

2024 WL 1167387

NOTICE: NOT FOR OFFICIAL PUBLICATION.
UNDER ARIZONA RULE OF THE SUPREME COURT
111(c), THIS DECISION IS NOT PRECEDENTIAL AND
MAY BE CITED ONLY AS AUTHORIZED BY RULE.

Court of Appeals of Arizona, Division 1.

Jeffrey Scott PETERSON, Plaintiff/Appellant,

v.

ARIZONA CORPORATION

COMMISSION, et al., Defendants/Appellees.

No. 1 CA-CV 23-0253

I

Filed March 19, 2024

Appeal from the Superior Court in Maricopa County, No.
CV2022-011823, The Honorable [Bradley H. Astrowsky](#),
Judge. **AFFIRMED**

Attorneys and Law Firms

Carmen Chenal Horne Law Firm PLLC, Phoenix, By Carmen
Chenal Horne, Counsel for Plaintiff/Appellant

Jeffrey S. Peterson, Mississauga, ON L5B 0C6 Canada,
Plaintiff/Appellant

Arizona Corporation Commission, Phoenix, By Elizabeth [M.
Schmitt](#), Counsel for Defendants/Appellees

Judge [Jennifer B. Campbell](#) delivered the decision of the
Court, in which Presiding Judge [Samuel A. Thumma](#) and
Judge [Michael J. Brown](#) joined.

MEMORANDUM DECISION[CAMPBELL](#), Judge:

*1 ¶1 This is an appeal from the superior court's order
declining special action jurisdiction. Finding no abuse of
discretion, we affirm.

BACKGROUND

¶2 The Arizona Corporation Commission initiated an internal
administrative action against Jeffrey Scott Peterson and
others for violating the Arizona Securities Act, [A.R.S. §](#)

[44-1801 et seq.](#), seeking penalties and other relief. Peterson
unsuccessfully moved for dismissal and for summary
judgment before the administrative law judge (ALJ).

¶3 Peterson then filed a special action complaint in the
superior court, arguing that the Commission lacked personal
jurisdiction and that he was exempt from liability under
[A.R.S. § 44-1844\(A\)\(1\)](#) because the relevant transactions did
not involve a public offering. The Commission asked the
court to decline special action jurisdiction or, alternatively,
deny relief. After considering briefing and oral argument, the
court declined jurisdiction and did not address the merits.
The court explained that Peterson sought relief from an
interlocutory order, and that he would have an opportunity to
defend himself in the administrative proceedings and appeal
if dissatisfied with the outcome.

¶4 Peterson timely appealed the order declining jurisdiction.

DISCUSSION

¶5 Where, as here, the superior court disposes of a special
action solely by declining jurisdiction, our review is confined
to that jurisdictional determination. See [State v. Johnson](#), [184
Ariz. 521, 523 \(App. 1994\)](#). We do not consider Peterson's
arguments concerning the merits of his special action.

¶6 We review the superior court's decision whether to
exercise special action jurisdiction for abuse of discretion.
Id. "Acceptance of special action jurisdiction is highly
discretionary." [State ex rel. Romley v. Fields](#), [201 Ariz.
321, 323, ¶ 4 \(App. 2001\)](#). Special action jurisdiction is
inappropriate, except as statutorily authorized, "where there
is an equally plain, speedy, and adequate remedy by appeal."
[Ariz. R.P. Spec. Act. 1\(a\)](#). Special action jurisdiction is not
favored to review an interlocutory order on an incomplete
record. [Piner v. Superior Court \(Jones\)](#), [192 Ariz. 182, 184,
¶ 8 \(1998\)](#).

¶7 Here, the superior court acted well within its discretion
by declining jurisdiction over Peterson's special action from
the ALJ's interlocutory order denying his motions to dismiss
and for summary judgment. The court reasonably concluded
that Peterson has an equally plain, speedy, and adequate
remedy via the normal procedures. Peterson may present
evidence and argument at a hearing before the Commission.
See [A.A.C. R14-3-101\(A\), -104\(A\), -109\(G\)](#). And after the
hearing, if he does not prevail, he may file exceptions

to the Commission's proposed order and appeal its final order. See [A.A.C. R14-3-110\(B\)](#) (parties may file exceptions once Commission issues proposed order); [A.R.S. § 44-1981](#) (Commission's decision may be reviewed by superior court); [A.R.S. § 12-913](#) (superior court's decision may be reviewed by supreme court).

¶8 We are unpersuaded by Peterson's argument that special action jurisdiction was required because the administrative proceedings will be costly and prolonged. Such factors alone do not compel the exercise of special action jurisdiction. [Caruso v. Superior Court \(Ryle\)](#), 100 Ariz. 167, 171 (1966). Similarly, we are unpersuaded by Peterson's argument that special action jurisdiction was required because the statutory exemption he advanced presented a novel legal issue. Caselaw has discussed [A.R.S. § 44-1844\(A\)\(1\)](#)'s exemption, and it is a fact-dependent inquiry unique to each situation. See [Wales v. Ariz. Corp. Comm'n](#), 249 Ariz. 263, 2760–71, ¶¶ 29–35 (App. 2020).

*2 ¶9 We also reject Peterson's argument that he was entitled to special action review because an ALJ cannot constitutionally adjudicate the matter. Peterson relies on [Jarkesy v. Securities & Exchange Commission](#), in which a federal court held that defendants in a federal securities fraud enforcement action for penalties were entitled to a jury trial. 34 F.4th 446, 450, 454, 465 (5th Cir. 2022), cert. granted, 143 S.Ct. 2688 (2023). But Peterson raised no constitutional challenge until this appeal (even though *Jarkesy* predated his special action complaint), and we find no compelling reason to address that challenge now. See [Hawkins v. Allstate Ins. Co.](#), 152 Ariz. 490, 503 (1987) (recognizing “issues of ‘general statewide significance’ are an exception to the general rule that an appellate court will not consider issues not raised in the trial court”).

¶10 *Jarkesy* is currently under review by the United States Supreme Court, see 143 S.Ct. 2688, and construes federal law in view of the Seventh Amendment right to a jury trial. See 34 F.4th at 450, 454, 465. Accordingly, *Jarkesy* will not be binding for the interpretation of Arizona administrative procedures. See [Wales](#), 249 Ariz. at 270, ¶ 30 (recognizing that settled federal securities law is persuasive for interpreting state securities law with substantially similar provisions); [Fisher v. Edgerton](#), 236 Ariz. 71, 81, ¶¶ 32–33 (App. 2014) (recognizing that Seventh Amendment does not apply to the states and that Seventh Amendment caselaw is persuasive regarding the construction of the state constitutional jury trial right). Further, the superior court's decision to decline special action jurisdiction does not preclude Peterson from raising constitutional arguments in the pending proceedings. See [Bilagody v. Thorneycroft](#), 125 Ariz. 88, 92–93 (App. 1979) (affirming superior court's decision declining special action jurisdiction where appellant could challenge constitutionality of transportation department's hearing procedures in an appeal from his license suspension). Peterson has not shown that the superior court abused its discretion by declining special action jurisdiction.

CONCLUSION

¶11 We affirm.

All Citations

Not Reported in Pac. Rptr., 2024 WL 1167387, Blue Sky L. Rep. P 75,389