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Dresser v. MEBA Medical & Benefits Plan United States Court of Appeals, Fifth Circuit 628 F.3d 705 (Decided December 22, 2010)

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riparian proprietor, whose land is bounded by a navigable river . . . has the right to make a landing, wharf or pier for his own use”⁹

On appeal, the government first argued that Maryland decisions decided after *Belt, Martin*, and *Standard Oil* undermined the Maryland Court of Appeals decision in *Chase*. The United States asserted that these post-*Belt* decisions established that the *Chase* Court was wrong in holding that there was a common law right to lay fill and build wharves. The United States believed that since *Belt, Martin*, and *Standard Oil* used *Chase* as their foundation, and *Chase* had been undercut, the lower court’s decision needed to be reversed. In response, the Court held that none of the cases or statutes cited by the United States definitively established that as of the common law in 1801, no right to lay fill and construct wharfs existed. Second, the United States argued that the District Court relied upon cases that conflicted with prior precedent. Again, the Court of Appeals saw no validity to this argument. Specifically, the United States failed to cite a case that speaks to the scope of riparian rights, except a case where the federal government was acting to promote the navigability of waterways, which was not relevant here.¹⁰

The Court concluded that since the aforementioned cases were consistent with both Maryland and federal law, the Court was bound by precedent to follow their interpretation of Maryland law.¹¹ Accordingly, the Court of Appeals affirmed the district courts’ ruling that, “[D]espite the United States’ ownership of the riverbed, Old Dominion had not trespassed, nor was it obligated to provide public access, because as a riparian owner abutting District of Columbia waters, it had the right to lay fill and build wharves.”¹²

Jameson Connor
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UNITED STATES DISTRICT COURT LACKED SUBJECT MATTER JURISDICTION TO PROVIDE JUDICIAL REVIEW OF A FINAL ORDER OF THE UNITED STATES COAST GUARD IN A SUSPENSION AND REVOCATION ACTION AGAINST A MARINER

Reviewing the District Court’s dismissal *de novo*, the United States Court of Appeals for the Fifth Circuit held that the Plaintiff-Appellant lacked subject matter jurisdiction because under Coast Guard and National Transportation Safety Board statutes and regulations an Administrative Law Judge’s decision could only receive judicial review in federal court after first being appealed to the NTSB

Dresser v. MEBA Medical & Benefits Plan
United States Court of Appeals, Fifth Circuit
628 F.3d 705
(Decided December 22, 2010)

The United States Coast Guard commenced a Suspension and Revocation (“S & R”) action against the license of the plaintiff, Christopher J. Dresser, a licensed marine engineer, after he tested positive for tetrahydrocannabinol (“THC”), the active chemical compound of marijuana. Dresser asserted that the reason he tested positive because he ingested hemp seed oil as a dietary supplement, and not from using marijuana.

⁹ *Id.* at 35.

¹⁰ *Marine Ry. & Coal Co. v. United States*, 265 F. 437 (D.C. Cir. 1920).

¹¹ *Id.*

¹² *Old Dominion Boat Club*, 630 F.3d at 1041.

The Coast Guard may conduct S & R proceedings against the licenses of marine engineers under the authority of the Secretary of the Department of Homeland Security.¹ S & R proceedings are adjudications before an Administrative Law Judge (“ALJ”), and are governed by the Administrative Procedure Act (“APA”). Dresser’s S & R proceeding was conducted by ALJ Boggs, who concluded that Dresser had used marijuana, and therefore ordered his license revoked. Dresser appealed the ALJ’s decision to the Commandant of the Coast Guard. The Commandant affirmed the decision of the ALJ, and this constituted the final action of the Coast Guard in the S & R proceeding.

The National Transportation Safety Board (“NTSB”) has authority to review the Coast Guard’s final decision in an S & R proceeding.² Dresser properly appealed to the NTSB, and the NTSB determined that there had been impropriety on the part of ALJ Boggs, and therefore remanded the case for a new hearing. On remand, the S & R hearing was conducted by ALJ Brudzinski, who also ruled in favor of the Coast Guard and ordered Dresser’s license revoked.

At this point, the plaintiff simultaneously appealed the ALJ’s decision to the Commandant of the Coast Guard and commenced an action in the District Court for the Eastern District of Louisiana (*Dresser I*).³ In his complaint to the district court, Dresser alleged that the ALJ’s decision to revoke his license was unconstitutional. The district court held that it lacked subject matter jurisdiction over the request for judicial review because there had not been “final agency action” pursuant to the APA,⁴ due to the pending appeal before the Commandant. As a result, the district court dismissed the complaint. Dresser then appealed to the United States Court of Appeals for the Fifth Circuit, where the district court’s decision was affirmed.

