

State of Maine
Supreme Judicial Court sitting as the Law Court

Larry Anderson,

Appellant,

v.

Maine Department of
Marine Resources,

Appellee.

Docket Number 24-479

Appeal from Final Judgment of the Maine Superior Court, Pursuant
to Rule 80C, Maine Rules of Civil Procedure

Brief for Larry Anderson, Appellant

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1. Nature of the Case

Larry Anderson files this brief in support of his appeal from the decision of the Superior Court denying his petition for Rule 80C relief. That decision incorrectly found that Mr. Anderson was not entitled to have a jury decide the questions of fact which would determine whether the Maine Department of Marine Resources could suspend his lobster license.

2. Facts and Procedural History

Larry Anderson is a lobsterman residing in Brunswick, Maine, who fishes out of Harpswell. Record, 412. The Maine Department of Marine Resources (D.M.R.) is an agency of the State of Maine.

On August 20, 2023, D.M.R. summonsed Mr. Anderson to District Court, asserting violations of Title 12 M.R.S. §6431-B (Untagged Traps, a Class D misdemeanor) and Title 12 M.R.S. §6431-A (fishing over 800 traps, a civil offense). Record, 24, 25. Mr. Anderson has pleaded not guilty and denied civil liability, and he has elected a jury trial on the criminal offense. At this writing these charges still pend.

By letter dated October 6, 2023, D.M.R. administratively suspended Mr. Anderson's lobster license for two years, under Title 12 M.R.S. §6351, with the suspension to commence October 16, 2023. Record, 28. By letter dated October 11, 2023, D.M.R. revised the length of the suspension to three years, with the

suspension to commence October 21, 2023. Record, 30. As the October 11 suspension letter states, D.M.R. issued the suspension based upon the agency's conclusion that Mr. Anderson had violated Title 12 M.R.S. §6431-A and Title 12 M.R.S. §6431-B, on the basis of the same allegations underpinning the District Court summonses set forth above.

On the administrative suspension, Mr. Anderson invoked his right to an evidentiary hearing. Record, 208. Pending the hearing, Mr. Anderson filed a motion before the agency for an order granting him a jury trial, or, in the alternative, dismissing the administrative suspension proceedings, allowing only the District Court prosecutions to go forward. Appendix, 38. D.M.R., acting through its hearing officer, denied the motion. Appendix, 41.

The evidentiary hearing occurred January 22, 2024. Mr. Anderson denied fishing more than 800 traps, asserting that he had sold certain traps to his son Avery. Avery corroborated his father's testimony. Record, 415-420, 463-468. Mr. Anderson also denied that he was liable for fishing untagged traps, producing evidence tending to show that trap tags fall off or are chewed off, and that D.M.R. is well aware of this issue with these D.M.R.-issued tags. Record, 423-425, 456.

On February 8, 2024, D.M.R. issued its letter confirming the hearing officer's findings that violations had occurred, and suspending Mr. Anderson's

lobster license for three years, commencing February 8, 2024. Appendix, 25. As the letter states, the February 8, 2024 letter is a final agency action.

Mr. Anderson timely filed a Rule 80C complaint against D.M.R., in the Cumberland County Superior Court, pointing out that he has a property interest in his lobster license and that, given the plain language of the Maine Constitution's Article 20, he was wrongfully denied his right to a jury trial. Appendix, 20. Oral argument occurred June 10, 2024, and on October 3, 2024 the court issued its Memorandum of Decision and Order, denying the appeal. Appendix, 7. His appeal to this court followed.

3. Issue Presented

In recent years, there has occurred a groundswell of appeals before state appellate courts asserting rights set forth in state constitutions, often rights which have gained new relevance concurrent with recent United States Supreme Court jurisprudence. Anderson v. D.M.R. is part of that groundswell. Before this court is whether, given settled law that Mr. Anderson had a property interest in his lobster license, and given the Maine Constitution's guarantee in Article I, Section 20 of a person's right to a jury trial "[i]n all controversies concerning property", the Superior Court should have held that the Maine Department of Marine Resources improperly denied Mr. Anderson's motion asking that a jury decide the questions of fact which would determine whether his lobster license could be suspended.

4. Standard of Review

An agency is limited both by its statutory grant of authority and by the state and federal constitutions. New Eng. Tel. & Tel. Co. v. Pub. Utils. Comm’n, 148 Me. 374, 379, 94 A.2d 801, 804 (1953). Because agencies have no expertise in constitutional interpretation, the Court, without deference, will conduct an independent review of the jurisdictional requirements imposed by the United States Constitution or the Maine Constitution. See LeBlanc v. United Eng’rs & Constructors Inc., 584 A.2d 675, 677 (Me. 1991).

