

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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TYBERIUS JAKOB-ANDERSON,  
  
Plaintiff,

OPINION AND ORDER  
03-C-445-C

v.

CITY OF MADISON, CONNIE THOMPSON  
and COREY PEARSON,  
  
Defendants.

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Plaintiff Tyberius Jakob-Anderson filed this civil action against defendants City of Madison, Connie Thompson and Corey Pearson, alleging discrimination based upon age and race. Plaintiff requests relief under 42 U.S.C. §§ 1981 and 1983, Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, and the Age Discrimination in Employment Act, 29 U.S.C. §§ 623-34. Jurisdiction is present under 28 U.S.C. § 1331.

The case is before the court on defendants' partial motion for summary judgment. Before filing this complaint, plaintiff filed a complaint with the Equal Rights Division of the Wisconsin Department of Workforce Development. Following a hearing, the administrative law judge found that defendants did not discriminate against plaintiff on the basis of age,

race, or oppositional activity. Defendants now contend that: (1) plaintiff's claims against the City alleging discrimination in violation of 42 U.S.C. §§ 1981 and 1983 are barred by the doctrine of issue preclusion because the administrative law judge found that defendants did not discriminate against plaintiff; (2) the Title VII and the ADEA claims against Pearson in her personal capacity were improper and must be dismissed; (3) plaintiff's claims for punitive damages under Title VII and ADEA must be dismissed because neither statute allows punitive damages recovery; and (4) Thompson must be dismissed as a defendant for lack of personal jurisdiction. Defendants have not moved to dismiss plaintiff's claims against the City under Title VII and the ADEA.

Because defendants have demonstrated that the agency proceeding possessed all of the due process protections necessary to make it a quasi-judicial proceeding and that the agency conducted its factfinding in roughly the same legal context that this court would, I will grant defendant's summary judgment motion and dismiss all of plaintiff's claims under 42 U.S.C. §§ 1981 and 1983. Further, because plaintiff concedes that this court does not have personal jurisdiction over defendant Thompson, that he may not sue defendant Pearson under Title VII or the ADEA and that punitive damages are not available on his statutory claims because the City is a governmental entity, I will dismiss the complaint as to defendant Thompson and will dismiss plaintiff's claims against defendant Pearson under Title VII and the ADEA.

From the parties' proposed findings of fact and the record, I find that the following facts are undisputed.

#### UNDISPUTED FACTS

Plaintiff Tyberius Jakob-Anderson is an adult male citizen of the United States and a resident of Madison, Wisconsin. At all relevant times, he was an employee of defendant City of Madison, which is a municipal corporation. Defendants Connie Thompson and Corey Pearson are adult residents of Wisconsin and employees of the City of Madison.

On June 4, 2001, plaintiff filed a complaint with the Equal Rights Division against the City, alleging workplace discrimination in violation of Wis. Stat. §§ 111.321 and 111.322 (the Wisconsin Fair Employment Act). Plaintiff alleged that the City and its employees (including Thompson and Pearson) discriminated against him on the basis of age and race and because he engaged in oppositional activity. In an initial determination, an agency investigator concluded that there was no probable cause to believe that the City or its employees had discriminated against plaintiff. Plaintiff appealed the investigator's findings, and a hearing was held before an administrative law judge on August 21, 2003, and September 27, 2003.

Prior to the hearing before the administrative law judge the parties did not engage in pretrial discovery, but had the opportunity to do so under Wis. Admin. Code § DWD

218.15 (2004). Neither side filed any memoranda of law in support of its position. During the hearing, plaintiff and the City were represented by counsel, allowed to present and cross-examine witnesses, introduce exhibits and present arguments. The Wisconsin Rules of Evidence were not adhered to “strictly.” The parties did not make opening or closing statements.

On March 31, 2003, the administrative law judge concluded that there was no probable cause to believe that the City, Thompson or Pearson had engaged in discrimination against plaintiff based on race, age or oppositional activity. (The judge made this finding with respect to plaintiff’s claims that defendants had discriminated against him in failing to promote him, refusing to hire him, terminating him and with respect to any other term or condition of employment). Plaintiff did not appeal the decision of the administrative law judge to the Industry Labor Commission. The factual allegations contained in the Equal Rights Division complaint are identical to the factual allegations in plaintiff’s complaint before this court.

## OPINION

### A. General Principles

The question in this case is whether the Equal Rights Division’s determination that plaintiff was not subjected to age or race discrimination bars him from relitigating his claims

under §§ 1981 and 1983. In University of Tennessee v. Elliott, 478 U.S. 788 (1986), the Supreme Court addressed the general question whether state administrative adjudications may have preclusive effect in federal court. An administrative law judge determined that the University of Tennessee had not discriminated against a black employee when it discharged him. The employee then sued the university in federal court for race discrimination under both Title VII and § 1983. Id. The Court allowed relitigation of the Title VII claim because the language and legislative history of that statute demonstrated Congress's intent to permit relitigation of unreviewed administrative decisions of Title VII claims. However, the Supreme Court stated that both state and federal agency decisions may bar § 1983 claims. Id. at 797. The Court explained that giving administrative decisions preclusive effect promotes the policies of avoiding duplicative and vexatious litigation, judicial economy and federalism. Id. at 798. Accordingly, when a state agency “acting in a judicial capacity . . . resolves disputed issues of fact properly before it which the parties have had an adequate opportunity to litigate,” the federal courts must give the agency's factfinding the same preclusive effect to which it would be entitled in the state's courts. Id. at 799. (quoting United States v. Utah Construction & Mining Co., 384 U.S. 394, 422 (1966)). This reasoning extends to § 1981 claims as well. Elliott, 478 U.S. at 791; East Food & Liquor, Inc. v. United States, 50 F.3d. 1405 (7th Cir. 1995); Buckhalter v. Pepsi-Cola General Bottlers, Inc., 820 F.2d 892 (7th Cir. 1987).

