STATE OF RHODE ISLAND AND PROVIDENCE PLANTATIONS

PROVIDENCE, SC. **SUPERIOR COURT**

[Filed: January 12, 2017]

BEAUTY WALK, LLC	:	
	:	
v.	:	**C.A. No. PC-13-0809**
	:	
DEPARTMENT OF LABOR AND TRAINING, CHARLES J. FOGARTY, In his official capacity as Director of the Department of Labor and Training, and KRISTEN TAIBL	:	

DECISION

PROCACCINI, J. Before this Court is Kristen Taibl's (Ms. Taibl) motion for attorneys' fees and interest. Ms. Taibl seeks attorneys' fees and interest in connection with her complaint before the Rhode Island Department of Labor and Training (DLT) against her former employer, Beauty Walk, LLC (Beauty Walk). Following an adverse decision by the DLT, Beauty Walk appealed to this Court under the Administrative Procedures Act. After reviewing the entirety of the record of the DLT proceeding, this Court affirmed the decision of the DLT, finding that Ms. Taibl was entitled to premium pay for the Sundays, holidays, and overtime that she worked while employed by Beauty Walk. Presently—over a year and a half after this Court rendered its decision affirming the DLT's decision—Ms. Taibl has filed a motion in this Court seeking attorneys' fees and interest associated with her claim against Beauty Walk.

I

Facts and Travel

This is the second time the parties have come before this Court in this matter. A thorough recitation of the facts and travel relevant to this litigation were provided in Beauty Walk, LLC v. Dep't of Labor and Training, No. PC-13-0809, 2015 WL 412873 (R.I. Super. Ct. Jan. 9, 2015). However, for purposes of clarity, the Court will provide a brief summarization.

Kathleen Walsh-Dwyer (Ms. Walsh-Dwyer) hired Ms. Taibl in September of 2010 to work at her boutique beauty care store, Beauty Walk. Ms. Taibl was paid a set salary of $540 per week. Subsequently, Ms. Taibl received information regarding state law requirements for premium pay such as time-and-a-half pay on Sundays and holidays. After bringing this information to the attention of Ms. Walsh-Dwyer, Ms. Taibl began to receive the appropriate premium pay. However, Ms. Taibl afterwards sought back pay for the premium hours she had worked from the beginning of her employment at Beauty Walk to the point when she began to receive the appropriate premium pay wages. Ms. Taibl was terminated from Beauty Walk following this request.

Ms. Taibl sought to resolve her grievance before the DLT. After a hearing was conducted, the DLT issued a decision finding that Ms. Taibl was owed premium pay for the Sundays, holidays, and overtime she had worked. Beauty Walk appealed the DLT's decision to this Court, which issued an order that confined the appeal to claims previously made and urged before the DLT. (Def.'s Ex. A.) Ultimately, this Court affirmed the DLT's decision in a written decision filed on January 9, 2015. See Beauty Walk, LLC, 2015 WL 412873 (R.I. Super. Ct. Jan. 9, 2015).

Following the adverse ruling by this Court, Beauty Walk filed a Petition for Issuance of Writ of Certiorari on April 2, 2015 with the Rhode Island Supreme Court. On September 24, 2015, the Rhode Island Supreme Court issued an order denying Beauty Walk's petition. Thereafter, this Superior Court, Licht, J., granted a motion for Entry of Final Judgment in this matter on July 1, 2016.

Notwithstanding the appeal having been concluded and final judgment having been entered, Ms. Taibl filed the present motion in the Superior Court on August 3, 2016, requesting attorneys' fees and interest in connection with her complaint against Beauty Walk. In support of her motion, Ms. Taibl contends that she has a right to such interest and fees under G.L. 1956 § 28-14-19(c).[1] In contrast, Beauty Walk contends that § 28-14-19(c) authorizes the Director of the DLT or his/her designee, and not the Superior Court, to make an award of attorneys' fees and interest. Additionally, Beauty Walk argues that Ms. Taibl's motion for attorneys' fees and interest is untimely and barred by the doctrines of collateral estoppel and res judicata.

