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IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

CASE NO.: 1D24-0476
Lower Tribunal Case No. 2023 CA 1569

MICHELLE WILSON,

Appellant,

vs.

FLORIDA COMMISSION ON HUMAN RELATIONS, and CHEYANNE
COSTILLA, in her official capacity, and individually

Appellee.

ON APPEAL FROM A FINAL ORDER OF THE CIRCUIT COURT OF
THE SECOND JUDICIAL CIRCUIT OF FLORIDA

APPELLEE'S ANSWER BRIEF

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STATEMENT OF THE CASE AND FACTS

I. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

This is an appeal of the dismissal of a complaint brought by Appellant, Michelle Wilson (“Wilson”) against the Florida Commission on Human Relations (“FCHR”) and its Executive Director, Cheyanne Costilla (“Costilla”), in both her official and individual capacity. [R4—R18].

Wilson filed a seven-count Complaint on May 25, 2023, alleging her state and federal constitutional rights were violated when the FCHR failed to issue a determination on a Whistle-blower Charge she filed on December 14, 2020. [R4—R18].

Costilla and FCHR moved to dismiss Wilson’s complaint on June 26, 2023. [R19—R24]. Wilson filed her response in opposition on July 12, 2023. [R25—R33]. A hearing was held on December 6, 2023, and on December 29, 2023, the court issued an order granting the motion to dismiss with prejudice, concluding that Wilson’s claims were barred by collateral estoppel. [R34—R37].

This appeal followed.

II. STATEMENT OF FACTS

Wilson was employed as Executive Director of the FCHR until October 15, 2020, when her employment was terminated. [R64]. On December 14, 2020, she submitted a Whistle-blower's Act (WBA) Charge of Discrimination ("Charge") to the FCHR, which she contends "easily met all the requirements of a whistleblower charge under Florida Law." [R7]. The FCHR disagreed, notified Wilson that the Charge was inadequate, and gave her an opportunity to amend. [R7]. The FCHR ultimately dismissed Wilson's Charge without an investigation, meaning that Wilson did not receive a right to sue FCHR under section 112.3187, Florida Statutes. [R8].

Wilson sought judicial review with this Court under section 120.68, Florida Statutes. On appeal, Wilson disputed "the authority of FCHR to withhold a determination under the operative statute [and raised] state and federal issues of separation of powers, conflict of interest, due process, access to courts, and right to trial by jury." [R8].

This Court affirmed FCHR's dismissal of Wilson's Charge and denied her motion for rehearing. [R8]. *Wilson v. Florida Comm'n on*

Human Relations, 351 So. 3d 109 (Fla. 1st DCA 2022), *reh'g denied* (Dec. 5, 2022).

In its decision, this Court cited to its opinion in *Stanton v. Fla. Dep't of Health*, 129 So. 3d 1083 (Fla. 1st DCA 2013), which reaffirmed “that when a whistle-blower complaint does not meet the prima facie elements necessary to initiate operation of the Whistle-blower’s Act, the Florida Commission on Human Relations has no authority to proceed with a fact-finding investigation,” and *Washington v. Fla. Dep’t of Revenue*, 337 So. 3d 502 (Fla. 1st DCA 2022), which held that in order to receive WBA protection, “a protected disclosure must be a written and signed complaint ... when a complainant has not claimed to have participated in an investigation or to have made a complaint through a hot-line.”

After her unsuccessful appeal of FCHR’s dismissal of her Charge, Wilson filed the subject Complaint, asserting that by “refusing to honor Plaintiff’s right to a determination on her whistleblower charge,” Costilla violated her First Amendment right to petition the government for redress of grievances” (Count I) [R8-9]; that by “review[ing] and passing[ing] upon the propriety of its own decision to fire Plaintiff,” Costilla violated her due process rights

under the Fourteenth Amendment (Count II) [R10]; that by “sweeping away Plaintiff’s valuable right to proceed in court on her whistleblower claim,” Costilla and FCHR violated her due process rights under the Fourteenth Amendment and the Florida Constitution (Counts III and IV) [R11—R13]; that by “placing illegitimate and insuperable obstacles in her path to vindication of her rights to litigate her whistleblower claims in circuit court,” FCHR violated her right of access to court and trial by jury under the Florida Constitution (Counts V and VI) [R13—R15]; and that by “amending the public whistleblower statute to grant itself an unlimited and undefined exception to the mandate to issue a determination in every case to allow each case to go to court,” FCHR violated the Florida Constitution’s mandate of separation of powers. (Count VII) [R16—R17].

