

Spring 1996

1995 Supreme Court of Rhode Island Survey: Civil Procedure

Edward M. Corvese

Roger Williams University School of Law

Follow this and additional works at: http://docs.rwu.edu/rwu_LR

Recommended Citation

Corvese, Edward M. (1996) "1995 Supreme Court of Rhode Island Survey: Civil Procedure," *Roger Williams University Law Review*: Vol. 1: Iss. 1, Article 9.

Available at: http://docs.rwu.edu/rwu_LR/vol1/iss1/9

This Survey of Rhode Island Law is brought to you for free and open access by the Journals at DOCS@RWU. It has been accepted for inclusion in Roger Williams University Law Review by an authorized administrator of DOCS@RWU. For more information, please contact mwu@rwu.edu.

Civil Procedure. *Department of Corrections v. Tucker*, 657 A.2d 546 (R.I. 1995). The decision of an administrative agency had a *res judicata* effect on proceedings before another agency as to issues that were or could have been decided in the original decision.¹

In *Department of Corrections v. Tucker*,² the Rhode Island Supreme Court held that the decision of the Personnel Appeal Board (Board)³ had a *res judicata* effect on a proceeding pending with the Commission for Human Rights (Commission).⁴ The *res judicata* effect was on issues that were raised or could have been raised during the Personnel Appeal Board proceeding.⁵

FACTS AND TRAVEL

In *Tucker*, an African-American male sought employment as a correctional officer with the Department of Corrections of the State of Rhode Island, which initially denied him the position.⁶ He subsequently brought a charge of discrimination before the Commission. After negotiation proceedings Tucker was allowed to reapply, and as a result, was accepted to the training academy.⁷ After he successfully completed his training, he began employment as a correctional officer in the Department of Corrections.⁸

Within the first six months, Tucker was accused of urinating in the yard while supervising inmates, watching television in an

1. *Res Judicata* is the rule that a "final judgment rendered by a court of competent jurisdiction on the merits is conclusive as to the rights of the parties and their privies, and, as to them, constitutes an absolute bar to a subsequent action involving the same claim, demand or cause of action." Black's Law Dictionary, 1305 (5th ed. 1991). See 18 Charles A. Wright et al, Federal Practice & Procedure § 4401 (1981).

2. 657 A.2d 546 (R.I. 1995).

3. The Personnel Appeal Board was established to monitor personnel practices of the state. R.I. Gen. Laws § 36-3-6 (1994). Among its duties is to hear appeals by state employees who feel they were dismissed due to their race. R.I. Gen. Laws § 36-4-42 (1995).

4. *Tucker*, 657 A.2d at 550. The Rhode Island Commission for Human Rights was established to protect any worker who feels aggrieved. R.I. Gen. Laws § 28-5-8 (1994). Among the commission's duties is to hear grievances because of racial discharge. R.I. Gen. Laws § 28-5-7 (1994).

5. *Tucker*, 657 A.2d at 550.

6. *Id.* at 546.

7. *Id.* at 547.

8. *Id.*

inmate's cell and various other prison violations.⁹ These alleged incidents reflected negatively on his probationary reports, which resulted in his dismissal. Tucker appealed this dismissal to the Board contending he was the victim of retaliation for the initial charge of discrimination.¹⁰ Tucker also alleged in the appeal that he was dismissed because of racial discrimination.¹¹ On August 2, 1990, the Board denied and dismissed the appeal after a public hearing. This decision was not appealed by Tucker.¹²

However, after the Board's hearing had ended but before the Board had filed its decision, Tucker filed a complaint with the Commission alleging racial discrimination, as well as discrimination due to his initial charge when Tucker was first denied employment.¹³ The Board's decision was never brought to the Commission's attention and the issue of *res judicata* was never raised.¹⁴ On June 29, 1992, the Commission issued an order to reinstate Tucker on the grounds that Tucker's discharge was in retaliation for Tucker filing the discrimination charge prior to his employment.¹⁵

An action to review the decision of the Commission was filed by Tucker in superior court.¹⁶ The Department of Corrections filed the Board's decision with the superior court.¹⁷ Though it was raised, the trial justice declined to consider the issue of *res judicata*. This decision was based on the fact that the Board's decision was never presented to the Commission. In addition, the issue of *res judicata* was never raised before the commission.¹⁸ The issue on appeal was whether the board's decision had *res judicata* effect on the proceedings before the Commission.

9. *Tucker*, 657 A.2d at 547.

10. *Id.*

11. *Id.*

12. *Id.*

13. *Tucker*, 657 A.2d at 548.

14. *Id.*

15. *Id.*

16. *Id.*

17. *Tucker*, 657 A.2d at 548.

