

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60676
Summary Calendar

MRS. PEGGY GATES,

Plaintiff-Appellant,

versus

JAMES GORDON WALKER, ETC.,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
(CA 2:90 128)

July 3, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Mrs. Peggy Gates appeals from the district court's entry of summary judgment in a civil rights suit brought under 42 U.S.C. § 1983. Finding the district court properly applied the doctrine of res judicata, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Gates worked as a teacher in the Hattiesburg Municipal

* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Separate School System for eighteen years. In April 1981, Gates received written notice that her principal refused to recommend her for reemployment for the 1981-82 school year because Gates: had inadequate or improper classroom instructional skills; excessive absences from the classroom; refused to abide by school policy with respect to leaves of absence; and had exhibited unprofessional conduct.

Gates sought administrative review of the decision under Mississippi state law. A hearing was held before an administrative hearing officer. At the hearing, Gates argued that her discharge was due to her outspoken criticism of the policies of the superintendent and the school board in violation of her First Amendment right of free speech. The administrative hearing officer held that each of the reasons given by the school board served as an adequate basis for Gates's discharge. The Board of Trustees for the school district followed the recommendation of the hearing officer and refused to rehire Gates for the 1981-82 school year.

Gates then sought judicial review of the administrative decision in the Mississippi chancery court, naming the school district as the defendant. The court found that the school district did not violate Gates's procedural rights under Miss. Code Ann. § 37-9-101. However, the court also held that: (1) the school district failed to meet its burden of proof under its local rules to show that the discharge was rationally related to some legitimate, educational interest of the district; and (2)

the school district violated Gates's federal and state constitutional right of free speech. The court reversed the administrative decision and ordered that Gates be reinstated for the 1981-82 school year.

In an appeal filed by the Board of Trustees, the Mississippi Supreme Court reversed the decision and reinstated the decision of the administrative hearing officer. Board of Trustees of the Hattiesburg Separate School District v. Gates, 461 So.2d 730 (Miss. 1984), clarified on other grounds, 467 So.2d 216 (Miss. 1985). The court held that the administrative hearing officer correctly determined that the school district's discharge of Gates was unrelated to her free speech activities. Id. at 739.

Subsequently, in 1990, Gates filed the instant § 1983 action against members of the School Board of the Hattiesburg Municipal Separate School District and Dr. Sam Spinks, a former school superintendent.¹ The defendants filed a joint motion for summary judgment, contending among other things that the action should be dismissed because it was barred by the doctrines of res judicata and collateral estoppel. The district court granted the defendants' motion, finding the suit barred by res judicata and collateral estoppel.

II. RES JUDICATA

¹ Gates had previously filed a § 1983 action which was dismissed based on the statute of limitations. Because of an intervening change in the law regarding the applicable statute of limitations, Gates initiated the instant § 1983 suit. For a more detailed history of this litigation, see Gates v. Walker, 865 F.Supp. 1222 (S.D. Miss. 1994).

Gates argues that the district court erroneously granted the defendants' motion for summary judgment. Summary judgment will be affirmed only when this Court is "convinced, after an independent review of the record, that 'there is no genuine issue as to any material fact' and that the movant is entitled to judgment as a matter of law.'" Herrera v. Millsap, 862 F.2d 1157, 1159 (5th Cir. 1989) (quoting Brooks, Tarlton, Gilbert, Douglas & Kressler v. United States Fire Ins. Co., 832 F.2d 1358, 1364 (5th Cir. 1987) and Fed.R.Civ.P. 56(c)). Fact questions must be considered with deference to the nonmovant. Herrera v. Millsap, 862 F.2d at 1159. Questions of law are reviewed de novo. Id.

Gates contends that her § 1983 action is not barred by res judicata. The Full Faith and Credit Act, 28 U.S.C. § 1738, requires federal courts to give the same preclusive effect to state court judgments that those judgments would receive in the courts of the state from which the judgments emerged. Migra v. Warren City School Dist. Board of Education, 465 U.S. 75, 80-81, 104 S.Ct. 892, 896 (1984). This is true "even when the basis of the federal claim is the Civil Rights Act." Scott v. Fort Bend County, 870 F.2d 164, 167 (5th Cir. 1989). Mississippi law therefore applies to the determination of the preclusive effect of the prior Mississippi state court judgment in question. Under Mississippi law, the doctrine of res judicata bars the relitigation of:

all issues tried in the prior lawsuit, as well as all matters which should have been litigated and decided in

the prior suit, . . . [if] the four identities of res judicata are present. They are: (1) identity of the subject matter of the action; (2) identity of the cause of action; (3) identity of the parties to the cause of action; and (4) identity of the quality or character of a person against whom the claim is made.

