

STATE OF MICHIGAN
COURT OF APPEALS

SAVITRI BHAMA, M. D.,

Plaintiff-Appellant,

v

DEPARTMENT OF COMMUNITY HEALTH,

Defendant-Appellee.

UNPUBLISHED

March 8, 2002

No. 226442

Court of Claims

LC No. 98-017014-CM

ON REHEARING

Before: Meter, P.J., and Jansen and R. D. Gotham*, JJ.

PER CURIAM.

Plaintiff appeals as of right the Court of Claims' order granting defendant's motion for summary disposition. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

Plaintiff, who is a psychiatrist, worked for the Department of Corrections (DOC). The DOC transferred its mental health services to defendant, and plaintiff became part of a Residential Treatment Program (RTP) unit. A RTP unit is a team comprised of health care professionals, including non-physicians, who make decisions regarding patient care. Plaintiff had conflicts with other team members, and violated various department rules. Defendant issued plaintiff two conditional service ratings, and ultimately terminated plaintiff's employment.

Plaintiff filed grievances from the conditional service ratings and her termination. She argued that the RTP structure interfered with her right to practice medicine in that it required her to delegate authority to make medical decisions to non-physicians. She contended that her discharge violated the law and public policy. The hearing officer (HO) upheld plaintiff's discharge, and rejected her argument that her discharge violated the law and public policy. The Employment Relations Board (ERB) recommended that the HO's decision be affirmed. The Civil Service Commission adopted the ERB's decision. Plaintiff filed an untimely appeal of the Civil Service Commission's decision.

In May 1997, prior to the issuance of the HO's decision, plaintiff filed suit in circuit court. Counts I-III alleged violations of the Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*, and Count IV alleged that defendant violated the law and public policy by interfering with

* Circuit judge, sitting on the Court of Appeals by assignment.

her practice of medicine and by allowing non-physicians to make medical decisions. The parties stipulated to the dismissal of Counts I-III, and to the transfer of Count IV to the Court of Claims.

In the Court of Claims, defendant moved for summary disposition pursuant to MCR 2.116(C)(4), (7), and (10). Defendant argued, *inter alia*, that the Court of Claims lacked subject matter jurisdiction because plaintiff had failed to exhaust her administrative remedies. The court took the motion under advisement. Thereafter, the HO upheld plaintiff's termination. Based on that decision, defendant asserted the additional argument that it was entitled to summary disposition based on collateral estoppel. The Court of Claims granted defendant's motion for summary disposition pursuant to MCR 2.116(C)(4) and (7). The court found that it lacked subject matter jurisdiction because plaintiff had failed to exhaust her administrative remedies. In the alternative, the court found that plaintiff's claim that defendant's actions violated the law and public policy was barred by collateral estoppel.

This Court reviews *de novo* a trial court's decision on a motion for summary disposition. *Harrison v Olde Financial Corp*, 225 Mich App 601, 605; 572 NW2d 679 (1997).

Plaintiff argues that the Court of Claims erred by granting defendant's motion for summary disposition. We disagree and affirm. After the Court of Claims granted defendant's motion, the ERB and the Civil Service Commission affirmed the HO's decision. The parties stipulated to the inclusion of those decisions in the record on appeal. MCR 7.210(A)(4). We conclude that the Court of Claims' decision regarding exhaustion of administrative remedies has been rendered moot by the completion of the administrative review process.

Collateral estoppel precludes the relitigation of an issue in a subsequent, different cause of action between the same parties or their privies when the prior proceeding culminated in a valid, final judgment and the issue was actually and necessarily determined in the prior proceeding. As a general rule, mutuality of estoppel is a necessary element of collateral estoppel. Estoppel is mutual if the one taking advantage of the earlier adjudication would have been bound by it had it gone against him. *Barrow v Pritchard*, 235 Mich App 478, 480-481; 597 NW2d 853 (1999); *Dearborn Heights School Dist No 7 v Wayne County MEA/NEA*, 233 Mich App 120, 124; 592 NW2d 408 (1998). Collateral estoppel applies to administrative determinations if the proceedings were adjudicatory, a method of appeal was provided, and the Legislature intended that the administrative determination was to be final in the absence of an appeal. *Nummer v Dep't of Treasury*, 448 Mich 534, 542; 533 NW2d 250 (1995).

The Court of Claims correctly found that defendant was entitled to summary disposition on the ground that plaintiff's claim was precluded by collateral estoppel. During the grievance hearing plaintiff argued that her discharge violated the law and public policy. That proceeding was adjudicatory in nature. The parties were represented by counsel, called and cross-examined witnesses, introduced exhibits, and presented arguments. The HO rejected plaintiff's arguments. That decision would have been final had plaintiff not pursued an appeal. *Id.* at 551. The Court of Claims correctly granted summary disposition in favor of defendant.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Roy D. Gotham