II

Analysis

A

Prejudgment Interest

In the present matter, Ms. Taibl contends that she is entitled to prejudgment interest pursuant to § 28-14-19(c). In pertinent part, § 28-14-19(c) states that a DLT order enforcing the

[1] In pertinent part, § 28-14-19(c) provides that:

> "[t]he [DLT] order shall dismiss the complaint or direct payment of any wages and/or benefits found to be due and/or award such other appropriate relief or penalties authorized under chapter 28-12 and/or 28-14, and the order may direct payment of reasonable attorneys' fees and costs to the complaining party. Interest at the rate of twelve percent (12%) per annum shall be awarded in the order from the date of the nonpayment to the date of payment."

state's wage laws "*shall*" award interest at the rate of twelve percent (12%) per annum from the date of nonpayment to the date of payment. Sec. 28-14-19(c) (emphasis added). While it is true that the statutory language directs that interest be added to the DLT's damage award, there is no statutory authorization in that section for this Court to grant the interest requested. See id.

As an initial matter, it is well-settled in this state "that, 'because the right to receive interest on judgments was unknown at common law as it is a right created by statute, the [C]ourt will strictly construe any statute that awards interest on judgments so as not to extend unduly the changes enacted by the legislature.'" Imperial Cas. & Indem. Co. v. Bellini, 947 A.2d 886, 894 (R.I. 2008) (quoting Clark-Fitzpatrick, Inc./Franki Foundation Co. v. Gill, 652 A.2d 440, 451 (R.I. 1994)). Furthermore, our Supreme Court has made it clear that '"[w]hen the language of a statute is clear and unambiguous, [this Court] must enforce the statute as written by giving the words of the statute their plain and ordinary meaning.'" Gem Plumbing & Heating Co., Inc. v. Rossi, 867 A.2d 796, 811 (R.I. 2005) (quoting Harvard Pilgrim Health Care of New England, Inc. v. Gelati, 865 A.2d 1028, 1037 (R.I. 2004)).

Here, the specific language of § 28-14-19(c) states that "[i]nterest at the rate of twelve percent (12%) per annum *shall be awarded in the order* from the date of the nonpayment to the date of payment." Sec. 28-14-19(c) (emphasis added). Given that § 28-14-19(c) is clear and unambiguous, this Court will enforce the statute according to its plain and ordinary meaning. See Gem Plumbing & Heating Co., 867 A.2d at 811. A plain reading of § 28-14-19(c) compels the conclusion that any award of prejudgment interest must be in the order from the DLT. Furthermore, there is no language in the remainder of the statute that would authorize the Superior Court to grant such an award. See § 28-14-19. Thus, given this Court's strict construction of statutes that award prejudgment interest, it cannot be said that this Court has the

power to grant prejudgment interest under § 28-14-19(c). See Imperial Cas. & Indem. Co., 947 A.2d at 894.

Moreover, this Court lacks the power to grant the requested prejudgment interest under any other statute, notwithstanding the language contained in another statute, G.L. 1956 § 9-21-10. Section 9-21-10 provides that "[i]n any civil action in which a verdict is rendered or a decision is made for pecuniary damages, there shall be added by the clerk of the court to the amount of damages interest at the rate of twelve percent (12%) per annum . . ." Sec. 9-21-10(a).

It is well-settled in the State of Rhode Island that "[t]he term 'civil action,' as used in statutes, has been held to be 'a proceeding in a court of justice by one party against another for the enforcement or protection of a private right or the redress of a private wrong."' Thrift v. Thrift, 30 R.I. 357, 75 A. 484, 487 (1910). Additionally, it has been held that "the words 'civil action' in [§] 9-21-10 do not encompass appeals to the Superior Court from decisions of [an] administrator." Gott v. Norberg, 417 A.2d 1352, 1357 (R.I. 1980); see also id. at 1357 n.6 ("administrative appeals are not civil actions within the meaning of the Rules of Civil Procedure"); Notre Dame Cemetery v. R.I. State Labor Relations Bd., 118 R.I. 336, 338, 373 A.2d 1194, 1196 (1977) (stating "a judicial review of [an] administrative action . . . is essentially an appellate proceeding and not a civil action"). Given that administrative appeals are not civil actions, this Court does not possess the power to assess prejudgment interest in this matter under § 9-21-10(a). Instead of filing her complaint with the DLT in the first instance, Ms. Taibl could have filed a civil action in this Court pursuant to § 28-14-19.2 and thus availed herself of this Court's statutory authority to grant prejudgment interest under § 9-21-10(a). However, given that Ms. Taibl elected to redress her grievances before the DLT, this Court lacks the authority to

grant her the requested prejudgment interest under § 9-21-10(a), and she should have availed herself of the remedies delineated in § 28-14-19(c).

