” can be read broadly, depending on circumstances, to include a number of activities that must be tended to upon the death of a family member. The fact that M was not the named executrix of the estate does not necessarily mean she that she was not actively settling the estate, and there were likely some things that needed to be done in addition to any probate proceedings. But an applicant claiming an absence for the purpose of settling an estate has the burden of showing that the absence was actually spent settling the estate. The applicants have conceded that M’s mother left a small estate, and that she died intestate leaving a surviving husband.

M was absent from Alaska for 349 days after her mother passed away. While she has stated that she “was the one responsible for telling my father what had to be done,” and the one that did what needed to be done, there is no real evidence of what actually had to be done and how long it took.³ The applicants concede that other reasons besides the need to settle the estate kept them in Missouri, specifically the shock of the death and not having enough money to return to Alaska.⁴ With more than three full months in 2002 to settle the estate, there is not any significant evidence in the file that M spent any time in 2003 settling her mother’s estate. Even if M did devote a full 220 days to settling her mother’s estate from the time her mother died, 98 of those days would have been in 2003. Only 122 days in 2003 could be allowable for this reason. When added to the 45 additional days allowed by AS 43.23.008(a)(14)(C), the resulting 167 allowable days are fewer than the 230 days that M was in Missouri in 2003. Because 63 of the days that M was in Missouri in 2003 were not allowable, M does not qualify for a 2004 dividend.

(c) D N’s absence was not allowable.

D was absent from Alaska for 220 days during 2003. This exceeds the 180 days allowed by AS 43.23.008(a)(14)(A). Although D was a minor at the beginning of 2003 until her 18th birthday on July 10, her absence to accompany her mother was not allowable. Under AS 43.23.008(a)(13), an absence to accompany a parent is only allowable if the parent is eligible. For the reasons stated above, D’s mother M was not eligible. There is no other basis to conclude that D’s absence in 2003 was allowable; she is not eligible for a 2004 dividend.

³ Exhibit 9, p. 7.

⁴ *Id.*; Exhibit 3, p. 14.

IV. Conclusion

Each of the three applicants in this case was unallowably absent in 2003, the qualifying year for a 2004 dividend. The PFD Division was correctly following the law when it denied their applications for 2004 dividends.

V. Order

IT IS HEREBY ORDERED that the decision of the Permanent Fund Dividend Division to deny the applications of M N, D N and Z B for 2004 permanent fund dividends be AFFIRMED.

DATED this 5th day of July, 2005.

By: *Signed* _____
DALE WHITNEY
Administrative Law Judge

Adoption

This Order is issued under the authority of AS 43.05.010 and AS 44.17.010. I, Terry Thurbon, Chief Administrative Law Judge, on behalf of the Commissioner of Revenue, order that this decision and order relating to the eligibility of M N, D N and Z B for 2004 permanent fund dividends be adopted and entered in their file as the final administrative determination in this appeal.

Reconsideration of this decision may be obtained by filing a written motion for reconsideration within 10 days after the date of this decision, pursuant to 15 AAC 05.035(a). The motion must state specific grounds for relief, and, if mailed, should be addressed to: Commissioner's Office Appeals (Reconsideration), Alaska Department of Revenue, P.O. Box 110400, Juneau, Alaska 99811-0400.

Judicial review of this decision may be obtained by filing an appeal in the Alaska Superior Court in accordance with AS 25.27.210 within 30 days of the date of this decision.

DATED this 6th day of July, 2005

By: *Signed* _____
Terry L. Thurbon
Chief Administrative Law Judge

[This document has been modified to conform to the technical standards for publication. Names may have been changed to protect privacy.]