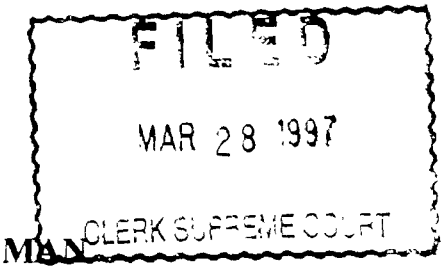
IN THE COURT OF APPEALS OF IOWA

No. 6-392 / 95-1261



DAVID JOHN DANNER,

Appellant,

vs.

STATE OF IOWA ex rel. DEPARTMENT OF HUMAN SERVICES, KATHLEEN ANN DANNER, et al.,

Appellee.

Appeal from the Iowa District Court for Johnson County, August F. Honsell, Judge.

David Danner appeals from a dismissal of his petition for judicial review of a decision by the Iowa Department of Human Services, Child Support Recovery Unit, upholding the State's action in intercepting and offsetting Danner's 1994 tax return against delinquent child support. **AFFIRMED.**

David John Danner, Iowa City, pro se.

Thomas J. Miller, Attorney General, Diane Stahle, Special Assistant Attorney General, and Michael J. Parker, Assistant Attorney General, for appellee.

Considered by Habhab, C.J., and Huitink and Vogel, JJ.

HABHAB, C.J.

In June 1994, the State notified David Danner it intended to intercept and apply his fifty-three dollar tax refund toward his delinquent child support of $2501.13. Danner contested the offset before an administrative law judge (ALJ) of the Iowa Department of Inspections and Appeals. The ALJ affirmed the State action. This decision was affirmed on appeal by the Iowa Department of Human Services (the Department).

Danner sought judicial review arguing (1) the State lacked jurisdiction (or exceeded its statutory authority) to intercept the refund, (2) his support obligation was met by trusts and other accounts he set up for his child, (3) the dissolution decree did not mandate where payments were to be made, and (4) his former spouse Kathleen Danner had not sought assistance in child support enforcement from the State.

Following a hearing, the district court found there was substantial evidence to support the agency's conclusion the requirements for tax refund offset were met. The court also found jurisdiction and authority for the State's actions existed, there was no confusion as to where support payments were to be made (Danner had made such payments through the court before), and the enforcement action was begun at Kathleen's request. Finally, the district court held issue preclusion applied to this case because Danner had raised some of the same issues in a former action regarding

the offset of his 1989 tax refund.[1] In that action, these issues were rejected by the agency, the district court, and the Iowa Supreme Court on appeal. Thus, in the present case, the district court affirmed the Department's decision and dismissed Danner's petition for judicial review.

Danner appeals.

I. Standard of Review. Judicial review under Iowa Code chapter 17A is appellate in nature and is at law and not de novo. *Taylor v. Iowa Dep't of Job Serv.*, 362 N.W.2d 534, 537 (Iowa 1985). Our review of the district court's decision is limited to correction of errors at law. *James v. Sheller-Globe Corp.*, 510 N.W.2d 170, 172 (Iowa App. 1993). We, like the district court, are bound by the Department's fact findings if those findings are supported by substantial evidence. *See id.* Evidence is substantial if a reasonable person would find it adequate for reaching a decision. *Id.*

II. Jurisdiction and Offset of 1994 Tax Refund. Danner argues the Department and the district court did not have jurisdiction to offset his state tax refund against his support obligation. We disagree, and in addition we find there is substantial evidence within the record to establish the Department and the district court properly exercised jurisdiction in this matter.

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[1] *See Danner v. State of Iowa ex rel. Dep't of Human Serv.*, No. 91-106 (Iowa July 29, 1991).

Iowa Code chapter 252B and section 421.17(21) authorize state income tax refunds to be set off against delinquent support obligations. The Iowa Administrative Code specifies if an obligor has not made a payment toward delinquent support within the previous twelve months and the delinquency is more than $50, the State may offset the obligor's state income tax refund. Iowa Admin. Code r. 411-95.6.

Substantial evidence within the record clearly reflects Danner's support obligation was delinquent in an amount over $50 and he had made no payment toward the delinquency in the twelve-month period preceding the offset. For these reasons, we affirm the decisions of the Department and the district court.

III. Issue Preclusion. The State contends many of the same facts and issues were presented to the court by Danner in an earlier action. Specifically, the State contends Danner is barred from relitigating his argument that his support obligation has been satisfied by his creation of a constructive trust for the benefit of his children and he is not required to make support payments through the Clerk of Court. We agree with the State on this issue.

In the previous action, Danner appealed the Department's offset of his 1989 Iowa tax refund against his delinquent support obligation. In that action Danner contended he had established a constructive trust for the benefit of his children and had thereby met his support obligation. He also argued the 1975 decree did not require him to make payments through the Clerk of Court. The ALJ determined

Danner was delinquent in his support obligation in the amount of $2545.13 and the tax offset against his delinquent support obligation was proper. The ALJ also found, although the 1975 dissolution decree did not specifically state Danner was to make his support payments through the Clerk of Court, "it was the intent that these payments be made to the Clerk of Court based upon the statute at the time in question."

The district court and our supreme court affirmed the ALJ's decision. As a result, Danner's tax refund in the amount of $44 was applied to his support obligation leaving an arrearage of $2501.13. This amount remains outstanding and was the basis of the State's offset of Danner's 1994 tax refund, leading to this appeal.

Issue preclusion applies when a party attempts to relitigate an issue which has already been raised and decided in a prior action. *Matsui v. King*, 547 N.W.2d 228, 231 (Iowa App. 1996). There are four prerequisites to an application of issue preclusion:

(1) The issue concluded must be identical;
(2) The issue must have been raised and litigated in the prior action;
(3) The issue must have been material and relevant to the disposition of the prior action; and
(4) The determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

In re Marriage of Eklofe, 549 N.W.2d 520, 522 (Iowa 1996).

The issues here are identical to the issues raised and litigated in the prior action. They were material and relevant to the prior action because they were the

only issues raised by Danner in alleging the State's offset of his refund was erroneous. As such, determination of these issues was necessary and essential to the prior resulting judgment. We find that as these issues meet the four requisite elements of issue preclusion, Danner's assertions in this regard are barred. Even assuming these issues are not barred, we find they are without merit.

IV. Miscellaneous. We deny Danner's request for unspecified fees in the amount of $1500. We have considered the other issues raised by Danner and find they are without merit.

AFFIRMED.