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**IN THE CIRCUIT COURT OF THE
SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

MICHELLE WILSON,

Plaintiff,

v.

Case No.: 2023-CA-1569

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

Defendants.

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS

THIS CAUSE is before the Court on Defendants' Motion to Dismiss. Having reviewed the motion and Plaintiff's response in opposition, and having heard arguments of the parties on December 6, 2023, the Court grants the Defendant's Motion to Dismiss for the reasons set forth below.

The Plaintiff, Michelle Wilson, was dismissed from her employment in October 2020, and believed that her dismissal was retaliation for reporting wrongdoing by her employer in violation of the Florida Whistle-blower's Act (WBA). Florida law provides that employees and former employees who believe they have been subjected to retaliation by an employer after making a disclosure protected by the WBA may file a complaint, or "whistle-blower charge," with the Florida Commission on Human Relations (FCHR), § 112.31895(1)(a), Fla. Stat. Thereafter, the WBA accords investigative power to the FCHR "to determine whether reasonable grounds exist to believe that a prohibited action or a pattern of prohibited action has occurred, is occurring, or is to be taken." §

112.31895(2)(a), Fla. Stat. Upon receipt of a determination, the employee or former employee may file a claim under the WBA in circuit court. Where the FCHR dismisses a whistleblower charge without making a determination, that decision is appealable to the First District Court of Appeal. § 120.68, Fla. Stat.

Here, the FCHR concluded that Plaintiff's whistle-blower charge was inadequate and, after giving Plaintiff an opportunity to amend, dismissed it without making a determination. Because FCHR dismissed Plaintiff's whistle-blower charge without making a determination, she was unable to exhaust the administrative prerequisite for bringing a civil claim under the WBA in circuit court. She appealed the dismissal to the First DCA.

On appeal, Plaintiff challenged the authority of FCHR to dismiss a whistle-blower charge without making a determination, argued that its failure to do so violated her state and federal constitutional rights, and raised issues of separation of powers, conflict of interest, due process, access to courts, and right to trial by jury. After briefing and oral argument, the First DCA affirmed the dismissal of Plaintiff's whistle-blower charge, but in its order did not explicitly address the merits of Plaintiff's constitutional arguments.

Plaintiff then filed this action, asserting seven (7) state and federal constitutional claims "to force consideration of her constitutional claims." [Complaint, ¶27]. Plaintiff's claims are based on her contention that "FCHR was required to issue a positive or negative determination on every charge." [Complaint, ¶22]. Plaintiff argues that though her constitutional claims were raised and argued on appeal, the failure of the appeals court "to acknowledge or address any of the constitutional issues, even on rehearing" [Complaint, ¶26] means that this Court can now consider them without relitigating issues that have already been decided.

Defendants moved to dismiss this action based on collateral estoppel and argue that the First DCA's affirmance of FCHR's dismissal of Plaintiff's whistle-blower charge precludes Plaintiff's constitutional claims here.¹ The First DCA has repeatedly held that FCHR may dismiss a charge if it "does not meet the *prima facie* elements necessary to initiate the operation of the Act." *Stanton v. Florida Dept. of Health*, 129 So. 3d 1083, 1084 (Fla. 1st DCA 2013) (affirming FCHR's dismissal of a Charge because it did not describe a disclosure that would trigger the protection of the WBA); *Tillery v. Florida Dept. of Juvenile Justice*, 104 So. 3d 1253, 1255 (Fla. 1st DCA 2013) (affirming FCHR's dismissal of a charge because it did not assert "when or to whom" a disclosure was made); *Caldwell v. Florida Dept. of Elder Affairs*, 121 So. 3d 1062, 1063 (Fla. 1st DCA 2013) (affirming dismissal of charge by FCHR because allegations in the charge were conclusory and did not describe any act or suspected act of misfeasance or malfeasance").

For each of her claims, Plaintiff would have this Court conclude that FCHR had no authority to dismiss her whistle-blower charge, contrary to the judgment of the First DCA.

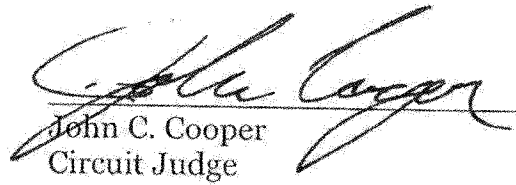
Defendants are correct. When a court "decides an issue necessary to its judgment, that decision precludes relitigation of the same issue on a different cause of action between the same parties." *Barrington v. Florida Dept. of Health*, 112 F. Supp. 2d 1299, 1303 (M.D. Fla. 2000).

¹ While collateral estoppel is an affirmative defense that typically should not be raised by motion to dismiss, Plaintiff specifically referenced the appeal of FCHR's dismissal of her whistle-blower charge to the First DCA in her Complaint, noting the constitutional issues she raised and the First DCA's ruling. Thus, this Court may consider the First DCA's ruling in deciding this motion. *Duncan v. Prudential Ins. Co.*, 690 So. 2d 687, 688 (Fla. 1st DCA 1997).

Because the First DCA previously found, in an action between these parties, that dismissal of Plaintiff's whistle-blower charge was appropriate, Plaintiff's claims are barred by collateral estoppel.

Accordingly, Plaintiff's Complaint is dismissed, with prejudice.

DONE and ORDERED in Chambers at Tallahassee, Leon County, Florida, this 29th day of December, 2023.


John C. Cooper
Circuit Judge

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