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**SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2692-21**

**SYLVESTER and YONGJIE  
TUOHY,**

Plaintiffs-Appellants,

v.

**DIRECTOR, DIVISION OF  
TAXATION,**

Defendant-Respondent.

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Submitted May 16, 2023 – Decided June 26, 2023

Before Judges Berdote Byrne and Chase.

On appeal from the Tax Court of New Jersey, Docket No. 013607-2018, whose opinion is reported at 32 N.J. Tax 561 (Tax 2022).

Sylvester Tuohy, appellant pro se.

Matthew J. Platkin, Attorney General, attorney for respondent (Donna Arons, Assistant Attorney General, of counsel; Linzhi Wang, Deputy Attorney General, on the brief).

PER CURIAM

Plaintiffs appeal from two Tax Court orders: the first granting defendant, Director, Division of Taxation (Director) summary judgment and the second denying plaintiffs' motion for reconsideration. Plaintiffs argue the Tax Court erred in upholding the Director's calculation of the resident tax credit pursuant to N.J.S.A. 54A:4-1 and in the Director's inclusion of capital gains and Tuohy's I.R.C. § 403(b) deductions in calculating gross income and New Jersey income. We affirm substantially for the same reasons set forth by Judge Joan Bedrin Murray in her well-reasoned written opinion<sup>1</sup> and add the following comments.

Plaintiffs are a married couple who were involved in two, nearly identical disputes with the Director. The first dispute occurred in 2004. See Tuohy v. Dir., Div. of Tax'n, No. 000033-2008 (Tax Aug. 18, 2008) (Tuohy I). During that period, Tuohy earned income in the amount of \$113,375, a substantial portion of which was earned in New York. In addition, he owed a \$30,000 alimony obligation to his former spouse.

On plaintiffs' 2004 New Jersey Gross Income Tax (GIT) return, they incorrectly calculated their GIT resident credit, which is a credit received for taxes paid to another jurisdiction, by failing to apply the \$30,000 alimony

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<sup>1</sup> The Tax Court's opinion is published at Tuohy v. Director, Division of Taxation, 32 N.J. Tax 561 (Tax 2022).

amount. To calculate the resident tax credit, the taxpayer's entire New Jersey income<sup>2</sup> (denominator) is divided by the taxable income of the other jurisdiction prior to allowances for deductions and exemptions (numerator). N.J.A.C. 18:35-4.1(a)(3). That amount is then multiplied by the tax due on the GIT. Ibid.

The Director issued plaintiffs a deficiency notice because they had erroneously applied the alimony obligation in their calculation of the resident credit. Following a hearing and final determination from the Director, the Tax Court affirmed the agency's holding, reasoning alimony should not have been included in the numerator in the calculation of income because the resident credit is limited to income, which is taxed, and New York law excludes alimony from its taxable income calculations.

In 2014, when filing their GIT, plaintiffs utilized the same methodology in calculating their resident credit, despite the earlier judgment, by incorrectly including alimony in their calculation of New York income. They reported \$107,125 in income: \$107,058 in New York wages and \$67 in interest. However, they excluded from their income \$13,880 in dividend income, a \$13,528 sale of stock, and \$11,573 in Tuohy's I.R.C. § 403(b) retirement benefit

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<sup>2</sup> "Entire New Jersey Income" is defined as "the New Jersey gross income subject to tax before allowances for personal exemptions and deductions." N.J.A.C. 18:35-4.1(a)(6)(ii).

withholdings. "In contrast, on their 2014 federal income tax return, plaintiffs reported \$13,880 in dividend income on Schedule B, \$13,528 in net long-term capital gains on Schedule D, and \$65,929 in long-term capital loss carryover." Tuohy, 32 N.J. Tax at 567.

In 2017, the Director issued another notice of deficiency to plaintiffs in the amount of \$1,003. In calculating the discrepancy, the auditor added back to gross income dividends, capital gains without carryover losses, and Tuohy's § 403(b) retirement contributions, increasing gross income from \$107,125 to \$146,106. The auditor also recalculated the plaintiffs' resident credit, utilizing their reported New York adjusted gross income of \$57,508 in the numerator and an increased total New Jersey income of \$146,106 in the denominator.