B

Attorneys' Fees

Ms. Taibl also requests that this Court grant her reasonable attorneys' fees in connection with this matter under § 28-14-19(c). Specifically, Ms. Taibl argues that there is clear legislative intent in the statute to allow the prevailing employee to recover attorneys' fees. Section 28-14-19(c) provides that the DLT "order may direct payment of reasonable attorneys' fees and costs to the complaining party." Sec. 28-14-19(c). However, just as this Court does not have the authority to grant Ms. Taibl's prejudgment interest under § 28-14-19(c), it also does not have the authority under that statute to grant her reasonable attorneys' fees.

In regards to awarding attorneys' fees, our Supreme Court has '"staunch[ly] adhere[d] to the 'American rule' that requires each litigant to pay its own attorney's fees absent statutory authority or contractual liability."' Danforth v. More, 129 A.3d 63, 72 (R.I. 2016) (quoting Shine v. Moreau, 119 A.3d 1, 8 (R.I. 2015)). Coinciding with such dedicated observance of this rule, our Supreme Court has also held that statutes providing for an award of attorneys' fees must be strictly construed. Moore v. Ballard, 914 A.2d 487, 489 n.3 (R.I. 2007); see also Accent Store Design, Inc. v. Marathon House, Inc., 674 A.2d 1223, 1226 (R.I. 1996) ("[A] statute that establishes rights not recognized by common law is subject to strict construction."). Therefore, the Court's task here is one of statutory interpretation. As mentioned earlier, '"[w]hen the language of a statute is clear and unambiguous, [this Court] must enforce the statute as written by giving the words of the statute their plain and ordinary meaning."' Gem Plumbing & Heating Co., 867 A.2d at 811 (quoting Harvard Pilgrim Health Care of New England, 865 A.2d at 1037).

Here, the relevant statute—§ 28-14-19—is titled "Enforcement powers and duties of the director of labor and training." In pertinent part, the statute states that the DLT "*order may* direct payment of reasonable attorneys' fees and costs to the complaining party." Sec. 28-14-19(c) (emphasis added). This Court concludes that § 28-14-19(c) is clear and unambiguous. Therefore, the plain reading of § 28-14-19(c) clearly bestows upon the DLT, and not this Court, the discretion to award attorneys' fees in connection with complaints before the DLT. See id. Furthermore, nothing within the remainder of § 28-14-19 can be read to confer upon this Court the authority to grant attorneys' fees in this matter. Thus, given that § 28-14-19(c) must be strictly construed and that it is devoid of any language authorizing this Court to grant attorneys' fees, this Court lacks the authority to grant the attorneys' fees requested in this matter. See Moore, 914 A.2d at 489 n.3. Though the Court notes arguments raised by Ms. Taibl—that awarding attorneys' fees ensures access to the judicial process and is important in wage disputes—this Court simply lacks the authority to grant attorneys' fees under these facts. This Court may not use policy reasons to circumvent the common law rule that each party is responsible for his or her own attorney's fees. See Danforth, 129 A.3d at 72.

C

Res Judicata

Though Ms. Taibl is not asserting that the DLT's failure to make an award of prejudgment interest and attorneys' fees requires this Court to grant her motion, this Court for purpose of discussion will address this issue. It must be noted that Ms. Taibl could have argued on appeal before this Court that the DLT erred by failing to include prejudgment interest and attorneys' fees in its award. The plain reading of § 28-14-19(c) reveals that the DLT erred when it failed to include the statutorily prescribed interest in its award favoring Ms. Taibl. See § 28-

14-19(c). As mentioned previously, § 28-14-19(c) clearly states that interest at the rate of twelve percent per annum "*shall*" be awarded in the order. (Emphasis added). Equally clear is the fact that the DLT neglected to include such interest in its award. However, there is no evidence in the record that Ms. Taibl raised this argument before the DLT, nor is there any record of her raising this issue on appeal. It was only after final judgment of the appeal was entered that Ms. Taibl raised the issue of her entitlement to prejudgment interest and attorneys' fees. However, that final judgment officially concluded the review of the DLT's decision. Thus, any assignment of error with regard to the DTL's failure to award statutory interest is precluded by the doctrine of res judicata. See DiBattista v. State, 808 A.2d 1081, 1085 (R.I. 2002).

'"The doctrine of res judicata renders a prior judgment by a court of competent jurisdiction in a civil action between the same parties conclusive as to any issues actually litigated in the prior action, *or that could have been presented and litigated therein*."'[2] Id. (quoting DiBattista v. State of Rhode Island, Department of Children, Youth and Families, 717 A.2d 640, 642 (R.I. 1998)) (emphasis added).

