

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

Reply Brief, Larry Anderson, Appellant

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Argument

1. The Respondent's brief hinges on an erroneous argument: That the procedure by which it suspended Larry Anderson's license was a suit at equity, and equitable actions have never been afforded a jury trial by right, either before or after City of Portland v. DePaolo, 531 A.2d 669, 670 (Me. 1987). Certainly, D.M.R.'s suspension of Mr. Anderson's license has scarcely any indicia of an action at equity, although at an erroneous stretch the three-year suspension might be deemed akin to an injunction. Equity concerns itself with special remedies, generally shaped to circumstances unlikely to be exactly repeated; land use violations and parental rights disputes are examples. In Thermos Co. v. Spence, 1999 ME 129, 735 A.2d 484 (1999) ¶18, the Law Court, addressing whether an action for contribution among joint tortfeasors carries with it a constitutional right to trial by jury, summed up the essential nature of equity: "Although the once-distinct qualities of matters sounding in equity have blurred through the years, the nature of equitable claims as those requiring creative, injunctive, or unique action by the court remains constant." Also see Marshall Tinkle, THE MAINE STATE CONSTITUTION, p. 59 (2nd ed. 2013)(addressing right to jury trial under Maine Constitution): "Suits at equity are proceedings for injunctions or other special remedies beyond the award of monetary compensation available in 'legal actions.'"

Here, D.M.R. seeks a years-long forfeiture of Mr. Anderson's lobster license, not a "special remedy" at all but rather a sanction specifically provided for in the statute,¹ with nothing requiring or even allowing "creative, injunctive, or unique action" by the hearing officer, Thermos Co., 1999 ME 129 ¶18. It is barely colorable to assert that when the state suspends a citizen's right to pursue his or her livelihood, acting not pursuant to a demand for equitable relief brought because remedies at law would be insufficient, nor shaping a unique remedy to address unique facts, but instead acting pursuant to a specific statutory framework both *defining the violation and specifying the remedy*, it acts in equity.

D.M.R. suggests that if the underlying action does not exclusively seek monetary relief, the action was therefore brought in equity. We can find nothing in the case law for the proposition that, in a license suspension action, the absence of a fine magically converts the action to equity. DePaolo certainly doesn't say that. DePaolo holds that if all that is sought is a fine, it is an action at law; the case stops far short of holding that if something other than a fine is sought, the cause in action is therefore equitable. DePaolo, 531 A.2d at 671.

The better characterization of this underlying administrative action is not merely at law, but penal as well. Loss of livelihood – and a three year suspension is the analytic equivalent - has historically been regarded, not as remedial, regulatory

¹ Title 12 M.R.S. §6374.

or equitable, but as punishment. Spevack v. Klein, 385 U.S. 511, 87 S.Ct. 625

(1967); also see the pre-DePaolo case of State v. Anton, 463 A.2d 703; (Me. 1983):

Although not alone decisive [in determining if right to jury trial exists], the degree of severity of the penalty is important. In theory, a criminal sanction serves to "punish" an individual for violating a legal norm, while civil sanctions serve to coerce, regulate or compensate. Imprisonment may not be imposed as a sanction for a civil offense. . . . Even so, other sanctions must be examined, for they may be so severe as to render the statute penal in nature.

2. Arguably (but see below) the Legislature could have explicitly granted D.M.R. equitable powers to remedy the lobstering violations here at issue, with a panoply of possible remedies such as mentorship, monitoring, trap limits and so on, and as a consequence eliminated the jury trial right, but it chose instead to grant D.M.R. the power only to suspend the license for more or less years. In telling contrast, because the Legislature endowed the Maine Human Rights Commission with equitable powers, the Law Court holds that actions brought under the Maine Human Right Commission statutory framework may not receive a jury trial. See DiCentes v. Michaud, 1998 ME 227 ¶10, where the Law Court considered whether the Maine Human Rights Act, which “explicitly provides the court with broad equitable authority to hear claims, determine liability, and award relief”, provides the right to a jury trial. The court held “Whether a claim is legal or equitable depends upon the basic nature of the claim, including the remedy sought, as evidenced by the source of the claim or the nature of the pleadings. We have

previously addressed this issue with respect to claims under the Maine Human Rights Act, 5 M.R.S.A. §§ 4551-4651 and have concluded that such claims are, by law, equitable in nature and thus do not give rise to a right to a jury trial.”

(Citations omitted.)

3. Of course, the Maine Human Rights Act is new law, providing causes of action which would have astonished the lawyers of colonial Maine. For new causes of action there is little question that the Legislature can provide for equitable remedies and as a consequence eliminate any right to a jury trial. On the other hand, fishery violations, as discussed in detail in our brief at pages 16-19, received jury trials long before Maine became a state. And here’s the rub: where there has long existed a right to a jury trial for a certain violation, the mere change of the form of action, from an action at law to one ostensibly at equity, cannot take away that right. 30A C.J.S. §6 EQUITY (“Where the effect of a statute giving a remedy in equity for what was formerly a legal demand is directly to defeat the right of a trial by jury the statute is usually void, but where such effect is merely incidental to the conferring of power to administer complete relief in equity the legislation is usually sustained. So new rights, unknown to the common law, may be created, and provision made for their determination in the absence of a jury, but the mere change in the form of an action will not authorize the submission of common-law

rights to a court in which no provision is made to secure a trial by jury.”)(citations omitted).

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