

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

SHERRY ELLIS, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	NO. CIV-16-0019-HE
)	
DANIEL HOLTZCLAW, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiffs Sherry Ellis and Carla Raines have moved for partial summary on the issue of liability, seeking a determination that defendant Daniel Holtzclaw violated their constitutional rights by sexually assaulting them. They argue he is collaterally estopped from contesting the issue, on the basis of the pretermination administrative proceedings conducted by the City of Oklahoma City which resulted in his termination from the police department. The motion has been fully briefed and is at issue.

Summary judgment is appropriate “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed.R.Civ.P. 56(a). “A genuine dispute as to a material fact exists when the evidence, construed in the light most favorable to the non-moving party, is such that a reasonable jury could return a verdict for the non-moving party.” Carter v. Pathfinder Energy Servs., Inc., 662 F.3d 1134, 1141 (10th Cir. 2011) (quotations and citation omitted).

It is undisputed that, prior to his termination by the Oklahoma City Police Department, Holtzclaw was afforded a pre-termination hearing as to various allegations

against him. The hearing was before a Department Review Board. The notice of hearing contained allegations that Holtzclaw had “directed [Raines] to expose her breast” and sexually assaulted and raped Ellis. Doc. # 107-1, pp. 2-3. Holtzclaw was represented by counsel at the hearing and afforded the opportunity to call and question witnesses. After the hearing the Chair of the Review Board drafted a memorandum to the Chief of Police in which he concluded that “there is clear and convincing evidence that Officer Daniel Holtzclaw violated the police department policies, procedures, rules, and City Personnel policies that would apply to the 29 allegations stated in the predetermination notice.” Doc. # 107-2, p. 2. It was recommended that Holtzclaw be terminated. Holtzclaw did not appeal the Board’s conclusions or his subsequent termination.¹

In appropriate circumstances, principles of collateral estoppel may apply based on prior administrative proceedings. “The United States Supreme Court has long favored the application of the common-law doctrines of collateral estoppel (as to issues) and res judicata (as to claims) to those administrative bodies that have attained finality.” Sierra Club v. Two Elk Generation Partners, Ltd. P’ship, 646 F.3d 1258, 1266 (10th Cir. 2011) (quotations and citation omitted). When a “state agency (1) acts in a judicial capacity; (2) resolves disputed issues of fact properly before it; and (3) the parties have had an adequate opportunity to litigate the issue, we will grant the state agency’s decision preclusive effect

¹ Any appeal of the Chief of Police’s final decision would have been “through either the Oklahoma City Personnel Policy Grievance Procedure, the FOP Collective Bargaining Agreement, or the AFSCME Collective Bargaining Agreement.” Doc. # 107-1, p. 9.

to the extent that it would have received preclusive effect in state court.” Salguero v. City of Clovis, 366 F.3d 1168, 1173 (10th Cir. 2004) (quotations and citations omitted).

In Oklahoma:

To apply collateral estoppel, the following elements must be established: (1) the issue previously decided is identical with the one presented in the action in question; (2) the prior action has been finally adjudicated on the merits; (3) the party against whom the doctrine is invoked was a party, or in privity with a party, to the prior adjudication; and (4) the party against whom the doctrine is raised had a full and fair opportunity to litigate the issue in the prior action.

Smith v. State, 46 P.3d 136, 138 (Okla. Crim. App. 2002) (citing Harrison v. Eddy Potash, Inc., 248 F.3d 1014, 1022 (10th Cir. 2001)). The court is satisfied that the board was acting in a judicial capacity, that its action is now final, and that plaintiffs are situated so as to be able to rely on the collateral estoppel doctrine if it otherwise applies. However, other pertinent elements have not been satisfied here.

Identity of issues is lacking with respect to plaintiff Raines. The Amended Complaint alleges that Holtzclaw “used his position to commit sexual assaults and batteries on the Plaintiff Carla Raines.” The allegation at issue in the termination proceedings was the he “directed her to expose her breast.” The allegations are similar, but not the same. Further, it is at least questionable whether the determinations of violation of departmental policy are necessarily the same as the constitutional violations plaintiffs seek to establish here. It is unnecessary to belabor that issue, however, as the court concludes Holtzclaw did not have a “full and fair opportunity”, within the meaning of the collateral estoppel doctrine, to litigate the pertinent issues in the termination proceeding.

The “inquiry into whether a party had a full and fair opportunity to litigate an issue often will focus 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.” Salguero v. City of Clovis, 366 F.3d 1168, 1174 (10th Cir. 2004) (quotations and citation omitted).


The pretermination hearing was held on December 11 and 23, 2014. At the time of the hearing, Holtzclaw had state criminal charges pending against him. He had been arrested in August 2014 and had been bound over for trial following a preliminary hearing in November of 2014. Even though he had the right to question witnesses and present evidence at the pretermination hearing, Holtzclaw had a significant interest in limiting his involvement so as not to reveal the approach he expected to take in the criminal trial, where the stakes were considerably higher. Further, it appears a substantial portion of the testimony presented at the termination hearing was hearsay in nature, based on other officers recounting their interviews of various witnesses. There is nothing necessarily wrong with permitting hearsay testimony in the context of an employment hearing. However, where the credibility of witness recollections is central, as it appears to be here, the lack of witness availability for in-person cross examination is significant. Taking all these factors together — potential technical differences between the departmental policy violations and the constitutional violations alleged, the impact of pending criminal charges on litigation strategy, and the looser evidentiary standards applicable to this administrative

hearing — the court concludes the result of the termination hearing and process is not such as should preclude Holtzclaw from denying liability here.²

The court concludes that Holtzclaw’s administrative termination proceedings should not be given preclusive effect. Plaintiffs’ Motion for Partial Summary Judgment [Doc. # 107] is therefore **DENIED**.

IT IS SO ORDERED.

Dated this 10th day of April, 2020.



JOE HEATON
UNITED STATES DISTRICT JUDGE

² *The court does not suggest there was anything unfair or unreasonable about the termination hearing and process, as such. It concludes only that the “full and fair opportunity” to litigate necessary for the application of the collateral estoppel doctrine was not present.*