

SUPREME COURT OF ALASKA

Ahtna Tene Nené v. State, Department of Fish & Game

288 P.3d 452 (Alaska 2012) · No. S-18968 · Decided November 9, 2012

SUMMARY

The Alaska Supreme Court dismissed as moot an appeal concerning regulations governing community and individual subsistence hunting permits because the challenged regulations had been substantially amended. The court declined to apply the public interest exception to the mootness doctrine and addressed the related attorney-fee awards. It vacated fees assessed against Ahtna and fees awarded to a pro se law-school graduate who was not admitted to practice law, while leaving the fee award to the private intervenor against the State undisturbed.

CASE DETAILS

COURT	Supreme Court of Alaska
WRITING FOR THE COURT	Carpeneti, Chief Justice; Carpeneti; Christen; Fabe; Stowers; Winfree
JURISDICTION	Alaska
DECIDED	November 9, 2012
DOCKET	S-18968
DISPOSITION	dismissed
PROCEDURAL POSTURE	Ahtna appealed the superior court's summary judgment enjoining a community harvest permit as unconstitutional and the court's awards of attorney's fees and costs. The Alaska Supreme Court consolidated the substantive appeal and the fee appeal and requested supplemental briefing on mootness.
STANDARD OF REVIEW	Standing and mootness are reviewed under an independent-judgment standard because they are questions of law. The legal analysis underlying an attorney's-fee award is reviewed de novo.
PRECEDENTIAL VALUE	precedential
PARTIES	Ahtna Tene Nené v. State, Department of Fish & Game, Alaska Fish & Wildlife Conservation Fund, Kenneth Manning

TOPICS

mootness

judicial review of agency action

administrative law

appellate procedure

attorney fees

PRACTICE AREAS

administrative law

constitutional law

appellate procedure

civil procedure

remedies

QUESTIONS PRESENTED

1. Whether the appeal challenging the Board's 2009 subsistence-hunt regulations was moot after the regulations were substantively amended and replaced.
2. Whether the public-interest exception to mootness required the court to reach the underlying constitutional, statutory, and administrative-law claims.
3. Whether the possibility of affecting attorney's-fee awards required review of the otherwise moot merits appeal.
4. Whether a pro se litigant who has a law degree but is not admitted to practice law may recover attorney's fees under Alaska law.

HOLDINGS

1. The appeal was moot because the challenged 2009 regulations were no longer in effect, the amended regulations substantially changed the disputed hunting opportunities, and the requested declaratory and injunctive relief was no longer available through court intervention.
2. The public-interest exception did not apply because the specific 2009 regulatory issues were not capable of repetition, subsequent regulations were substantially different, and deciding the claims would require an advisory opinion on a broader controversy not presented by the operative facts.
3. The court was not required to reach the merits merely to determine the prevailing party for attorney's-fee purposes because no substantive issues remained and appellate review would not affect the Fund's fee award.
4. A pro se litigant who has a law degree but is not admitted to practice law is a non-attorney and may not recover attorney's fees under Alaska Civil Rule 82 or Alaska Statute 09.60.010.

KEY QUOTATIONS

“Issuing a decision regarding regulations that are no longer in effect is merely an academic exercise; it provides no explanation of a party's rights under the existing law.” (458)

“We decline to make broad declarations of law that ignore the facts of the case in front of us.” (460)

“A law school graduate is a non-attorney; thus, the plain language of these rules and statutes prohibit the award of fees.” (463)

FACTUAL BACKGROUND

The Alaska Board of Game replaced a controversial Tier II subsistence permit system for Game Management Unit 13 with a Tier I system consisting of community and individual hunts. Ahtna received a community harvest permit under the new regulations, which Kenneth Manning challenged as violating the Alaska Administrative Procedure Act, due process, governing statutes, and the Alaska Constitution. While the appeal was pending, the

Board amended the regulations to make community permits available regardless of residency and to alter the frequency of individual permits.

PROCEDURAL HISTORY

Kenneth Manning challenged Alaska Board of Game regulations establishing Tier I community and individual subsistence hunts. Ahtna intervened for the State, and the Alaska Fish & Wildlife Conservation Fund intervened for Manning. The superior court granted summary judgment to Manning and the Fund, enjoined Ahtna's community harvest permit, and found APA notice deficiencies, arbitrary and unreasonable agency action, an unconstitutional residency-based permit, and an impermissible delegation. After the Board amended the regulations and they became effective in 2011, Ahtna appealed. The Supreme Court dismissed the merits appeal as moot, vacated the fee award against Ahtna as to the Fund, left the State's liability for the Fund's award undisturbed, and vacated Manning's fee award.

DISPOSITION

dismissed

REMAND INSTRUCTIONS

No remand was ordered. The merits appeal was dismissed; the fee award against Ahtna was vacated as to the Alaska Fish & Wildlife Conservation Fund, the State's liability for the Fund's award was left undisturbed, and Manning's fee award was vacated.

CASES CITED

- State, Department of Fish & Game v. Manning, 161 P.3d 1215, 1217 (Alaska 2007)
- Ulmer v. Alaska Restaurant & Beverage Ass'n, 33 P.3d 773, 776-78 (Alaska 2001)
- Weimer v. Continental Car & Truck, 237 P.3d 610, 613 (Alaska 2010)
- O'Callaghan v. State, 920 P.2d 1387, 1388 (Alaska 1996)
- Kleven v. Yukon-Koyukuk School District, 853 P.2d 518, 523 (Alaska 1993)
- Kodiak Seafood Processors Ass'n v. State, 900 P.2d 1191, 1195-96 (Alaska 1995)
- Peninsula Marketing Ass'n v. State, 817 P.2d 917, 919-20 (Alaska 1991)
- Mullins v. Local Boundary Commission, 226 P.3d 1012, 1015, 1017 & n. 12 (Alaska 2010)
- Akpik v. State, Office of Management & Budget, 115 P.3d 532, 534-35 (Alaska 2005)
- State, Department of Natural Resources v. Greenpeace Inc., 96 P.3d 1056, 1068 (Alaska 2004)
- Hayes v. Charney, 693 P.2d 831, 834 (Alaska 1985)
- Fairbanks Fire Fighters Ass'n, Local 1324 v. City of Fairbanks, 48 P.3d 1165, 1168 (Alaska 2002)
- Taylor v. Gill Street Investments, 743 P.2d 345, 347 (Alaska 1987)
- Gold Country Estates Preservation Group, Inc. v. Fairbanks North Star Borough, 270 P.3d 787, 794-95 (Alaska 2012)
- Smallwood v. Central Peninsula General Hospital, Inc., 227 P.3d 457, 461 (Alaska 2010)

- Hickel v. Southeast Conference, 868 P.2d 919, 928 n. 11 (Alaska 1994)
- Maloney v. Progressive Specialty Insurance Co., 99 P.3d 565, 568 (Alaska 2004)
- J.L.P. v. V.L.A., 30 P.3d 590, 599 (Alaska 2001)
- Juelfs v. Gough, 41 P.3d 593, 598-99 & n. 26 (Alaska 2002)
- Sherry v. Sherry, 622 P.2d 960, 966 (Alaska 1981)
- Burrell v. Hanger, 650 P.2d 386, 387 (Alaska 1982)
- Pratt & Whitney Canada, Inc. v. Sheehan, 852 P.2d 1173, 1181 (Alaska 1993)
- Shearer v. Mundt, 36 P.3d 1196, 1198-99 (Alaska 2001)

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