The Law Court is obliged to vacate the decision if the administrative findings, inferences, conclusions or decisions are: (1) in violation of constitutional or statutory provisions; (2) in excess of the statutory authority of the agency; (3) made upon unlawful procedure; (4) affected by bias or error of law; (5) unsupported by substantial evidence on the whole record; or (6) arbitrary or capricious or characterized by abuse of discretion. Cobb v. Board of Counseling Professionals Licensure, 896 A.2d 271, 274; 2006 ME 48; Title 5 M.R.S. §11007(4)(C) (2005).

The Law Court will review questions of law de novo, Palian v. Maine Department of Health and Human Services, 2020 ME 131 ¶10, and “[t]he party seeking to overturn the agency’s decision bears the burden of persuasion.” Doe v. Dep’t of Health and Human Services, 2018 ME 164, ¶11, 98 A.3d 782.

Importantly, however, the Maine Department of Marine Resources bears the burden of demonstrating that Mr. Anderson was not entitled to a jury trial. North Sch. Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me. 1989) (“Specifically, our practice now is to find that there is such a right unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820.”)

5. Argument

D.M.R.’s imposition of a license suspension without affording Mr. Anderson a jury trial violates the Maine Constitution. Mr. Anderson had a property interest in his lobster license and the Maine Constitution provides the right of a jury trial in all controversies including property; hence the Superior Court erroneously deprived him of that right.

A. Larry Anderson had a property interest in his lobster license.

Neither the grant of a lobster license nor the continuance of an issued lobster license is at the discretion of D.M.R. Rather, a lobster license is the right of any Maine citizen meeting the statutory and regulatory requirements set forth by the Legislature and the Department. Title 12 M.R.S. §6301 et seq. The statutory and regulatory scheme makes clear that but-for a finding of specific violations, a finding reached by means of the procedures outlined in Title 12 chapter 617 and

the Administrative Procedures Act, Title 5 Ch. 375, D.M.R. was and remains without discretion either to suspend a lobsterman's license in the middle of the fishing year or to deny him or her a lobster license for the coming fishing year. D.M.R. undertook both actions as to Larry Anderson's lobster license on the basis of its administrative finding that he had violated two fisheries statutes. But for that finding, Mr. Anderson would have been licensed through the 2024 fishing year. He also would have renewed his license for 2025 and beyond, unless D.M.R. established some basis, set forth in the regulatory scheme, to bar renewal.

Where a Maine state agency has given a citizen a license to undertake a given activity, which license cannot be suspended except in conformance with procedure set out in the regulatory scheme, the citizen enjoys a property interest in the license. Munjoy Sporting and Ath. Club v. Dow, 2000 ME 141, makes the point. There, the petitioning club, which for decades had conducted public games of chance, asserted that the Maine State Police's denial of its request for a license without a hearing violated the Maine Administrative Procedures Act, Title 5 M.R.S. Section 10003(1). The respondent agency asserted that because as a formal matter the club was requesting a new license, the Administrative Procedures Act did not require a hearing. Finding for the club, the Law Court held "[I]f a benefit is a matter of statutory entitlement for persons qualified to receive them, then the government has created a property interest in that benefit Licenses create

property rights where state law mandated renewal upon satisfaction of certain substantive prerequisites.” Munjoy Sporting and Ath. Club v. Dow, 2000 ME 141 ¶11(internal quotation marks and citations omitted).

B. Because he had a property interest in his lobster license, the Maine Constitution guarantees Larry Anderson the right to a jury trial before D.M.R. can suspend his license.

Article I, Section 20 of the Maine Constitution provides “[I]n all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced” Because Mr. Anderson enjoyed a property right in his lobster license, D.M.R.’s imposition of a suspension by administrative hearing unlawfully denied him his right to have a jury decide whether there exist facts sufficient to allow the state to take away that license.

D.M.R.’s power to suspend a lobster license is set forth in three statutes. Title 12 M.R.S. §6351 allows a suspension after judicial finding of criminal or civil liability for violation of *inter alia*, a fisheries law. Title 12 M.R.S. §6371, the statute D.M.R. used to suspend Mr. Anderson’s license, allows suspension after an administrative finding of (among other transgressions) a fisheries violation. The lesser used Title 12 M.R.S. §6374 allows the Commissioner to suspend a license *ex parte*, based on the probable cause affidavit of an officer, without prior hearing.

