

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

WILLIAM C. GREGORY, )  
 )  
 Plaintiff, )  
 v. ) Civ. No. 95-0274-B  
 )  
 ROBERT SMITH, ET AL., )  
 )  
 Defendants. )

ORDER AND MEMORANDUM OF DECISION

BRODY, District Judge.

Plaintiff, William Gregory, who appears pro se, alleges that he was unlawfully discharged by Defendants, Robert Smith and Arby's Restaurant. Mr. Smith is apparently the owner of Arby's Restaurant, although it is unclear from the record. The facts surrounding this conflict are largely in dispute. Plaintiff claims that he was fired for reporting certain health code violations at Arby's Restaurant. Defendant claims that Plaintiff had a bad temper generally and was ultimately fired because of sexually harassing remarks made to a female coworker and for throwing a bucket of scrap meat at another coworker. There is no controversy regarding the following. Plaintiff was discharged on August 21, 1994 and was denied unemployment benefits by the Maine Department of Labor. Plaintiff appealed the Department of Labor's determination based on facts identical to those raised in his Complaint here, and the appeal was denied on November 22, 1994. Plaintiff did not appeal the second decision, although he had an opportunity to do so.

On August 2, 1994, Plaintiff filed a complaint with the Maine Human Rights Commission, again based on the same facts and issues raised before this Court. The Commission ruled in Defendants' favor and dismissed Plaintiff's complaint on October 31, 1995. Plaintiff

filed another complaint with the U.S. Department of Labor, Occupational Safety and Health Administration (hereinafter “OSHA”), again raising the same issues. That complaint was dismissed on March 6, 1996, and Plaintiff did not appeal OSHA’s decision.

Plaintiff now claims violations of the Americans With Disabilities Act (hereinafter “ADA”) and his civil rights. Defendants move for dismissal claiming that the issues raised here have been raised and litigated three times, and on all three occasions, the fact finder found against Plaintiff, hence, the doctrine of res judicata requires dismissal of this case. The Court grants Defendant’s Motion in part and requests briefing in compliance with this Order on Defendant’s Motion for Judgment On the Pleadings/Motion to Dismiss.

### **I. Res Judicata**

Plaintiff’s Complaint claims that Defendants’ actions violated (a) the federal Civil Rights Act, specifically, 42 U.S.C. §§ 1981, 1983, and 2000e;<sup>1</sup> (b) the Maine Human Rights Act, specifically, 5 M.R.S.A. §§ 4571-4575; and (c) the ADA, specifically, 42 U.S.C. §§ 12101-12213. Defendants claim that, despite Plaintiff’s new proffered legal theories, the facts now before the Court are the same as those heard in the three agency proceedings, and, therefore, this action should be dismissed on res judicata grounds.

---

<sup>1</sup> Plaintiff’s Complaint claims that his action arises under “the Civil Rights Act of 1991, 42 U.S.C. 1981a.” Recognizing that the pleadings of pro se litigants proceeding in forma pauperis must be liberally construed, the Court assumes that this count of the Complaint alleges violations of both the Reconstruction civil rights statutes as well as Title VII of the Civil Rights Act of 1964. See, e.g., Estelle v. Gumbel, 429 U.S. 97, 106 (1976); Johnson v. Rodriguez, 943 F.2d 104, 107 (1st Cir. 1991), cert. denied, 502 U.S. 1063 (1992).

## A. Federal Civil Rights Claims

### 1. 42 U.S.C. §§ 1981 and 1983 (Reconstruction Civil Rights Statutes)

Title 28 U.S.C. § 1738 governs the preclusive effect to be given the judgments and records of state courts. This statute requires that decisions issued from the various state courts shall have the same full faith and credit in other courts as they would be accorded by the issuing state court system. In this case, however, the decisions against Plaintiff are by agencies, two state and one federal. Twenty-eight U.S.C. § 1738, therefore, does not, by its explicit language, apply to this case.<sup>2</sup> However, the Supreme Court has reasoned that:

because § 1738 antedates the development of administrative agencies it clearly does not represent a congressional determination that the decisions of state administrative agencies should not be given preclusive effect.

