

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

IAN & PEGGY HARROD,)
)
 Appellants,)
)
 v.)
)
STATE OF ALASKA, DEPARTMENT)
OF REVENUE,)
)
 Appellee,)
)

Case No. 4FA-07-1224CI

DECISION AND ORDER

I. INTRODUCTION

The appellants, Ian and Peggy Harrod, appeal the decision of the Alaska Department of Revenue denying them their family's 2005 Permanent Fund Dividends. In the proceedings below, Administrative Law Judge Kennedy concluded that the Harrods were collaterally estopped by prior decisions of the department which terminated the Harrods' PFD eligibility. Because Judge Kennedy correctly applied the doctrine of collateral estoppel, Judge Kennedy's Decision and Order is affirmed. Because the issues the Harrods raise on appeal are not germane to Judge Kennedy's decision and should have been raised in 2002 and 2003, those issues are not addressed by this court.

II. FACTS AND PROCEEDINGS

Ian and Peggy Harrod first moved to Alaska in 1987 when the Navy assigned Ian to Adak. In 1992 Ian was transferred to

Europe and the family left the state. The family continued to claim Alaska residency and applied for and received dividends from 1993 through 1996 relying on military and accompanying spouse allowable absence provisions. From 1997 through 2000 the Harrods did not apply for dividends.

In 2001 the Harrods applied for and were initially denied dividends because they had been absent from the state for more than five years and they did not rebut the presumption that arises by such an absence. But this determination was reversed by a hearing officer who concluded that the Harrods had successfully rebutted the presumption.

In 2002 and 2003 the Harrods again applied and again had their dividends denied for the same reasons. But the Harrods did not appeal those denials. The decision of the department became final.

The Harrods did not apply in 2004.

In 2005 the Harrods applied for dividends and were once again denied, this time for the reason that the 2002 and 2003 decisions were final and as a result the Harrods needed to reestablish their residency for PFD eligibility. It is undisputed that the Harrods could not do so because they were still outside the state. The department further ruled that the Harrods could be denied, once again, for the reason that they

were absent for more than five years and did not rebut the presumption that arises from that absence. The Harrods formally appealed that decision.

After a formal hearing, Administrative Law Judge Christopher Kennedy issued his Decision and Order affirming the department's decision on the grounds that the Harrods were collaterally estopped by the 2002 and 2003 decisions terminating their eligibility and therefore the Harrods needed to reestablish their eligibility. It being undisputed that the Harrods did not reestablish residency, the decision of the department was affirmed. Judge Kennedy did not address the issue of the five-year absence and the presumption that arises therefrom. This appeal follows.

III. STANDARD OF REVIEW

Administrative determinations concerning PFD eligibility are reviewed using the independent judgment of the court.¹ A substitution of judgment standard is applied to issues of law not involving agency expertise, such as statutory interpretation and constitutional claims.² But this court does not substitute its judgment for that of the agency with respect to the efficacy

¹ Church v. State, Dep't. of Revenue, 973 P.2d 1125, 1127 (Alaska 1999).

² Id. citing Madison v. Alaska Dep't. of Fish and Game, 696 P.2d 168, 173 (Alaska 1985).

of a regulation nor does it review the wisdom of a particular regulation.³ Whether the doctrine of collateral estoppel applies is a question of law reviewed de novo.⁴

IV. DISCUSSION

The Department's 2002 and 2003 Decisions Are Binding and Harrods Must Reestablish Residency

The department's 2002 and 2003 decisions are final decisions. The Harrods participated in the administrative review. They did not appeal. The Harrods claim that they appealed the denial of their 2002 and 2003 dividends but offer no evidence in support of that claim. The department's record establishes that no appeal was taken.

Administrative Law Judge Kennedy correctly applied the doctrine of collateral estoppel to the department's prior determinations. Judge Kennedy notes as follows:

"In essence, when the same parties have disputed an issue in the past and the issue was resolved by a final decision in an adjudicatory proceeding that either takes place in court or offers "an adequate substitute for judicial procedure," that issue is resolved when it arises in the future between those parties." ⁵

³ Id. citing State, Dep't. of Revenue v. Cosio, 858 P.2d 621, 624 (Alaska 1993) (additional citations omitted).

⁴ Matanuska Electric v. Chugach Electric Assn., 152 P.3d 460, 465 (Alaska 2007).

⁵ December 28, 2006 Decision in Order, citing Alaska Contracting and Consulting, Inc. v. Alaska Department of Labor, 8 P.3d 340, 344-45 (Alaska 2000); Aloha Lumber Corp. v. University of Alaska, 994 P.2d 991, 1001-02 (Alaska 1999); Briggs v. State, Department of Motor Vehicles, 732 P.2d 1078, 1081-82 (Alaska 1987).