Ultimately, the Director abated the penalties of the deficiency judgment, lowering the amount owed from \$1,003 to \$866. Plaintiffs filed an administrative protest, and the Director issued another final determination affirming the 2017 deficiency notice. Thereafter, plaintiffs filed a complaint in the Tax Court and argued the final determination was erroneous.

The Director moved for summary judgment, which the court granted, dismissing plaintiffs' complaint with prejudice. First, the Tax Court addressed the resident tax credit issue. In finding the doctrine of collateral estoppel

precluded plaintiffs from relitigating whether alimony was properly applied to the calculation, the court reasoned plaintiffs made the same arguments in the 2004 proceedings. The court noted the Tax Court in Tuohy I found Ambrose v. Director, Division of Taxation, 198 N.J. Super. 546, 552 (App. Div. 1985) controlled, which expressly "held . . . the Director properly excluded the plaintiff[s'] alimony payments from his New York taxable income as expressed in the numerator of the credit fraction, noting the statute 'clearly distinguishes between income actually taxable in the foreign state and the taxpayer's' entire New Jersey income." The Tax Court precluded plaintiffs' arguments on the resident credit issue because the arguments were identical to those made to the Tax Court in the 2004 matter. Plaintiffs failed to show the Director erred in its calculation or used a different "mode of computation" than that utilized in Tuohy I.

The Tax Court then upheld the Director's decision to include dividends, net gains, wages, and Tuohy's I.R.C. § 403(b) deductions in its recalculation of his net income. The court reasoned plaintiffs' arguments were inapposite to New Jersey law and merely advanced positions advocating New Jersey law was wrong and needed to be changed.

Following the court's decision, plaintiffs filed a motion for reconsideration. The Tax Court denied the motion, reasoning plaintiffs failed to show the decision to grant the Director's motion for summary judgment was palpably incorrect or made on an irrational basis. See Palombi v. Palombi, 414 N.J. Super. 274, 288 (App. Div. 2010) (quoting D'Atria v. D'Atria, 242 N.J. Super. 392, 401 (Ch. Div. 1990)). Plaintiffs raised identical arguments as they had in opposition to summary judgment, did not support their positions with legal authority, and merely expressed disagreement with New Jersey's tax laws.

We confer "a presumption of correctness" to the Director's decision due to the Director's expertise in tax matters. Est. of Taylor v. Dir., Div. of Tax'n, 422 N.J. Super. 336, 341 (App. Div. 2011). Similarly, we also accord factual findings and decisions of the Tax Court "a highly deferential standard of review" in light of their specialized expertise. Presbyterian Home at Pennington, Inc. v. Borough of Pennington, 409 N.J. Super. 166, 180 (App. Div. 2009). Legal conclusions, however, are reviewed de novo. Shedlock v. Dir., Div. of Tax'n, 32 N.J. Tax 174, 178 (App. Div. 2020).

In reviewing the grant of summary judgment, we apply the same standard utilized by the Tax Court, Branch v. Cream-O-Land Dairy, 244 N.J. 567, 582 (2021), and will "consider whether the competent evidential materials presented,

when viewed in the light most favorable to the non-moving party, are sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party" Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). Reconsideration is evaluated pursuant to an abuse of discretion standard. Branch, 244 N.J. at 582.

Upon review of the record presented to us, the Tax Court properly affirmed the Director's reformulation of plaintiffs' miscalculated GIT return, and plaintiffs' have failed to produce any evidence or legal authority to lead us to a different result.

First, plaintiffs are collaterally estopped from arguing the methodology they used in calculating the resident tax credit should prevail over the Director's determination. The doctrine of collateral estoppel precludes a litigant from relitigating issues that had been resolved in a prior suit. Allen v. V & A Bros., Inc., 208 N.J. 114, 137 (2011). Collateral estoppel is applicable where a five-part test is satisfied:

(1) the issue to be precluded is identical to the issue decided in the prior proceeding; (2) the issue was actually litigated in the prior proceeding; (3) the court in the prior proceeding issued a final judgment on the merits; (4) the determination of the issue was essential to the prior judgment; and (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.