Here, a prior judgment was entered in Beauty Walk, LLC, 2015 WL 412873 (R.I. Super. Ct. Jan. 9, 2015) when this Court reviewed and affirmed the DLT's decision. Ms. Taibl neglected to ascribe error to the DLT's decision regarding prejudgment interest and attorneys' fees at that time. Additionally, final judgment was entered in this matter on July 1, 2016. See Order, July 1, 2016. Now, the same parties are before this Court with an issue that could have

[2] In Rhode Island, the doctrine of res judicata has been recognized in both civil actions and administrative appeals. See DiBattista, 808 A.2d at 1086 (holding the doctrine of res judicata precluded the Superior Court's review of the same dispute that "formed the crux" of the parties' previous administrative appeal before the Family Court); see also Dep't of Corr. of State of R.I. v. Tucker, 657 A.2d 546, 549 (R.I. 1995) (holding the same res judicata rule applied "to the decision of a quasi-judicial administrative tribunal as to the judgment of a court.") (citing Restatement (Second) of Judgments, ch. 6, § 83 (1982).

been presented and litigated in the initial action—notably, the DLT's error in failing to award prejudgment interest and attorneys' fees. Thus, the doctrine of res judicata precludes this Court from addressing the sufficiency of the DLT's decision regarding prejudgment interest and attorneys' fees. See DiBattista, 808 A.2d at 1085.

The Court is mindful of recent precedent that appears at first blush to hold that the doctrine of res judicata does not bar the Superior Court from entertaining subsequent motions for attorneys' fees. See Sisto v. Am. Condo. Ass'n, Inc., 140 A.3d 124 (R.I. 2016). In Sisto, our Supreme Court held the doctrine of res judicata was not applicable to a defendant's request for additional attorneys' fees incurred after defending a previous appeal to the Supreme Court. Id. at 128-29. The Court found that the doctrine of res judicata bars the relitigation of issues in a second cause of action. Id. (citing Torrado Architects v. R.I. Dep't of Human Servs., 102 A.3d 655, 658 (R.I. 2014)). The Court went on to conclude that the motion for additional attorneys' fees was not a second cause of action and, instead, the original action remained ongoing. Id. at 129.

The present matter is distinguishable from Sisto. In Sisto, the original appeal to the Supreme Court was remanded to the Superior Court, thus keeping the matter ongoing.[3] By contrast, there was no remand from the Supreme Court that kept the appeal active in this case. Instead, the Supreme Court denied Beauty Walk's Petition for Writ of Certiorari and, subsequently, the Superior Court entered final judgment in the administrative appeal. See Order, July 1, 2016. Therefore, the review of the DLT's decision in this matter had concluded and Ms. Taibl's motion would be considered a separate claim. Thus, even if this Court were to construe

[3] During the protracted litigation in Sisto, the Rhode Island Supreme Court did not enter a final judgment in the action but instead remanded the case to the Superior Court. See Sisto v. Am. Condo. Ass'n, Inc., No. NC20080119, 2014 WL 6709913, at *2 (R.I. Super. Ct. Nov. 20, 2014).

Ms. Taibl's motion for prejudgment interest and attorneys' fees as an assignment of error of the DLT's decision, the Court would nonetheless be prohibited from addressing the sufficiency of the DLT's decision under the doctrine of res judicata.

III

Conclusion

This Court denies Ms. Taibl's motion for attorneys' fees and prejudgment interest. Since both the awarding of attorneys' fees and prejudgment interest herein contravene the common law, this Court must be authorized by statute to grant such awards. However, the Court lacks statutory authority to grant the requested awards. The statute most applicable in this matter—§ 28-14-19(c)—merely authorizes the director of DLT (or his or her designee) to make such awards. However, Ms. Taibl did not assign error in the DLT's not awarding fees and prejudgment interest in its decision, both before the DLT and on appeal. Since this Court's review of the sufficiency of the DLT's decision has concluded, this Court's review of such alleged error is precluded by the doctrine of res judicata. For these reasons, Ms. Taibl's motion is denied in full.

Counsel shall submit the appropriate Order for entry.

RHODE ISLAND SUPERIOR COURT

Decision Addendum Sheet

TITLE OF CASE:	Beauty Walk, LLC v. Department of Labor and Training, et al.
CASE NO:	PC-2013-0809
COURT:	Providence County Superior Court
DATE DECISION FILED:	January 12, 2017
JUSTICE/MAGISTRATE:	Procaccini, J.
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