Riley v. Moreland, 537 So.2d 1348, 1354 (Miss. 1989) (quotations and citations omitted). The court below determined that the four identities of res judicata were present between Gates's prior state court action and the present federal action.

Gates maintains that res judicata is inapplicable because there is no identity of the things sued for, or identity of the causes of action. She also asserts that res judicata does not apply in cases in which the court or agency that issued the first action did not have the authority to award the relief sought in the second action. Because Gates does not challenge the district court's decision concerning the identity of the parties or the identity of the quality or character of the parties, we do not discuss those factors.

A. Identity of Subject Matter

Gates argues that the "identity of the subject matter" means "identity of the things sued for." She maintains that she sued for different things in the actions: (1) in the state action she sought the relief available under the School Employment Procedures Act, Miss. Code Ann. § 37-9-101; and (2) in the federal action she sought the relief available under § 1983, including damages, punitive damages, back-pay, reinstatement, accrued retirement benefits, attorneys' fees, and interest.

Gates's argument that this factor focuses on the "identity

of the thing sued for" insofar as she contends that differences in the relief sought in the two proceedings destroys identity is without merit. The more recent Mississippi cases use the language the "identity of the subject matter" rather than the "identity of the things sued for," and focus on the actual basis of the actions. Riley, 537 So.2d at 1354; Walton v. Bourgeois, 512 So.2d 698, 701 (Miss. 1987); Dunaway v. W.H. Hopper & Associates, Inc., 422 So.2d 749, 751 (Miss. 1982); see also Moses v. Flanagan, 727 F.Supp. 309, 311 (N.D. Miss. 1989) (the subject matter of the § 1983 suit and the appeal to the chancery court "is the termination of his teaching contract."); Johnson v. Howell, 592 So.2d 998, 1002 (Miss. 1991) (actions concerned identical claims, an interest in a particular estate). The district court correctly determined that both actions involved the same subject matter, namely the failure to renew Gates's teaching contract and Gates's contention that the nonrenewal was in violation of the First Amendment rights. The fact that relief was first sought under Mississippi's statutory law and not under 42 U.S.C. § 1983 does not alter the subject matter of the two proceedings.

B. Identity of Causes of Action

Gates contends that there is no identity of the causes of action in the state action and the present federal action. She maintains that identity of the causes of action does not exist because the relief available in each action was different.

The "identity of the cause of action" has been defined as

"identity of underlying facts and circumstances upon which a claim is asserted and relief sought from the two actions." Riley, 537 So.2d at 1354 (internal quotation marks and citation omitted). Gates argues that the § 1983 action was not, and could not have been, brought in the state administrative action. Mississippi chancery courts, however, may hear federal constitutional claims, including § 1983 claims. Hood v. Mississippi Dept. of Wildlife Conservation, 571 So.2d 263, 266 (Miss. 1990) (citing Burrell v. Mississippi State Tax Commission, 536 So.2d 848, 863-64 (Miss. 1988)). In Hood, the Mississippi Supreme Court held that a former civil service employee § 1983 action was barred by the res judicata effect of a prior unappealed Employee Appeal Board decision upholding his discharge. Id. at 268. The court based its decision on the authority of the Employee Appeals Board to hear the employee's federal constitutional claims. Id. Even if Gates could not have brought her § 1983 claim in the administrative appeal, the Mississippi chancery court did have authority to hear Gates's § 1983 action. Hood, 571 So.2d at 266.² This argument affords her no relief.

The court below correctly determined that because both

² Gates cites Frazier v. King in support of her argument that the doctrine of res judicata does not apply if the first court did not have the authority to award the relief sought in the second case. 873 F.2d 820, 825 (5th Cir.), cert. denied, 493 U.S. 977, 110 S.Ct. 502 (1989). However, this case is inapplicable because it is based on Louisiana law. Id. at 824-25. As previously set forth, Mississippi law applies to the determination of the preclusive effect of a prior Mississippi state court judgment. Scott, 870 F.2d at 167.

actions involved the same underlying facts and circumstances (the nonrenewal of Gates's teaching contract and whether the nonrenewal was due to Gates's criticism of the school district in violation of her First Amendment rights), there was an identity of the causes of action. See Riley, 537 So.2d at 1354.

Accordingly, we hold that the district court properly applied Mississippi law and found Gates' suit barred by the doctrine of res judicata.³

CONCLUSION

For the above stated reasons, the judgment of the district court is AFFIRMED.

³ Because we find the suit barred by res judicata, we need not address the issue of collateral estoppel.