The Alaska Supreme Court has recognized that "principles of finality may be applied to the decisions of administrative agencies if, after case specific review, a court finds that the administrative decision resulted from a procedure that seems an adequate substitute for judicial procedure and that it would be fair to accord preclusive affect to the administrative decision."⁶

In this case the Harrods are seeking to raise precisely the same question of residency in 2005 that was adjudicated in 2002 and 2003. The 2002 and 2003 administrative procedures afforded the Harrods an opportunity to present their arguments and evidence on the issue of their eligibility and they did so. They were afforded an opportunity to appeal the initial denial and chose not to do so. Because the issue of residency was contested before the department with adequate procedures and with an opportunity for appeal, it is fair to apply the doctrine of collateral estoppel to that issue. The fact that the Harrods' lost their dividend eligibility should be deemed conclusively established by the 2002 and 2003 decisions.

Accordingly, the question of the Harrod's 2005 PFD eligibility now turns solely on the issue of their

⁶ Matanuska Electric, 152 P.3d at 468. quoting Matanuska Electric v. Chugach Electric Assn., 99 P.3d 553, 561 n. 30 (Alaska 2004).

reestablishing residency. It is uncontested that the Harrods were not physically present in Alaska and therefore did not reestablish their residency. Thus the denial of the 2005 PFD is proper. The decision of Administrative Law Judge Kennedy is affirmed.

Harrods' Issues on Appeal Are Not Germane to the Denial of Their 2005 PFD

The issues raised by the Harrods on appeal are not germane to the denial of their 2005 dividends. Judge Kennedy's decision turns solely on the question of the collateral estoppel effect of the 2002 and 2003 decisions and the undisputed fact that the Harrods did not reestablish residency. Yet the Harrods raise issues on appeal that relate to the question of residency that was disposed of in 2002 and 2003. Judge Kennedy did not reach that question. This court declines to reach that question as well.

The Harrods raise the following issues on appeal:

- 1) The Alaska Department of Revenue Has No Legal Authority to Revoke, in Part or Whole, the Resident Status of Any Alaskan Citizen;
- 2) The Alaska Department of Revenue Exceeds Statutory Authority Granted by Placing Additional Eligibility Requirements within 15 AAC 23.163(h)(2);
- 3) 15 AAC 23.163(f) Violates the Equal Protection Clause of the United States Constitution and the Alaska Constitution;
- 4) AS 43.23.005 (a)(4) Violates the Due Process Clause of the United States Constitution and the Alaska Constitution; and

5) The PFD Division Did Not Follow Regulations in Denying Both 2002 and 2003 Dividends.

But these issues are relevant to the denial of the 2002 and 2003 dividends. They should have been raised in an appeal of the denial of those dividends. They are not germane to the sole issue considered by Judge Kennedy. They are not germane to this appeal and will not be considered by this court.⁷

Denying a Second Hearing Was Not Abuse of Authority

Following the conclusion of the administrative hearing before Judge Kennedy the Harrods requested a second hearing to allow them to question the department's representative. Judge Kennedy denied that request for hearing because the department's representative was not a fact witness and the Harrods advanced no reason why she needed to be heard from again. Judge Kennedy was within his discretion to conclude that the Harrods did not make a showing sufficient to warrant a second hearing. As the department argues, the Harrods had the department's position paper prior to the first hearing and could have challenged any of the department's assertions they believed were inaccurate. The department's representative is in fact not a fact witness and has no evidence to give. Judge Kennedy was within his

⁷ If this court were to reach these issues they would each be rejected for the reasons set forth in the Brief of Appellee. Each of the legal questions the Harrods raise has been previously addressed by the Supreme Court. Each of the Harrods' arguments should be rejected.

discretion to deny the request for a second hearing. He properly concluded that the Harrods' stated purpose of examining the department's representative did not warrant the rehearing.

Moreover, because Judge Kennedy properly ruled that the Harrods were collaterally estopped by the prior decisions of the department and because it was undisputed that the Harrods did not return to Alaska and reestablish residency, there was no reason to hold a second hearing. There was no dispute as to any material facts.

V. CONCLUSION

For the foregoing reasons the Decision and Order of Administrative Law Judge Kennedy dated December 28, 2006 is AFFIRMED.

DATED this 13th day of March, 2009 at Fairbanks, Alaska.

Michael A. MacDonald
Superior Court Judge