[Adelman v. BSI Fin. Servs., Inc., 453 N.J. Super. 31, 40 (App. Div. 2018) (quoting Allen, 208 N.J. at 137).]

In deciding whether to apply the doctrine equitable considerations will be weighed. In re Liquidation of Integrity Ins. Co./Celotex Asbestos Tr., 214 N.J. 51, 67 (2013).

The operative facts are identical to Tuohy I, save for the specific dollar amounts involved and the calendar year, and plaintiffs raise the identical claims with respect to calculation of the resident income tax credit. There is no doubt the issue of the recalculation of plaintiffs' resident tax credit was actually litigated in Tuohy I as it was discussed at length, see Tuohy I, slip op. at 8-13, and the Tax Court in 2008 issued a final judgment on the merits. In fact, the issue of plaintiffs' miscalculation of their resident tax credit was the sole issue addressed in the decision and plaintiffs were parties to the action.

Thus, "[w]hatever we may think of plaintiff[s'] arguments, they are based on the same facts that were operative in [their] first case and there has been no intervening authority in this state that supports them." Blair v. Tax'n Div. Dir., 225 N.J. Super. 584, 588 (App. Div. 1988). The Tax Court correctly precluded plaintiffs' argument, and there is no reason to disturb the decision to deny reconsideration as plaintiffs have failed to demonstrate the decision was palpably incorrect or made on an irrational basis. Palombi, 414 N.J. Super. at



288 (quoting D'Atria, 242 N.J. Super. at 401). Indeed, in Tax Court matters, collateral estoppel is typically utilized when "the same kind of assessment . . . previously challenged unsuccessfully" is again argued in a subsequent proceeding. Blair, 225 N.J. Super. at 586. See N.J.A.C. 18:35-4.1(a)(3), (6)(i)-(ii).

Finally, plaintiffs argue the Tax Court erred in upholding the Director's inclusion of capital gains and Tuohy's I.R.C. § 403(b) deductions in calculating his gross taxable income.<sup>3</sup> Contrary to plaintiffs' claims, prior year capital losses may not be applied to offset current year capital gains. See N.J.S.A. 54A:5-2; Est. of Guzzardi v. Dir., Div. of Tax'n, 15 N.J. Tax 395, 400 (Tax 1995), aff'd o.b., 16 N.J. Tax 374 (App. Div. 1996) (holding while not explicitly provided in the statute, it is clear the Legislature intended that losses utilized to offset gains pursuant to N.J.S.A. 54A:5-2 must arise during the current year). Similarly, it is well-established I.R.C. § 401(k) deductions are the only retirement contributions exempt from gross income tax. N.J.S.A. 54A:6-21; Reck v. Dir., Div. of Tax'n, 345 N.J. Super. 443, 455 (App. Div. 2001), aff'd o.b., 175 N.J. 54

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<sup>3</sup> Plaintiffs do not argue the Director's inclusion of dividends in the calculation of gross income was erroneous. It is not briefed and therefore waived on appeal. N.J. Dep't of Env't Prot. v. Alloway Twp., 438 N.J. Super. 501, 505 n.2 (App. Div. 2015).

(2002) ("[W]e read the express authorization for the deductibility of [§] 401(k) contributions to preclude similar treatment of other types of pension and retirement plans, although not expressly prohibited.").

The Tax Court did not err in finding the Director was entitled to summary judgment. Reconsideration is not appropriate merely because a litigant is not satisfied with a court's decision. Plaintiffs raise no substantive legal arguments and only advocate the tax laws in New Jersey should be changed. Plaintiffs' arguments are best presented to the Legislature.

To the extent we have not addressed them, any additional arguments do not have sufficient merit to warrant discussion in a written opinion. R. 2:11-3(e)(1)(E).

Affirmed.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.



CLERK OF THE APPELLATE DIVISION