FCHR and Costilla moved to dismiss Wilson’s complaint based on collateral estoppel because this Court had already ruled on the issue dispositive to all of her claims: whether FCHR was required to investigate Wilson’s Charge and issue a determination giving her a point of entry to court. [R23].

The trial court concluded that because this Court previously found that FCHR's dismissal of Wilson's Charge was appropriate, and because each of her claims depended on that one issue, her claims were barred by collateral estoppel.

SUMMARY OF ARGUMENT

Wilson raises claims here that all stem from her belief that FCHR is required to investigate and issue a determination on every Whistle-blower Charge that it receives. This Court has repeatedly explained that FCHR has inherent authority to dismiss a Charge that does not meet the prima facie elements necessary to trigger the protections of the Whistle-blower's Act. Applying that precedent, this Court affirmed FCHR's dismissal of Wilson's Charge. With the question of the correctness of the dismissal already answered, Wilson's constitutional claims cannot succeed, and the trial court's order dismissing Wilson's Complaint should be affirmed.

STANDARD OF REVIEW

The standard of review when a court reviews an order granting a motion to dismiss based on collateral estoppel is de novo. *Felder v. State, Dept. of Mgmt. Services, Div. of Ret.*, 993 So. 2d 1031 (Fla. 1st DCA 2008).

ARGUMENT

I. COLLATERAL ESTOPPEL APPLIES BECAUSE THIS COURT PREVIOUSLY RENDERED A DECISION ON THE ISSUE DISPOSITIVE TO ALL OF WILSON’S CLAIMS

Wilson argues that collateral estoppel does not preclude her claims because “[n]o issue in this case was previously litigated to conclusion.” [Initial Brief, p. 7].

This Court has explained that the doctrine of collateral estoppel “prevents identical parties from relitigating the same issues that have already been decided.” *Johnson v. State*, 311 So. 3d 203, 205 (Fla. 1st DCA 2020). *See also Brown v. Dep’t of Prof’l Regulation, Bd. of Psychological Examiners*, 602 So. 2d 1337, 1341 (Fla. 1st DCA 1992)(explaining that the doctrine applies when the parties are identical or privies.).

The issue that is central to and necessary for all Wilson’s claims—whether FCHR had the authority to and properly dismissed her Whistle-blower Charge—was the issue on appeal in *Wilson v. Florida Comm’n on Human Relations*, 351 So. 3d 109 (Fla. 1st DCA 2022). Wilson’s claim that Costilla violated her First Amendment right is based on Costilla “refusing to honor Plaintiff’s right to a determination on her whistleblower charge.” [R8-9]. Her claim that

that Costilla violated her due process rights under the United States Constitution is based on Costilla “passing[ing] upon the propriety of its own decision to fire Plaintiff.” [R10]. Her claim that Costilla and FCHR violated her due process rights under the Fourteenth Amendment and the Florida Constitution is based on their “sweeping away Plaintiff’s valuable right to proceed in court on her whistleblower claim.” [R11—R13]. Her Claim that FCHR violated her right of access to court and trial by jury under the Florida Constitution is based on FCHR “placing illegitimate and insuperable obstacles in her path to vindication of her rights to litigate her whistleblower claims in circuit court.” [R13—R15]. And her claim that FCHR violated the Florida Constitution’s mandate of separation of powers is based on FCHR “amending the public whistleblower statute to grant itself an unlimited and undefined exception to the mandate to issue a determination in every case to allow each case to go to court.” [R16—R17].

