STATE OF MINNESOTA
IN COURT OF APPEALS
A08-0195

Stephen J. Smith,
Respondent,

vs.

City of Princeton,
Relator,

Commissioner of Veterans Affairs,
Respondent.

Filed December 30, 2008
Affirmed
Collins, Judge[*]

Minnesota Department of Veterans Affairs
OAH Docket No. 3-3100-18039-2

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Considered and decided by Hudson, Presiding Judge; Bjorkman, Judge; and Collins, Judge.

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[*] Retired judge of the district court, serving as judge of the Minnesota Court of Appeals by appointment pursuant to Minn. Const. art. VI, § 10.

U N P U B L I S H E D O P I N I O N

COLLINS, Judge

Relator City of Princeton challenges the grant of summary disposition to respondent-employee Stephen Smith, arguing that the doctrines of res judicata and collateral estoppel do not bar Smith's second termination. Because res judicata applies, we affirm.

FACTS

The City of Princeton employed Stephen Smith since 2002 as a maintenance worker in the public-works department. In 2005, Mark Karnowski, the city administrator, became aware that Smith's coworkers suspected him of stealing gasoline from the city. Karnowski discussed the matter with the city police chief, and during the early morning on October 3, 2005, Smith was observed under police surveillance while he worked alone.

Later that day, based on the surveillance report, Smith was issued a citation for misdemeanor theft of fuel. Smith's supervisor instructed Smith to leave work and advised him that Karnowski would contact him. After meeting with Smith, who adamantly denied the charge, Karnowski informed Smith of his recommendation to the city council that Smith's employment be terminated. The city council met the following week and voted unanimously to terminate Smith's employment. Smith was fired on October 14, 2005.

Because Smith received an honorable discharge from the United States Navy, he is entitled to the protections and privileges conferred by the Veterans Preference Act

(VPA). Minn. Stat. §§ 197.455-.481 (2006); *see also* Minn. Stat. § 197.447 (2006) (defining "veteran"). Under the VPA, no veteran working in the public sector "shall be removed from such position or employment except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing." Minn. Stat. § 197.46 (2006). A veteran, however, must "request a hearing within 60 days of receipt of the notice of intent to discharge." *Id.*

Smith timely requested a hearing to contest his termination, and an arbitration panel was convened under the authority of respondent Commissioner of Veteran Affairs. At the arbitration hearing on June 5, 2006, the city argued that Smith's conduct violated the city's personnel policy and that because maintenance workers often went into people's homes and businesses, permitting Smith to remain employed would undermine the citizens' trust and confidence in the city. After hearing the evidence, the arbitration panel stated:

> The evidence proffered by employees does not establish that [Smith] was engaged in the theft of City fuel. Rather, it amounts to nothing more than mere speculation on the part of these two employees, one of whom had an "axe to grind" with [Smith]. What we have left then is [Smith]'s alleged theft of unleaded gasoline on the morning of October 3, 2005, as witnessed by Officer Zawacki.
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> . . . .
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> [And] although Officer Zawacki believes what he saw and testified credibly, it is entirely possible, due to the observation distance of approximately 120 yards and the darkness that time of the morning in October, [Smith] could have been carrying a red water jug as he claimed rather than a red unleaded gasoline can.

Based on the evidence, the arbitration panel determined that "the [city] did not have just cause to terminate [Smith]." The panel ordered Smith reinstated to his former position. It further ordered that Smith "be made whole for any loss of economic benefits, seniority; or any other benefits or rights or privileges suffered" because of the city's actions and that Smith's termination letter and any reference to his termination be expunged from his personnel file. Smith returned to work on July 31, 2006.

In September 2006, following a district court trial, Smith was found guilty of the underlying misdemeanor-theft charge. On March 23, 2007, Karnowski placed Smith on paid administrative leave and gave him a notice of intent to discharge, citing the workplace- and community-fall-out from Smith's conviction. Shortly thereafter, the city council again resolved to terminate Smith's employment subject to his rights under the VPA.

After his second termination, Smith contacted the Minnesota Department of Veterans Affairs advising that he had been fired twice for the same conduct. On May 9, 2007, Smith filed a petition for relief under Minn. Stat. § 197.481, seeking an order requiring the city to abide by the previous arbitration decision. On May 21, Smith hand-delivered a letter to the city, which requested "a hearing with the Office of Administrative Hearings as per [Minn. Stat. §] 197.481," and faxed a copy of the letter with a note to the DVA stating that he had "[r]equested [his] Veteran's Preference Hearing today."

A month later, Smith moved for summary disposition on his petition, alleging that "the City should be precluded from discharging [Smith] and from re-litigating what is

essentially the same case of misconduct against the Veteran." The city opposed the motion, arguing that Smith's second discharge was not a consequence of the conduct underlying his first termination; rather, Smith was terminated due to his subsequent criminal conviction and the resulting "severe morale problem within the department and [the] significant image problem within the Princeton community."