18. *Id.*

BACKGROUND

The doctrine of *res judicata* has long been adhered to in Rhode Island with respect to decisions of courts.¹⁹ Under the doctrine, a prior decision is deemed binding in a subsequent suit with regard to the issues that were raised or could have been raised.²⁰ The decisions of agencies have the same *res judicata* effect as do the decisions of courts.²¹ This doctrine has been uniformly followed by state and federal courts.²² As long as due process is afforded by the agency's proceedings, its findings are accorded finality.²³ *Res judicata* has been held to apply between agencies and federal courts,²⁴ agencies and state courts,²⁵ among agencies.²⁶

ANALYSIS AND HOLDING

The supreme court held that the trial justice was incorrect and that the *res judicata* issue was properly presented to him.²⁷ The court held that the Board had the jurisdiction to decide any type of wrongful discharge and that its decision had a *res judicata* effect.²⁸ The opinion stated that Rhode Island has long adhered to the principles of *res judicata* in respect to the decisions of courts

19. *Id.* at 549. See Rhode Island Student Loan Authority v. NELS, Inc., 600 A.2d 717 (R.I. 1991); Mulholland Const. Co. v. Lee Pare & Assoc., Inc., 576 A.2d 1236 (R.I. 1990); Hebert v. Ventetuolo, 480 A.2d 403 (R.I. 1984).

20. Rhode Island Student Loan Authority v. N.E.L.S., Inc., 600 A.2d 1236 (R.I. 1990); 18 Charles A. Wright et al., Federal Practice & Procedure § 4449 (1981).

21. Restatement (Second) of Judgments § 83(1) (1980).

22. Univ. of Tennessee v. Elliot, 478 U.S. 788, 797 (1986); McCuin v. Secretary of Health and Human Serv., 817 F.2d 161, 172 (1st Cir. 1987); Fitandes v. Perry, 537 A.2d 1139, 1140 (Me. 1988).

23. *Univ. of Tennessee*, 478 U.S. at 799. (The due process requirements of a fair trial apply to administrative agency hearings). Bourque v. Setto, 589 A.2d 815, 823 (R.I. 1991). (A party in an administrative hearing is "entitled to be heard at a meaningful time and in a meaningful manner."). *Id.*

24. *Univ. of Tennessee*, 478 U.S. at 799; S.M.A. Life Assurance Co. v. Sanchez, 777 F.Supp. 15, 18 (D.P.R. 1991).

25. *Fitandes*, 537 A.2d at 1140; Carothers v. Cappozziello, 574 A.2d 1268, 1274 (Conn. 1990).

26. *Knox v. Pennsylvania Bd. of Probation and Parole*, 588 A.2d 79, 81 (Pa. Commw. 1991); *Neunzig v. Seaman Unified School Dist.*, 722 P.2d 569, 574 (Kan. 1986). *But see*, *Capaldo v. Public Utility Hearing Bd.*, 75 A.2d 302, 305 (R.I. 1950) (holding that *res judicata* did not apply when the second hearing was at a much later date and there was different evidence).

27. *Tucker*, 657 A.2d at 549.

28. *Id.* at 549-50. The state is a covered employer. R.I. Gen. Laws § 28-5-6(2)(A) (1994).

and that these principles should apply to the decisions of quasi-judicial administrative agencies.²⁹ In doing so, the court followed the Restatement (Second) of Judgments.³⁰

Hearings before the Board and the Commission offered the parties the opportunity to present evidence and make arguments similar to hearings before a court.³¹ In addition, there was the opportunity for judicial review of the decisions under both agency's statutes.³² Thus, due process was afforded and *res judicata* was applied to the Board's decision.³³ In *Tucker*, the Court decided that the Board's decision was final due to the fact it was not appealed by Tucker and that the broad area of retaliation included in the Board's decision was preclusive as to the issues before the Commission.³⁴

CONCLUSION

In *Tucker*, the Rhode Island Supreme Court followed the Restatement (Second) of Judgments in holding that the decision of an administrative agency could have a *res judicata* effect on proceedings before another agency. The case dealt specifically with decisions between agencies, but under the court's reasoning state courts should also be bound by the doctrine to apply administrative determinations as long as due process was afforded in the original proceeding.

Edward M. Corvese

29. *Tucker*, 657 A.2d at 549.

30. *Id.* This is a state court but "[f]ederal *res judicata* principles have been heavily influenced by the great advances in the Restatement (Second) of Judgments. Federal courts and commentators often cite and rarely depart from the restatement view." *Reeder v. Succession of Palmer*, 623 So.2d 1268, 1271 (La. 1993), *cert. denied*, 114 S.Ct. 1191 (1994). See Restatement (Second) of Judgments § 83(1).