To find in Wilson’s favor on any of these issues would contradict this Court’s prior decision affirming FCHR’s dismissal of her Charge.

Because this Court has already decided that FCHR had the authority to and appropriately dismissed Wilson’s Charge, and

because to succeed on the constitutional claims she now raises would require a contradictory decision on that issue, the trial court correctly dismissed Wilson’s complaint based on collateral estoppel.

II. THE MOTION TO DISMISS WAS COGNIZABLE

Wilson next argues that because collateral estoppel is an affirmative defense, it was not appropriately raised by a motion to dismiss. [Initial Brief, p. 10].

Wilson concedes in her brief, however, that collateral estoppel may support a motion to dismiss “where the facts that establish such defenses are stated on the face of the Complaint.” [Initial Brief, p. 11]. The facts establishing the defense of collateral estoppel are indeed stated on the face of Wilson’s Complaint. As noted above, Wilson’s Complaint alleged that the action giving rise to each of her claims is FCHR’s alleged improper dismissal of her Charge. Likewise, she alleged on the face of her Complaint that this Court affirmed FCHR’s dismissal of her Charge.

This single issue that underlies each of Wilson’s claims—whether FCHR appropriately and lawfully dismissed her Charge foreclosing her right to sue—was decided and concluded, and this is all apparent on the face of Wilson’s Complaint. The trial court was

not required to look outside of the four corners of Wilson’s Complaint to determine that collateral estoppel applied and therefore the defense was properly raised by motion to dismiss.

Wilson then argues that the motion erroneously rested on jurisdictional grounds, rather than on the grounds of failure to state a claim. The trial court did not address whether its order was based on subject matter jurisdiction or the failure to state a claim. Regardless, if this Court finds that the motion to dismiss should have been brought under Rule 1.40(b)(6), it should affirm based on the tipsy coachman doctrine because Wilson’s Complaint, on its face, did not state a claim for which she could recover in light of her allegations of this Court’s prior decision on the central issue. *See Jones v. Grace Healthcare*, 320 So. 3d 191, 192–93 (Fla. 1st DCA 2021)(affirming decision below but “via a slightly different analytical route.”).

III. DISMISSAL DOES NOT VIOLATE WILSON’S RIGHT OF ACCESS TO COURTS

Finally, Wilson argues that the trial court’s dismissal of her Complaint violated her fundamental right to go to court and contends that this Court “decided nothing” about her constitutional claims in the prior appeal. [Initial Brief, p. 14].

A party asserting that her right to access courts must be able to show “an underlying cause of action the vindication of which is prevented by the denial of access to the courts.” *Cromartie v. Shealy*, 941 F.3d 1244, 1258 (11th Cir. 2019).

Contrary to Wilson’s argument, this Court did “decide something” in the prior appeal. Namely, that FCHR was not required to issue a determination on her Charge—the issue that is dispositive for all of Wilson’s claims.

Moreover, Wilson was not barred from the courts. She could have asserted other claims related to the termination of her employment that did not depend on the lawfulness of FCHR’s dismissal of her Charge. For example, she could have filed a § 1983 claim for First Amendment retaliation, a claim which has no administrative prerequisite. But she chose only to go the Whistle-blower Act route.

FCHR dismissed Wilson’s Charge because she failed to sufficiently describe activity that would trigger the protections of the Whistle-blower’s Act, and this Court agreed. The trial court’s dismissal of Wilson’s claims, all of which depended on an issue that

has already been decided, did not infringe upon her right to access the courts. The decision below should be affirmed.

CONCLUSION

The Trial court properly found that Wilson's claims all relied on a dispositive issue that was previously decided by this Court, and that her claims were therefore barred by the doctrine of collateral estoppel. Accordingly, this Court should affirm the trial court's order of dismissal and judgment for FCHR and Costilla.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief is prepared in Bookman Old Style 14-point font and contains 2,319 words.

CERTIFICATE OF SERVICE

I certify that a copy of this brief was filed with the Florida Courts E-Portal which furnished a copy to all parties of record on May 18, 2024.

/s/ Jamie Ito
Jamie Ito

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