

**Commonwealth Of Kentucky**

**Court of Appeals**

NO. 2002-CA-000573-MR

LARRY CHAPMAN, INDIVIDUALLY,  
AND D/B/A FARM BOY FOOD MART

APPELLANT

v. APPEAL FROM JEFFERSON CIRCUIT COURT  
HONORABLE THOMAS J. KNOFF, JUDGE  
ACTION NO. 01-CI-004583

CLAYTON FARRIS

APPELLEE

OPINION

AFFIRMING

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BEFORE: BARBER, McANULTY, AND TACKETT, JUDGES.

McANULTY, JUDGE: Larry Chapman, individually, and d/b/a Farm

Boy Food Mart, (Chapman) appeals from the Jefferson Circuit

Court's order granting partial summary judgment in favor of

Clayton Farris (Farris) in a wage and hour enforcement action.

In his appeal, Chapman argues that the circuit court erroneously

allowed the offensive use of issue preclusion to bar any defense

by Chapman in the underlying suit filed by Farris to recover

unpaid wages as determined by the Kentucky Labor Cabinet in an

administrative proceeding. Having concluded that the doctrine of issue preclusion was applicable in this case, we affirm.

From October of 1981, through March of 1998, Farris worked as a store manager for Farm Boy Food Mart, a small grocery store owned by Chapman. Ultimately, in mid-March of 1998, Farris voluntarily resigned from his employment at Farm Boy Food Mart.

In April of 1998, Farris filed a wage and hour complaint with the Kentucky Labor Cabinet (Labor Cabinet), Division of Employment Standards Apprenticeship and Training (the Division). In his complaint, Farris alleged that Chapman owed Farris the following compensation under KRS 337.055: (1) his final two weeks salary; (2) bonuses for the second, third and fourth quarters of 1997 and the first quarter of 1998; and (3) vacation pay for one week of vacation that Farris actually took and one week of unused vacation.

The Division launched an investigation into Farris's complaint. Prior to the conclusion of the investigation, however, Chapman paid Farris his final two weeks salary, so the only remaining claims addressed by the Division pertained to the bonuses and vacation pay. As to those claims, on March 17, 2000, the Division issued its Tentative Findings of Fact. In pertinent part, the Division found that Chapman violated KRS 337.055 and owed Farris gross wages totaling \$19,238.79.

Moreover, for being in violation of KRS 337.055, the Division assessed a civil penalty of \$200 against Chapman.

Chapman appealed the Division's Tentative Findings and requested a fact-finding hearing. In response, the Labor Cabinet held an administrative hearing under KRS Chapter 13B before an administrative law judge (ALJ) on October 23, 2000. Although Chapman had had counsel at various times during the investigative process, he chose not to have counsel at the administrative hearing.

The ALJ issued Recommended Findings of Fact, Conclusions of Law and Recommended Order on January 17, 2001, to which no exceptions were filed. The ALJ recommended that the tentative findings of the Division be affirmed and that Chapman be ordered to make restitution of \$19,238.79 to Farris for unpaid wages and pay a \$200 penalty to the Labor Cabinet.

On April 6, 2001, the Secretary of Labor adopted the ALJ's Recommended Findings of Fact, Conclusions of Law and Order dated January 17, 2001, as the Final Order of the Labor Cabinet. In the Final Order, the Secretary of Labor informed Chapman of his right to appeal. Chapman did not appeal the Labor Cabinet's Final Order, nor did he pay Farris the ordered restitution of \$19,238.79.

On July 3, 2001, Farris filed the action underlying this appeal to enforce the Labor Cabinet's Final Order. In

addition, under KRS 337.385, Farris also sought liquidated damages and a reasonable attorney's fee. On September 28, 2001, Farris filed a motion for partial summary judgment on the issue of the \$19,238.79 in unpaid wages that had been awarded to him in the administrative action before the Labor Cabinet. The trial court granted Farris's motion for partial summary judgment, precipitating this appeal.

On appeal, Chapman's sole argument is that issue preclusion is not applicable in this case to bar any challenge by Chapman that he owed \$19,268.79 in wages to Farris. Issue preclusion is not applicable, according to Chapman, because Chapman was not represented by counsel during the hearing. Moreover, there is a vast difference in the nature and importance of the issues previously addressed at the administrative level and those raised in the trial court proceeding. In support, Chapman asserts that the case of Bd. of Educ. of Covington v. Gray, Ky. App., 806 S.W.2d 400 (1991), is on point.

To begin our analysis, we set out the following terminology.

Issue preclusion refers to the effect of a judgment in foreclosing relitigation of a matter that has been litigated and decided. This effect also is referred to as direct or collateral estoppel. Claim preclusion refers to the effect of a judgment in foreclosing litigation of a matter that

never has been litigated, because of a determination that it should have been advanced in an earlier suit. Claim preclusion therefore encompasses the law of merger and bar.

Migra v. Warren City School Dist. Bd. of Educ., 465 U.S. 75, 77 n.1, 104 S. Ct. 892, 79 L. Ed. 2d 56 (1984) (internal citations omitted). In this case, we are dealing with the doctrine of issue preclusion, not claim preclusion. To be consistent, we will use the term "issue preclusion" instead of the terms "collateral estoppel" or "res judicata."