Prior to 2017, D.M.R. officers referred serious lobster violations to the District Attorney or Attorney General for prosecution; these violations were then typically misdemeanor criminal offenses. A conviction, if it occurred, was the predicate for D.M.R.'s suspension of the license pursuant to Title 12 M.R.S. §6351. That level of due process, entirely appropriate for a state action seeking to suspend a Mainer's license to engage in his or her livelihood, allowed a defendant a Superior Court jury trial and some elected that procedure.

Apparently wishing to streamline this process, D.M.R. successfully lobbied the Legislature for the power to administratively adjudicate license suspensions. The result was Title 12 M.R.S. §6371, "Administrative Suspension": Commissioner "may suspend any licenses or certificates issued under this Part on the following grounds: A. Violation of any section of marine resources laws or rules adopted under this Part." Since 2017, when §6371 became effective, administrative suspensions have become the norm.

The result, of course, was to remove from the courtroom the determination of whether an alleged lobster violation would result in license suspension. The judicial prosecutions of misdemeanor or civil violations might still occur, on a parallel track as it were, just as is the case with Mr. Anderson. But all that is at stake in the courtroom is a fine, although for misdemeanors jail time is a possibility. The determination of whether there would be imposed a livelihood-

ending license suspension now takes place in an administrative hearing, remotely held in Mr. Anderson's case, presided over by an employee of the same executive branch seeking the suspension, with no jury trial allowed, and with the Maine Rules of Evidence suspended.

This diminished procedure, so dismissive of the fisherman's expectation that robust due process ought to preface so momentous a sanction, and likely violating the United States Constitution's guarantee of procedural due process found in the 14th Amendment¹, unambiguously violates Article I, Section 20 of the Maine Constitution: "In all civil suits, and in all controversies concerning property, the parties shall have a right to a trial by jury, except in cases where it has heretofore been otherwise practiced"

These words mean what they say. The Law Court has warned against an inappropriately nuanced analysis of this straightforward right:

The unmistakable import of [Article I, Section 20] obviates resort either to nice semantic distinctions or to wooden interpretative principles. In language plain and broad Article I, Section 20 guarantees to parties in all civil suits the right to a jury trial, except where by the common law and Massachusetts statutory law that existed prior to the adoption of the Maine Constitution in 1820 such cases were decided without a jury.

¹ The U.S. Supreme Court recently held that the 7th Amendment to the United States Constitution guarantees the right of a person to a jury trial before the Securities and Exchange Commission can levy a monetary penalty for a licensure infraction. *S.E.C. v. Jarkesy*, 603 U.S. 109 (2024). D.M.R. may argue that there's no monetary penalty for Mr. Anderson. True, there is merely a three year license suspension, which as a practical matter puts him permanently out of the fishery.

City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987)(internal citations omitted).

C. The Respondent cannot carry its burden of showing that before 1820 a jury trial would not have been available in a case such as Mr. Anderson's.

The Law Court's endorsement of the jury trial right is so robust as to place *on the agency* the burden of showing that no such right exists. North School

Congregate Hous. v. Merrithew, 558 A.2d 1189, 1190 (Me. 1989):

We have recently modified how we analyze the constitutional right to a jury trial to track more closely the language of Article I, Section 20. Specifically, our practice now is to find that there is such a right unless it is affirmatively shown that a jury trial was unavailable in such a case in 1820. *See In re Shane T.*, 544 A.2d 1295, 1297 (Me. 1988); City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987).

This is a burden D.M.R. cannot carry.

A 2017 Maine Law Review comment usefully frames the Law Court's analysis when an appeal asserts that Maine's Constitution guaranteed the right to a jury trial:

The constitutional right to a jury trial must be analyzed independently for each civil action. To determine whether a jury trial right exists for a particular action, one must first understand whether that cause of action existed at common law: for Maine, in or prior to 1820. If the same cause of action existed at the time the Constitution was adopted, the next step required by the court is to determine whether the cause of action was granted a jury trial, or if was handled in some other non-jury proceeding, such as a proceeding under equity jurisdiction. If the cause of action did not exist at common law, the same analysis must be undertaken by assessing whether a "suit of a similar nature" was decided in a non-jury proceeding at the time. If no similar cause of action existed, there is an

affirmative right to a jury trial under the DePaolo interpretation of Article I, Section 20.

Liegner, A MODERN LOOK AT THE RIGHT TO A CIVIL JURY TRIAL UNDER THE MAINE CONSTITUTION, 69 ME. L. REV. 169, 187 (2017).