The Seventh Circuit applied Elliott in Waid v. Merrill Area Public Schools, 91 F.3d 857 (7th Cir. 1995), a case similar to plaintiff's. In Waid, a public school teacher filed a complaint against the school system, alleging that it had discriminated against her on the basis of sex. After a full hearing in which each party had legal representation, the Equal Rights Division found for the complainant teacher, who then sued in federal court on the same operative facts under Title IX in order to obtain additional remedies available only in federal court. The district court granted summary judgment in favor of the school system.

Reversing the district court in part, the court of appeals concluded that the Equal Rights Division had satisfied the factors laid out in Elliott: "Under the terms of the Fair Employment Act, the Equal Rights Division clearly acted in a judicial capacity in resolving the factual question of discrimination. See Wis. Stats. § 111.39. And it is equally clear that this factual issue was well within the agency's province." Id. at 866. The court then analyzed the Equal Rights Division's factfinding according to the prerequisites for issue preclusion in the state of Wisconsin: (1) the ability of the party against whom preclusion is sought to obtain judicial review of the decision; (2) differences in the quality or extensiveness of the procedures; (3) differences in the standards of proof required by the agency and the court; and (4) policy considerations that would make the application of issue preclusion fundamentally unfair. Lindas v. Cady, 183 Wis. 2d 547, 515 N.W.2d 458, 463 (1994).

The court concluded that each of these factors was satisfied. First, the school system

had the opportunity to seek judicial review, but declined to do so. Second, in the administrative process both parties had access to virtually all of the procedural instruments employed for factfinding in courts, including representation by counsel; the opportunity to conduct pretrial discovery and subpoena witnesses; and the opportunity to present testimony, exhibits and to cross-examine witnesses, all on the record. Wis. Stat. §§ 111.39(2) and 111.39(4)(b). Third, the elements of discrimination and the standard for proving it were essentially the same in the Equal Rights Division as they would be in federal court. Finally, the court found that the policies underlying the creation and enforcement of the state law claim under Wis. Stats. § 111.31 were substantially similar to the policies underlying plaintiff's federal rights claim. Id. at 867. Accordingly, the court concluded that the agency's findings had preclusive effect in federal court. Id. at 867.

### B. Analysis

Because the Equal Rights Division conducted the proceedings in this case, Waid is controlling. As in Waid, the Equal Rights Division acted in a judicial capacity in resolving the factual question of discrimination which was "clearly within the agency's province." Id. at 866. Therefore, this court must give the same preclusive effect to Equal Rights Division's decision that it would receive in Wisconsin's courts.

Plaintiff fails to demonstrate why Waid should not apply. In Waid the Equal Rights

Division was called upon to investigate an allegation of discrimination and did so under the same procedures and policies active here. That the claims were brought under Title IX and not under §§ 1981 or 1983 is irrelevant. Waid rebuts many of plaintiff's arguments against the preclusive effect of the Equal Rights Division decision, including the lack of discovery, the standards of proof and the factfinding capacity of the Equal Rights Division. As the court of appeals explains in Waid, for the purposes of issue preclusion, it is the opportunity to utilize procedural mechanisms that is important.

Plaintiff had the chance to utilize important procedural mechanisms of pretrial discovery and judicial review. He cannot now claim that the decision of the Equal Rights Division is not binding because of his own omissions. It is not significant that the Wisconsin Rules of Evidence were not strictly adhered to or that there were no opening and closing arguments or any final judgment on the merits. Nothing in Waid suggests that any of these matters would make any difference to the preclusion decision. The presentation of evidence was governed by Chapter 227.45 of the Wisconsin Statutes, under which the general evidentiary principles of relevancy, materiality and probative force were followed. Furthermore, both parties had the opportunity to present their cases. Contrary to plaintiff's assertions, the administrative law judge prepared a formal written decision at the conclusion of the hearing as required under the Wisconsin Administrative Code. Wis. Admin. Code § DWD 218.20 (2004). The decision included findings of fact, conclusions of law and an

order, accompanied by a memorandum opinion. Dft's. Exh. C., dkt. #11, at 9-10.

The Equal Rights Division acted in a judicial capacity to resolve disputed issues of fact surrounding plaintiff's discrimination claim and conducted its fact-finding in roughly the same legal context as this court would. Plaintiff had an adequate opportunity to litigate these issues in the forum that he initially chose. I conclude that plaintiff is precluded from pursuing both his claims under 42 U.S.C. §§ 1981 and 1983 in this court.

#### ORDER

IT IS ORDERED that the motion for partial summary judgment filed by defendants the City of Madison, Connie Thompson and Corey Pearson is GRANTED. Plaintiff Tyberius Jakob-Anderson's claims that defendants City of Madison and Corey Pearson discriminated against him on the basis of race and age in violation of 42 U.S.C §§ 1981 and 1983 are DISMISSED. The complaint is DISMISSED as to defendant Thompson for lack of personal jurisdiction. Finally, plaintiff's claims under Title VII and the ADEA are DISMISSED as to defendant Pearson. Plaintiff's remaining claims are against defendant

City of Madison only and only under Title VII and the ADEA.

Entered this 21st day of July, 2004.

BY THE COURT:

BARBARA B. CRABB  
District Judge