Meanwhile, after the complaint had been dismissed by the district court, but before that decision was affirmed by the Fifth Circuit, the Commandant affirmed the ALJ’s decision. Dresser filed a new complaint in the district court against the Coast Guard, which contained the same allegations as the previous complaint. The district court once again held that it lacked subject matter jurisdiction over Dresser’s case, holding that in order to obtain judicial review, he was required to appeal the Commandant’s decision to the NTSB. The court concluded that by appealing, the plaintiff had attempted to circumvent the statutorily provided procedures for appealing an S & R order. As a result, the district court dismissed Dresser’s complaint.

Dresser appealed this decision to the Fifth Circuit, arguing that the district court committed an error by dismissing his complaint for lack of subject matter jurisdiction. He argued that the Commandant’s decision to affirm the ALJ’s order was a final agency action within the meaning of the APA and therefore the district court had jurisdiction to review the decision. He reasoned that there was no statutory means of obtaining judicial review of the Coast Guard’s final order, and, as a result, the default provision of APA § 10(c) applied. Under § 10(c) the “final agency action for which there is no other adequate remedy in a court [is] subject to judicial review.”⁵ To support this argument, Dresser contended that his appeal of the Commandant’s decision to the NTSB was optional, and therefore the United States Supreme Court’s holding in *Darby v. Cisneros*⁶ was controlling and gave the district court jurisdiction over the case.⁷ In *Darby*, the Supreme Court held that litigants were not required to exhaust all intra-agency appeals not mandated by statute or agency rule.⁸ Therefore Dresser argued that since his decision to appeal the Commandant’s decision to the NTSB was optional, APA § 10(c) applied and provided the district court with jurisdiction over the case.

¹ See 6 U.S.C. § 468(b) (2006).

² 49 U.S.C. 1133(3) (2006).

³ *Dresser v. Ingolia*, CIV.A. 07-1497, 2007 WL 3353305, at *1 (E.D. La. Nov. 8, 2007) *aff’d*, 307 F. App’x 834 (5th Cir. 2009).

⁴ *Dresser I*, 2007 WL 3353305, at *2.

⁵ Administrative Procedure Act (APA) § 10(a), 5 U.S.C. § 704 (2006).

⁶ 509 U.S. 137 (1993).

⁷ *Id.*

⁸ *Id.* at 147.

The Fifth Circuit reviewed the district court's dismissal *de novo* because it involved that court's interpretation of a statute and was therefore a question of law. The Court concluded that under the Coast Guard and NTSB statutes and regulations, the ALJ's decision could only receive judicial review in federal court after first being appealed to the NTSB. In addition, the Court held that after an appeal has been made to the NTSB, judicial review over the NTSB decision in federal court may only be provided in a court of appeals.

To reach this conclusion, the Court reviewed the procedural requirements for the Coast Guard to commence an S & R proceeding, and for a plaintiff to appeal an adverse decision in such a proceeding. The Court determined that after the Coast Guard has taken final action in the form of the Commandant's decision to affirm, modify or remand the ALJ's order, the NTSB regulatory scheme provides for judicial review of the Coast Guard's decision under 49 U.S.C. §1133(3). Subsequent to the NTSB's decision on the matter, judicial review of that determination is again provided for in the "appropriate court of appeals of the United States" pursuant to 49 U.S.C. §1153(a).

The Court also rejected the plaintiff's argument that his decision to appeal the Commandant's decision to the NTSB was optional. The Court distinguished *Darby* because that case involved judicial review of appeals in the Department of Housing and Urban Development (HUD), and the HUD regulations specifically provided that review of the ALJ decision was subject to the discretion of the HUD secretary.⁹ Review by the NTSB when a Commandant's decision is sought to be appealed in an S & R proceeding is mandatory, as evidenced by the language, "the NTSB 'shall review' an appealed S & R decision from the Coast Guard Commandant."¹⁰ As a result, the Court concluded that the district court did not violate the *Darby* decision by requiring Dresser to seek judicial review by the NTSB before seeking judicial review in the federal courts.

The Court also pointed out that consideration must be given to the earlier Supreme Court decision of *Bowen v. Massachusetts*, where the Supreme Court held that "a statutory and regulatory scheme that specifically provides for judicial review is not superseded by the default rule in APA § 10(c)."¹¹ In light of this reasoning, the Court concluded that APA § 10(c) did not apply because an appeal from the Commandant's decision was mandated to be reviewed by the NTSB, and that judicial review of the NTSB decision by a court of appeals under 49 U.S.C. § 1153(a) constituted an "adequate remedy" under the APA, so that the APA default provision was irrelevant. As a result, the Court affirmed the decision of the district court dismissing Dresser's complaint for lack of subject matter jurisdiction.

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⁹ *Id.* at 141.

¹⁰ 49 U.S.C. §1133(3) (2006).

¹¹ *Bowen v. Massachusetts*, 487 U.S. 879, 903 (1988).