Also see M. Tinkle, THE MAINE STATE CONSTITUTION, p. 59 (2nd ed. 2013):

Just as the right to trial by jury in criminal cases is broader under the Maine Declaration of Rights than under the federal Constitution, so, too, is the right to jury trial in civil suits, guaranteed under this section. The Seventh Amendment preserves the right to a jury trial if it was previously required "at common law" (see Atlas Roofing Co., Inc. v. Occupational Safety & Health Review Commission, 430 U.S. 442, 455 (1977)), whereas the Maine Constitution's guarantee requires a jury trial in all civil actions except if the prior practice was otherwise. This distinction matters, in view of the many modern civil actions that were unknown to the early common law.

By way of example, in North School Congregate Housing, the court undertook an in-depth historical analysis to conclude that forcible entry and detainer actions have the right to a jury trial, because suits for eviction had such a right prior to 1820, under both common law and Massachusetts statute. 558 A.2d at 1190-92.

It might seem difficult to analogize a pre-statehood case to Mr. Anderson's matter. In fact, one may analogize in two ways, by reference to early fishery regulation and by reference to early drayage licensing.

i. Early fisheries regulation. Alewives, salmon, eels, shad and other anadromous and catadromous species played a key role in allowing the colonists to

survive, and the Pilgrims had hardly stepped ashore when law was used to prevent interference with the fish runs.²

In 1789 Massachusetts enacted Mass. Gen. Laws Ch. 51 (1789), “An act to regulate the catching of salmon, shad and alewives”, reproduced in the Appendix at 45. The law strictly regulated the time and place for the taking of salmon, shad and alewives; in substance the law reads remarkably like a typical current Maine fishery regulation, with specific rivers receiving specific regulation. Cases were heard in the first instance before a single justice of the peace, without a jury, but with “an appeal being allowed to either party to the Court of general sessions of the Peace next to be holden in and for the same county.” Id.

The Courts of general sessions of the Peace, according to the Massachusetts state website, heard cases from 1692 to 1827, and allowed a trial by jury:

² See John Josellyn, Colonial Traveler, A Critical Edition of Two Travels to New England (publ. 1674; *republished*, University Press of New England. 1988):

"The Alewife is like a herrin [sic], but has a bigger bellie therefore called an Alewife, they come in the end of April into fresh Rivers and Ponds; there hath been taken in two hours by two men without any Weyre at all, saving a few stones to stop the passage of the River, above ten thousand. . . . It seems to be a sort of fish appropriated by Divine Providence to Americans and most plentifully afforded to them so that remote towns as far as Dunstable (as we hear) have barreld y'm up and preserved them all winter for their reliefe. No wonder then that the poor people of Taunton were so much concerned when such sort of a dam was made at Cohannit that should quite stop the fish from going up the river and therefore prosecuted the man that did it in ye law (which process in law how it came to a full stop as it did is mysterious and unaccountable) and it was difficult to persuade the aggrieved people to forbear using violence to open a passage for ye fish and to keep in the path of law for y'r reliefe."

Courts of General Sessions of the Peace heard criminal cases and oversaw county administration. Justices of the peace appointed by the governor and council served the courts. The legislature determined the date and location for quarterly sittings, where the entire bench would preside over criminal jury trials prosecuted by the attorney general. Rulings could be appealed to the Superior Court of Judicature (later the Supreme Judicial Court) to present the case before another jury.

<https://www.mass.gov/info-details/find-out-how-to-access-historic-civil-and-criminal-case-records>

There exists a reported Massachusetts Supreme Court case discussing an infraction of the 1789 law, Melvin v. Bridge, 3 Mass. 305 (Mass. 1807) (reproduced at Appendix, 43). In summary, prosecutor Bridge filed an information against Melvin for taking Merrimac River fish in contravention of Mass. Gen. Laws Ch. 51 (1789). A Justice of the Peace found Melvin guilty, and fined him \$5.00 and costs. Melvin appealed, although the appeal was to the Court of Common Pleas, which like the Courts of General Sessions of the Peace was a trial court, with a jury trial available.³ The controversy was then heard *de novo before a*

³ Apparently the statute under which Melvin was prosecuted had not been amended to reflect shifting subject matter jurisdiction in the Massachusetts courts. The forty years following 1783 were a period of considerable flux in the Massachusetts courts, with many changes in subject matter jurisdiction. The one constant, however, was a three-tiered court system: inferior courts trying non-capital matters before a single justice, with appeal *de novo* available, including a jury trial if elected, before the Court of Common Pleas, whose jurisdiction overlapped both in time and in subject matter with the Court of General Sessions of the Peace, and with the right of appeal from both those courts to the Superior Court of Judicature, which itself replaced the Court of Assistants. See M. Hindus, A GUIDE TO THE COURT RECORDS OF EARLY MASSACHUSETTS, 62

jury, and he was acquitted. (Melvin subsequently sued the prosecutor for costs, which appeal was denied, in the reported case, on procedural grounds.)