Kentucky recognizes the use of non-mutual issue preclusion, which is "applicable when at least the party to be bound is the same party in the prior action." Moore v. Commonwealth, Ky., 954 S.W.2d 317, 319 (1997). As the parties in the administrative proceedings were the Division and Chapman, Farris is not prevented from asserting issue preclusion as long as he establishes the following essential elements:

- (1) identity of issues;
- (2) a final decision or judgment on the merits;
- (3) a necessary issue with the estopped party given a full and fair opportunity to litigate;
- (4) a prior losing litigant.

Id. (citing Sedley v. City of West Beuchel, Ky., 461 S.W.2d 556, 559 (1970)).

In this case, we begin with the first essential element listed above -- identity of issues. Contrary to Chapman's assertion in this appeal that the Labor Cabinet's

intent in the administrative hearing was to determine the propriety of the decision to assess a civil penalty against Chapman, the issue decided, as framed by the Labor Cabinet, was "whether Chapman violated KRS 337.055 by failing to pay his employee, Clayton Farris, for bonuses due and vacation leave accrued at the time of Farris's termination." See Findings of Fact, Conclusions of Law and Recommended Order issued January 17, 2001, and entered January 18, 2001. This is the precise issue on which the trial court granted partial summary judgment. Farris's primary reason for filing the circuit court action was to enforce the award of the Labor Cabinet for unpaid wages. In other words, Farris's objective in both the administrative and circuit court proceedings is to seek reimbursement for Chapman's wrongful retention of wages owed to Farris. The Labor Cabinet clearly determined that Chapman had violated KRS 337.055 by failing to pay Farris for bonuses due and vacation leave accrued at the time of Farris's termination.

We move to the second and third essential elements of issue preclusion, the discussion of which we believe is intertwined -- a final decision or judgment on the merits and a necessary issue with the estopped party given a full and fair opportunity to litigate. As mentioned in the statement of Chapman's argument above, Chapman relies on the case of Bd. of Educ. of Covington v. Gray, 806 S.W.2d 400, for the proposition

that preclusion based on administrative proceedings may be inappropriate in some circumstances because of the profound differences between administrative proceedings and those found in a court of law. Gray is in line with Moore, however, in that it cites Sedley and specifies that a party intending to apply issue preclusion must meet several stringent requirements, those requirements including the four we have listed above. See Gray, 806 S.W.2d at 402.

Chapman focuses on the following language in Gray in urging that the use of issue preclusion was inequitable in this case: “[I]n Parklane, the United States Supreme Court listed factors which it believed might limit use of the doctrine [collateral estoppel], including the bound party’s lack of incentive to litigate in the prior action, as well as any other unspecified reason which might work an inequity on the losing party.” Id. (citing Parklane Hosiery Co. v. Shore, 439 U.S. 322, 331-32, 99 S. Ct. 645, 58 L. Ed. 2d 552 (1979)).

Chapman asserts that he had no incentive to litigate in the administrative proceedings because civil penalties were the focus of the Division’s inquiry on Farris’s allegations of nonpayment, and now Farris seeks substantially greater damages. We find this assertion unconvincing for two reasons. First, as discussed at length above, the focus of the Division’s investigation was whether Chapman unlawfully failed to provide

Farris any outstanding wages. Ultimately, the Labor Cabinet determined that Chapman had and issued a final order in which it ordered Chapman to pay \$19,238.79 to Farris. Second, the final order of the Secretary of Labor finally disposed of Farris's wage complaint and served as an adjudication of Farris's legal right to payment of wages and Chapman's legal duty to pay to wages. See KRS 13B.010(2),(6).

Returning to our discussion of elements two and three, it is now well accepted that the decisions of administrative agencies acting in a judicial capacity are entitled to the same preclusive effect as judgments of a court. See Goodbye v. Univ. Hosp., Ky. App., 975 S.W.2d 104, 105 (1998) (quoting Barnes v. McDowell, 647 F.Supp. 1307, 1310 (E.D.Ky. 1986)). "An agency acts in a judicial capacity when it hears evidence, gives parties an opportunity to brief and argue their versions of the facts, and gives parties an opportunity to seek court review of these findings." Presbyterian Child Welfare Agency of Buckhorn, Kentucky, Inc. v. Nelson County Bd. of Adjustment, 185 F.Supp. 2d 716, 722 (W.D.Ky. 2001). There can be no dispute that the Labor Cabinet acted in a judicial capacity in this case. Simply, it heard evidence, it gave the parties an opportunity to brief and argue their versions of the facts, and gave the parties an opportunity to seek court review of these findings. That Chapman did not utilize the opportunities afforded him

under KRS Chapter 13B in the administrative proceedings to defend his nonpayment cannot be used in his favor to relitigate the same issue in the circuit court.

In conclusion, we hold the final order entered by the Secretary of Labor to be a final judgment on the merits of the case. Moreover, Chapman's unlawful withholding of wages was the sole issue decided in the administrative proceedings before the Labor Cabinet. Consequently, it was a necessary issue which Chapman had a full and fair opportunity to litigate. Chapman is precluded from relitigating the wage issue.

For the foregoing reasons, the Jefferson Circuit Court's order granting partial summary judgment in favor of Farris is affirmed.

ALL CONCUR.

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