31. *Tucker*, 657 A.2d at 549.

32. *Id.* Parties seeking to appeal the decision of The Personnel Appeals Board, and having exhausted all administrative options, may obtain judicial review. R.I. Gen. Laws § 42-35-15 (1994). The same is true in respect to the Commission on Human Rights. R.I. Gen. Laws § 28-5-28 (1994).

33. *Tucker*, 657 A.2d at 549-50.

34. *Id.* at 550.

Civil Procedure. *Ciunci, Inc. v. Logan*, 652 A.2d 961 (R.I. 1995). Under the Superior Court Rules of Civil Procedure, a non-resident defendant does not have to travel to Rhode Island to be deposed if undue hardship will result to the defendant.¹

In *Ciunci, Inc. v. Logan*,² the Rhode Island Supreme Court addressed whether a non-resident defendant, in order to be deposed, could be ordered to travel to Rhode Island where he was being sued.³ The court held in *Ciunci* that the defendant could not be ordered to make the trip because undue hardship would result.⁴

FACTS AND TRAVEL

Ciunci, Inc. v. Logan was an insurance subrogation action resulting from a fire in the defendant's laundromat.⁵ Plaintiff lessor alleged that defendant's negligence resulted in the destruction of the building.⁶ Pursuant to Rhode Island Superior Court Rules of Civil Procedure Rule 26 the trial justice issued an order directing that the defendant travel to Rhode Island to be deposed.⁷ At the time the suit was filed, however, defendant was a resident of Loui-

1. The opinion does not state the specific rules under examination but Rule 26 of the Superior Court Rules of Civil Procedure provides that "[a]ny party may take the testimony of any person, including a party, by deposition upon oral examination or written interrogatories for the purpose of discovery or for use as evidence in the action or for both purposes." R.I. Sup. Ct. R. Civ. P. 26. Further, "[t]he attendance of witnesses may be compelled by the use of subpoena as provided in Rule 45." *Id.* However, parties to an action only need to be given "reasonable notice" for oral depositions. R.I. Sup. Ct. R. Civ. P. 30(a); *Carroccio v. DeRobbio*, 274 A.2d 424, 426 (R.I. 1971). Failure of a party to appear for the taking of the party's deposition, after being served with "proper notice," could result in a dismissal of the action or default judgment. R.I. Sup. Ct. R. Civ. P. 37(d); *Carroccio*, 274 A.2d at 425. See also *Pinkham v. Paul*, 91 F.R.D. 613, 614 (D. Me. 1981) (under the Federal Rules of Civil Procedure, notice is all that is needed to require attendance of parties to be deposed, there is no need for a subpoena).

2. 652 A.2d 961 (R.I. 1995).

3. *Id.* at 962.

4. *Id.* The court held it was an abuse of discretion by the trial judge to order the defendant to travel from Louisiana to Rhode Island. To do so was contrary to the "overwhelming authority" of established law. *Id.*

5. *Id.* Both parties argued that financial considerations should be ignored. The Court, however, wanted to adopt a rule to apply to all future parties, including those without insurance. If they did not, the courts would be inundated with cases requesting "special consideration." *Id.*

6. *Ciunci*, 652 A.2d at 962.

7. *Id.*

siana.⁸ An un rebutted affidavit submitted by defendant established that the defendant possessed neither financial savings nor a steady income.⁹ The only issue on appeal to the supreme court was if an out-of-state defendant could be ordered to travel to Rhode Island to be deposed if the action is brought in a Rhode Island court.¹⁰

BACKGROUND

Prior to *Ciunci*, the Rhode Island Supreme Court had not addressed the extent of a court's power to order a party to travel extensively in order to be deposed. However, federal cases which have involved the same issue have almost uniformly held that a defendant may not be required to travel to a distant state to be deposed.¹¹ These holdings are based upon the reluctance of federal courts to order a far-off defendant to incur a substantial amount of inconvenience.¹² However, courts do retain discretion to

8. *Id.*

9. *Id.* The affidavit stated that the defendant "was sixty-three years of age, living on a social security pension and doing some parttime work as a store clerk in a hardware store" with no appreciable savings and also established that he could not afford the trip or the related expenses, such as food and lodging. *Id.*

10. *Ciunci*, 652 A.2d at 962.

11. *Id.* citing *Thompson v. Sun Oil Co.*, 523 F.2d 647, 648 (8th Cir. 1975); *Grey v. Continental Marketing Assoc., Inc.*, 315 F.Supp. 826, 832 (N.D. Ga. 1970); *Twardzik v. Sepauley*, 286 F.Supp. 346, 350 (E.D. Pa. 1968); *General Leasing Co. v. Lawrence Photo-Graphic Supply, Inc.*, 84 F.R.D. 130, 131 (W.D. Mo. 1979); *Kurt M. Jachmann Co. v. Hartley, Cooper & Co.*, 16 F.R.D. 565 (S.D.N.Y. 1954).