To be clear, Melvin v. Bridge was not a licensing case: The first Maine or Massachusetts fisheries license would not be issued for many decades. But the case shows us how fisheries violations were adjudicated in 1806 – the case shows us that cases of a similar nature to Mr. Anderson’s were tried, when the defendant elected, before a jury. North School Congregate Hous. v. Merrithew, 558 A.2d 1189, 1192 (Me. 1989).

ii. Early drayage licensing.

While not quite pre-statehood, In re Vandine, 6 Pick. 187, 23 Mass. 187, 17 Am.Dec. 351 (Mass. 1828) demonstrates that in the relevant period licensure actions concerning drayage were tried before juries. The City of Boston brought an action against Vandine, who “transported house-dirt and offal from the yards of houses to his cart standing in the streets of the city”, for delivery to his Cambridge

Transactions, Colonial Society of Massachusetts 519, 522 (1981)(available at <https://www.colonialsociety.org/node/930#ch19>).

A case from very early in Maine’s statehood shows the same procedure and the same availability of a jury trial in the Circuit Court of Common Pleas. In Johnson's Case, 1 Me. 230 (1821), the defendant had been convicted of keeping a house of ill-fame. The Justice of the Peace refused Johnson's application to appeal to the Circuit Court of Common Pleas. The Law Court held that under the Massachusetts Statute of 1783, ch. 51, and under article I, section 6 of the Maine Constitution, "the accused must, of necessity, be entitled to an appeal from the sentence of a Justice of the peace, who tries without the intervention of a jury, to the Circuit Court of Common Pleas, where a trial by jury may be had." Id.

piggery. It was a commercial enterprise. The city laws required Vandine to be licensed to haul commercially within the city, he was not, he was prosecuted therefore, and his case was tried to a jury.

6. The contours of a possible decision.

Vandine was prosecuted for engaging in his business without a license. He got a jury trial. Maine seeks to prevent Larry Anderson from engaging in his business by suspending his license, and we argue that should not happen until he has had a jury trial. But there are all sorts of licenses in Maine's laws; we all have one on our persons when we get behind the wheel, or cast a fishing line. Do we argue that in all cases of suspension of any license, there exists the right to a jury trial?

Such a conclusion is not required for this court to sustain the appeal. Maine's seminal case finding a property right in a license, Munjoy Sporting and Ath. Club v. Dow, 2000 ME 141, concerned a license to engage in an enterprise. Licenses to engage in an enterprise are distinct from licenses to engage in non-professional driving, or hunting, or recreational fishing, for a license suspension causing loss of livelihood has historically and justly been regarded as penal, and hence subject to heightened due process requirements. See Ferris v. Turlington, 510 So.2d 292 (Fl. 1987)(statute providing for loss of professional license is penal). Therefore, this

court may wish to hold that where a license to engage in an enterprise is at issue, and where that license cannot be suspended at the mere whim of the state, but rather must remain in force absent a violation of the regulatory scheme, the licensee has a property interest in that license, and under Maine's Constitution the licensee is entitled to a trial by jury before suspension.

7. Conclusion, and Relief Sought

Massachusetts fisheries violations were afforded jury trials well before Maine's statehood. Maine lobster violations were tried to juries since the enactment of the first lobster law in 1872, when possession of egged lobsters became a crime.⁴ Those accused of misdemeanor lobster violations continued to have the right to a jury trial until 2017, when the Legislature amended Title 12 M.R.S. §6371 and in doing so eliminated the right of a Maine fisherman to have a jury decide whether the state could end his livelihood. Indeed, one of the offenses Mr. Anderson is charged with (§6431-B, Untagged Traps), and on which D.M.R. in part based his suspension, remains a crime, although the availability of a jury trial to decide his guilt or innocence is moot given the ability of D.M.R. to take away his license by administrative adjudication of the same violation. Before the court is not a licensing proceeding based on a technical violation that has never historically

⁴ P.L. State of Maine 1872 ch. 20, "An Act to protect the spawn or egg lobsters in the waters of Maine."

been considered the basis for criminal prosecution or civil liability: The opposite is true. And the impact of an adverse licensing decision — the end of a person’s cherished livelihood — is penal, beyond any traditional right accorded to unelected bureaucrats.

We ask for an order reversing the Superior Court decision, and remanding to the Department of Marine Resources with an order to reinstate Mr. Anderson’s license pending his Superior Court jury trial.

January 30, 2025

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