An administrative law judge (ALJ) recommended denying Smith's motion for summary disposition and granting Smith a second arbitration hearing to contest his second termination. The ALJ stated that "the factual issues are different enough that the City should not be precluded from attempting to discharge [Smith]." Both parties filed exceptions to the ALJ's recommendation and presented oral arguments before the commissioner. On January 4, 2008, the commissioner (1) rejected the ALJ's recommendation, (2) determined that the "second termination is precluded by the doctrine of res judicata" and "constitutes a denial of [Smith]'s rights under the Veterans Preference Act," and (3) granted Smith's motion for summary disposition, holding that the city is barred from relitigating Smith's discharge. This certiorari appeal followed.

D E C I S I O N

The city challenges the grant of summary disposition, arguing that the facts underlying Smith's second termination are different from the facts underlying the first termination and, therefore, that the doctrines of res judicata and collateral estoppel do not apply.

When reviewing an agency's decision, we determine whether the agency violated the constitution, exceeded its authority, engaged in unlawful procedure, erred as a matter

of law, issued a decision unsupported by substantial evidence, or acted arbitrarily or capriciously. Minn. Stat. § 14.69 (2006). We defer to an agency's expertise in finding facts and will affirm the agency's decision so long as it is lawful and reasonable. *Contel of Minn. v. Minn. Pub. Utils. Comm'n*, 532 N.W.2d 583, 588 (Minn. App. 1995), *review denied* (Minn. Aug. 30, 1995). "[D]ecisions of administrative agencies enjoy a presumption of correctness, and deference should be shown by courts to the agencies' expertise and their special knowledge in the field of their technical training, education, and experience." *Minn. Ctr. for Envtl. Advocacy v. Minn. Pollution Control Agency*, 644 N.W.2d 457, 463 (Minn. 2002) (quotation omitted).

"Summary disposition is the administrative equivalent of summary judgment," and we review the grant of summary disposition as we would the grant of summary judgment. *Tombers v. City of Brooklyn Ctr*., 611 N.W.2d 24, 26 (Minn. App. 2000). Summary judgment should be granted "if the pleadings [and filed discovery], together with the affidavits, if any, show that there is no genuine issue as to any material fact and that either party is entitled to a judgment as a matter of law." Minn. R. Civ. P. 56.03. Here, the commissioner ruled that Smith is entitled to summary disposition on his petition by applying res judicata. The availability of the doctrine of res judicata is a question of law, which we review de novo. *Hauschildt v. Beckingham*, 686 N.W.2d 829, 840 (Minn. 2004).

Res judicata is a finality doctrine mandating an end to litigation. *Id*. A final judgment on the merits bars a second lawsuit for the same cause of action. *Id.* Res judicata precludes a party from relitigating a cause of action in a second lawsuit if: (1) the

earlier claim involved the same set of factual circumstances; (2) the earlier claim involved the same parties or their privities; (3) there was a final judgment on the merits; and (4) the estopped party had a full and fair opportunity to litigate the matter. *Brown-Wilbert, Inc. v. Copeland Buhl & Co.*, 732 N.W.2d 209, 220 (Minn. 2007). "Res judicata not only applies to all claims actually litigated, but [also] to all claims that could have been litigated in the earlier action." *Hauschildt*, 686 N.W.2d at 840. Res judicata applies to an administrative agency's decision when the "agency acts in a judicial or quasi-judicial capacity." *See Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991).

In the context of res judicata, the word "claim" does not refer to a legal theory; rather, it refers to "a group of operative facts giving rise to one or more bases for suing." *Hauschildt*, 686 N.W.2d at 840. In other words, "the *facts* surrounding the occurrence which constitutes the cause of action—not the legal theory upon which plaintiff chose to frame his complaint—must be identical in both actions to trigger res judicata." *Meagher v. Bd. of Trustees*, 921 F. Supp. 161, 167 (S.D.N.Y. 1995) (*quoted in Hauschildt*, 686 N.W.2d at 840), *aff'd*, 79 F.3d 256 (2d Cir. 1996). "The common test for determining whether a former judgment is a bar to a subsequent action is to inquire whether the same evidence will sustain both actions." *Hauschildt*, 686 N.W.2d at 840; *see also Myers v. Price*, 463 N.W.2d 773, 777 (Minn. App. 1990) ("Two causes of action are the same when they involve the same set of factual circumstances or when the same evidence will sustain both actions."), *review denied* (Minn. Feb. 4, 1991). "In addition, claims cannot be considered the same cause of action if the right to assert the second claim did not arise

at the same time as the right to assert the first claim." *Hauschildt*, 686 N.W.2d at 840-41 (quotation omitted). Underlying the first prong is the notion that "a plaintiff may not split his cause of action and bring successive suits involving the same set of factual circumstances." *Id.* (quotation omitted).