12. *Thompson*, 523 F.2d at 648 (refusing to have a company incur "considerable expense" in transporting its employees from Pennsylvania to Omaha to be deposed); *Grey*, 315 F.Supp. at 832 (holding that the place of deposition is presumed to be in the defendant's home state unless there are unusual circumstances justifying the "inconvenience" to the defendant); *Twardzik*, 286 F.Supp. at 350 (holding it to be "oppressive" to have all the defendants travel over forty miles to be deposed); *General Leasing Co.*, 84 F.R.D. at 131 (holding plaintiff may only obtain requested documents at defendant's place of business because of the "burden" of transporting the great number requested); *Kurt M. Jachmann Co.*, 16 F.R.D. at 565 (refusing to order defendants to travel from England to New York to be deposed).

Further, it is the plaintiff who chooses the forum in which to litigate. *Payton v. Sears Roebuck and Co.*, 148 F.R.D. 667, 669 (N.D. Ga. 1993) ("The general rule is based on the concept that it is the plaintiffs who bring the lawsuit and who exercise the first choice as to forum."). See also, 8A Charles A. Wright et al., *Federal Practice & Procedure* § 2112 (1994). Therefore, the plaintiff "should expect to appear for any legal proceedings" there. *Undraitis v. Luka*, 142 F.R.D. 675, 676 (N.D. Ind. 1992). However, this rule is subject to exceptions. *Abdullah v. Sheridan Square Press, Inc.*, 154 F.R.D. 591 (S.D. N.Y. 1994) (holding, where suit was brought in New York, depositions would occur in England where plaintiff could not

order a defendant to travel.¹³ In certain circumstances, courts could order a defendant to travel to be deposed.¹⁴

ANALYSIS AND HOLDING

Because the application of Rule 26 was a question of first impression in Rhode Island, the court looked for guidance from federal cases which have interpreted the Federal Rules of Civil Procedure after which the Rhode Island Rules were fashioned.¹⁵ Since the overwhelming majority of these cases hold that a defendant's deposition is to be taken at the defendant's residence or the defendant's workplace¹⁶ the court, noting that Rhode Island does "not exist in a vacuum", simply applied this line of reasoning to Rule 26 and ruled that the defendant could not be ordered to travel to Rhode Island.¹⁷

CONCLUSION

The court's reasoning and decision in *Ciunci* clearly follows established federal law. A defendant cannot be required to travel a great distance to be deposed if it will put the defendant through hardship.¹⁸ Under the facts of the case, to require a low-income defendant residing in Louisiana to travel to Rhode Island would

have sued in England and plaintiff could not have left England without losing asylum).

13. *Thompson*, 523 F.2d at 648 ("It is well settled that the district court has great discretion in designating the location of taking a deposition.")

14. *Newman v. Checkwrite California, Inc.*, 156 F.R.D. 659 (E.D. Cal. 1994) (defendants could be ordered to travel 164 miles to be deposed because plaintiffs had previously rescheduled the depositions to a time more convenient to defendants and defendants did not complain about the location); *Undraitis v. Luka*, 142 F.R.D. 675 (N.D. Ind. 1992) (defendant waived any right to have deposition be taken at his residence where the defendant's attorney waited until five weeks before trial to notify plaintiff that defendant would not appear for the deposition in district where suit was filed, there was no explanation for the delay, and the plaintiffs had been trying to arrange the deposition for over one year).

15. *Ciunci*, 652 A.2d at 962 (R.I. 1995) ("We have stated many times that when our Rules of Civil Procedure and our case law are silent on a particular issue, we will look to the body of law that has addressed the question.")

16. *See supra* note 12.

17. *Ciunci*, 652 A.2d at 962. Deference should be given to the "experience and reasoning" of federal and state court judges who interpret the Federal Rules or rules patterned after the Federal Rules such as Rhode Island's. *Id.*

18. *Id.* (The opinion expressed no view as to the requirements for plaintiffs. However, it did state it would follow established federal law in the area of depositions if Rhode Island law is silent on the issue).

have been too great a burden on the defendant. However, if the defendant had resided closer or had a different income, it is possible that a different decision might have resulted.¹⁹

Edward M. Corvese

19. See *Thompson*, 523 F.2d at 648; 8A Charles A. Wright et al., *Federal Practice & Procedure* § 2112 (1994) ("The particular facts of each case will determine the selection of a place for examination.").