University of Tennessee v. Elliott, 478 U.S. 788, 795 (1986). The Court has approved the sound policy of applying the principles of claim and issue preclusion to the fact finding of administrative agencies acting in a judicial capacity.<sup>3</sup> See United States v. Utah Construction &

---

<sup>2</sup> The Supreme Court has held that § 1738 requires that state court determinations be accorded claim and issue preclusive effect in subsequent actions brought under 42 U.S.C. § 1983. See Allen v. McCurry, 449 U.S. 90, 96-105 (1980) (issue preclusion); Migra v. Warren City School District Board of Education, 465 U.S. 75, 80-85 (1984) (claim preclusion).

<sup>3</sup> The terminology of preclusion doctrines is frequently confusing, although it need not be. “Claim preclusion,” as commonly used, means res judicata. This is the principle that assures the finality of judgments, thus conserving judicial resources and protecting litigants from multiple lawsuits. The doctrine of claim preclusion prevents any party to a controversy from raising a claim or defense in a subsequent action that was or could have been raised in the prior action. In essence, claim preclusion prevents parties from relitigating the same set of facts surrounding a controversy.

A related, but distinct concept, is “issue preclusion.” Issue preclusion, commonly referred to as collateral estoppel, treats issues of fact or law that were fully argued and decided between the parties as final and conclusive in any subsequent action.

Mining Co., 384 U.S. 394, 421-422 (1966); see also Kremer v. Chemical Construction Corp., 456 U.S. 461, 484-485 (1982). Giving preclusive effect to administrative fact finding serves the important value of enforcing repose between the parties, which includes both the parties' interest in avoiding costly, repetitive litigation and the public's interest in conserving judicial resources. See Elliott, 478 U.S. at 798. This is equally true whether the fact finder is a federal or state agency. Id. The Court has further stated that, when the decision maker is a state agency, application of issue preclusion principles also facilitates the value of federalism. Id. Given all of these considerations, the Court in Elliott concluded that:

we hold that when a state agency "acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate," . . . federal courts must give the agency's fact finding the same preclusive effect to which it would be entitled in the State's courts.

Id. at 799 (quoting Utah Construction & Mining Co., 384 U.S. at 422). Therefore, in order to determine the res judicata effect of an agency judgment, a federal court must examine the law of the state. See also Dall v. Goulet, 871 F. Supp. 518, 521 (D. Me. 1994) (citing Roy v. City of Augusta, Maine, 712 F.2d 1517, 1520 (1st Cir. 1993)).

Under Maine law three requirements must be met for a court to apply res judicata. First, the same parties, or their privies, must be involved in both cases; second, a valid final judgment must be entered in the prior action; and, third, the matters presented for decision were, or might have been, litigated in the prior action. See, e.g., Kradoska v. Kipp, 397 A.2d 562, 565 (Me. 1979). The first two requirements are clearly met in this case. The parties are the same, and valid judgments were issued by the Maine Department of Labor, the Maine Human Rights Commission, and by OSHA. With regard to the third requirement, Plaintiff does not appear to

have raised any civil rights claims before any of the three agency bodies, however, the facts and issues raised in Plaintiff's Complaint are identical to those presented to the agencies. There are no new facts or issues in the Complaint which would cause this Court to conclude differently than the three prior fact finders. The Court's decision would be no different even if Plaintiff now amended his Complaint to include such new information. Maine's res judicata doctrine requires that all matters which were or might have been presented for decision should not be relitigated by another decision maker. Litigants cannot withhold claims to be used down the road in order to gain entry into another forum. See, e.g., Roy v. City of Augusta, Maine, 712 F.2d 1517, 1521 (1st Cir. 1983) ("Under modern principles of res judicata, a party cannot split his claim by first seeking one type of remedy in one action and later asking for another type of relief in a second action.").