The city contends that res judicata does not bar the second termination because the underlying facts and evidence that supported Smith's first termination "arose from events on unspecified dates in the summer of 2005 and culminated in the incident of October 3, 2005" and that the underlying facts and evidence to support Smith's second termination arose only since September 19, 2006. But this argument rings hollow.

Because the city chose to terminate Smith and proceed with the VPA arbitration hearing before Smith's criminal trial occurred, the arbitration panel could not consider Smith's conviction or the resulting public reaction in determining whether Smith engaged in misconduct justifying his termination. Thus, the evidence presented and relied on by the arbitration panel at the first hearing is not precisely identical to the evidence presented to the commissioner. But Smith's criminal conviction obviously stems from the same conduct for which he was terminated in the first place—the allegations of theft of fuel culminating on October 3, 2005—which the arbitration panel determined were not proved sufficiently to warrant Smith's termination.

Moreover, although the city maintains that the evidence of the citizens' lack of trust and confidence arising from Smith's continuing employment is new, it merely recasts the similar basis for relief sought in the previous hearing. The city argued before

the arbitration panel that its employees "often go into businesses and private homes, and the public needs assurance that their personal property would not be stolen."

We conclude that the commissioner did not err by finding that both cases for termination involved the same set of factual circumstances; thus the first res judicata element was satisfied.

The second element requires us "to determine the nature and extent of the relationship between a formal party and the person alleged to have been in privity with that party." *Crossman v. Lockwood*, 713 N.W.2d 58, 62 (Minn. App. 2006). In this case, because the city and Smith were the only parties involved in both cases, the commissioner did not err by finding that this element was satisfied.

Because the first action reached a final judgment, the commissioner did not err by finding that the third element of res judicata was satisfied. In the initial action, the arbitration panel issued a judgment ordering the city to reinstate Smith. The city did not appeal that decision, and the judgment of the arbitration panel became final and binding on both parties.

The final element, whether a party had a full and fair opportunity to litigate a matter, depends on "whether there were significant procedural limitations in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." *State v. Joseph*, 636 N.W.2d 322, 328 (Minn. 2001) (quotation omitted). The city presented witnesses at the arbitration hearing, including two co-workers who observed and reported Smith's suspicious behavior; the police officer who observed Smith's conduct on October

3, 2005; and Karnowski, who dealt with Smith after he was cited for theft of city property. Clearly, the city had the incentive to fully litigate the issue, and the litigation was not impaired by procedural or other limitations. Thus, the commissioner did not err by finding that the city had a full and fair opportunity to litigate the case in the first instance.

The city also contends that the commissioner's application of collateral estoppel is unfounded. The doctrine of collateral estoppel, or issue preclusion, prevents "parties to an action from relitigating in subsequent actions issues that were determined in the prior action." *Nelson v. Am. Family Ins. Group*, 651 N.W.2d 499, 511 (Minn. 2002) (quoting *In re Vill. of Byron*, 255 N.W.2d 226, 228 (Minn. 1977)). "The doctrine . . . mandates that once an issue is actually and necessarily determined by a court of competent jurisdiction, that determination is conclusive in subsequent suits, based on a different cause of action, involving a party to the prior litigation." *Haavisto v. Perpich*, 520 N.W.2d 727, 731 (Minn. 1994) (quotation omitted); *see Hauser v. Mealey*, 263 N.W.2d 803, 806 (Minn. 1978) (observing that "the principle of collateral estoppel operates as to matters which were actually litigated and determined by, and essential to, a previous judgment, irrespective of whether the subsequent action is predicated upon the same or a different cause of action").

Like res judicata, collateral estoppel applies to certain administrative decisions when they are made in a judicial or quasi-judicial capacity. *Graham v. Special Sch. Dist. No. 1*, 472 N.W.2d 114, 115-16 (Minn. 1991). For collateral estoppel to apply to an administrative decision, the following requirements must be met:

> (1) the issue to be precluded must be identical to the issue raised in the prior agency adjudication,
> (2) the issue must have been necessary to the agency adjudication and properly before the agency,
> (3) the agency determination must be a final adjudication subject to judicial review,
> (4) the estopped party was a party or in privity with a party to the prior agency determination, and
> (5) the estopped party was given a full and fair opportunity to be heard on the adjudicated issue.

Id. at 116 (citations omitted).

Although the commissioner stated that "both [res judicata and collateral estoppel] are applicable in the instant case," the commissioner relied primarily on the doctrine of res judicata. At no time did the commissioner address the elements of collateral estoppel or make findings specific to the doctrine of collateral estoppel. Because the record before us is undeveloped as to whether the doctrine of collateral estoppel applies here, and because we would be required to supplement the findings to make that determination, the availability of collateral estoppel is not properly before us and will not be addressed.

We hold that the commissioner properly granted Smith's motion for summary disposition based on the correct application of the doctrine of res judicata. Therefore, we need not address whether collateral estoppel applies, or the city's secondary contention that Smith failed to timely request a second VPA hearing.

Affirmed.