Plaintiff has had ample opportunity to litigate his civil rights claims against Defendants, and he offers the Court no extenuating circumstances arguing that this case is unusual in a way which requires the Court to reexamine the agency determinations in the interests of justice. Res Judicata applies, and Plaintiff's 42 U.S.C. §§ 1981 and 1983 claims are dismissed.<sup>4</sup>

**2. 42 U.S.C. §2000e (Title VII of the Civil Rights Act of 1964)**

For purposes of preclusion, Plaintiff's Title VII allegation is different than his claims under the Reconstruction civil rights statutes. The Supreme Court's analysis of the

---

<sup>4</sup> The Court also notes that a plaintiff cannot bring a civil rights action under 42 U.S.C. § 1983 absent the requirement that the defendant acted under color of state law. E.g., Casa Marie, Inc. v. Superior Court of Puerto Rico, 988 F.2d 252, 259 (1st Cir. 1993). Plaintiff in this case alleges no such state action.

legislative history of Title VII led it to conclude that litigants are entitled to a trial de novo in federal court of Title VII claims in situations such as Mr. Gregory's. See Elliott, 478 U.S. at 794-796; see also Chandler v. Roudebush, 425 U.S. 840, 843-861, 864 (1976) (The Court held that a federal employee whose claim was rejected, after an administrative hearing by her employing agency, was entitled to a trial de novo, in federal court, on her Title VII claim.). The Court concluded that "Congress did not intend unreviewed state administrative proceedings to have preclusive effect on Title VII claims." Elliott, 478 U.S. at 796. Thus, Title VII is an exception to the general rule of res judicata in agency decisions, and Defendants' Motion is denied with regard to Plaintiff's claim under this statute.

**B. Maine Human Rights Act**

Plaintiff also claims that Defendants violated the Maine Human Rights Act. The facts, parties, and issues remain the same here as they were before the three agencies which found against Plaintiff in the prior proceedings. For the reasons discussed in Section I.A.1, above, Plaintiff's claim under the Maine Human Rights Act is dismissed on res judicata grounds.

**C. Americans With Disabilities Act**

Plaintiff claims that his rights under the ADA were violated. After careful examination of the records from all three agency proceedings on Mr. Gregory's case, the Court finds no discussion of an alleged violation of the ADA. It is also unclear whether any of the three agency fora are appropriate under the law for adjudication of ADA claims. Neither party has addressed this issue to date. This claim is, therefore, inappropriate for dismissal on res judicata grounds, and Defendants' Motion is denied in this respect.

**II. Motion to Dismiss**

On September 30, 1996, Defendants filed a Motion for Judgment on the Pleadings/Motion to Dismiss (hereinafter "Motion to Dismiss"). No memorandum of law was included. Rule 19 of the Rules of this District requires that every motion shall incorporate a memorandum of law which includes citations and supporting authorities. In most instances, violation of Rule 19 leads to dismissal of the motion in question without reference to its merits, however, in the interests of judicial economy, the Court is making an exception and allowing an opportunity for Defendants to correct their error. Defendants will, therefore, file their memorandum of law in support of the Motion to Dismiss 10 days from the issuance of this Order. Plaintiff shall file his response five days thereafter, to be followed by Defendants' reply, if any, five days after Plaintiff's response.

Two claims remain in this case: first, Defendants' alleged violation of Plaintiff's civil rights under Title VII; and, second, Plaintiff's claim under the ADA. In their briefing, the parties should focus on these two counts and specifically address whether Plaintiff states claims for which relief can be granted. General statements such as "Plaintiff has no showing that he is entitled to relief" are not helpful to the Court. Both parties should address issues such as whether Plaintiff falls within the definition of disability under 42 U.S.C. § 12102(2) and whether the facts, as pled by Plaintiff, give rise to a violation of a person's civil rights. Appropriate statutory and case citations should be provided.

Defendants' Motion to Dismiss is GRANTED with regard to the allegations contained in 42 U.S.C. §§ 1981 and 1983 and the Maine Human Rights Act. Decision is reserved on the remaining issues, and the Parties are ordered to submit briefs on these issues pursuant to the schedule set out above.

SO ORDERED.

---

MORTON A. BRODY  
United States District Judge

Dated this 29<sup>th</sup> day of October, 1996.