

NOTICE
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2012 IL App (4th) 110087-U

Filed 3/8/12

No. 4-11-0087

IN THE APPELLATE COURT
OF ILLINOIS

FOURTH DISTRICT

ROBERT POWERS,)	Appeal from
Petitioner-Appellee,)	Circuit Court of
v.)	Sangamon County
THE ILLINOIS CIVIL SERVICE COMMISSION;)	No. 04MR19
GEORGE E. RICHARDS; RAYMOND W. EWELL;)	
JOHN M. DORGAN; BARBARA J. PETERSON;)	
BETTY BUKRABA; DAN P. FABRIZIO; THE)	
DEPARTMENT OF CENTRAL MANAGEMENT)	
SERVICES; and MICHAEL M. RUMMAN, in His)	
Capacity as Director of THE DEPARTMENT)	Honorable
OF CENTRAL MANAGEMENT SERVICES,)	Patrick J. Londrigan,
Respondents-Appellants.)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

ORDER

- ¶ 1 *Held:* The appellate court concluded that the doctrine of *res judicata* barred the circuit court from considering petitioner's claim that his due-process rights were violated when the respondents terminated his employment because the merits of that claim had been previously considered and rejected in federal court.

- ¶ 2 In May 2003, respondents, the Illinois Civil Service Commission; George E. Richards, Raymond W. Ewell, John M. Dorgan, Barbara J. Peterson, Betty Bukraba, Dan P. Fabrizio, in their capacity as board members of the Commission; the Department of Central Management Services (CMS); and Michael M. Rumman, in his capacity as Director of CMS (collectively, Commission), terminated the employment of plaintiff, Robert Powers.

¶ 3 In January 2004, Powers filed (1) a complaint for administrative review pursuant to section 3-103 of the Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/3-103 (West 2004)) and (2) a civil action in federal court pursuant to section 1983 of the Civil Rights Act (42 U.S.C. § 1983 (2000)), contesting his termination.

¶ 4 Following the adjudication of Powers' claims in federal court, the circuit court considered Powers' complaint for administrative review. In January 2011, the court entered an order reversing Powers' termination, finding that the Commission, through its board members, violated Powers' due-process rights.

¶ 5 The Commission appeals, arguing that the circuit court erred by reversing Powers' termination. Because we conclude that Powers' due-process claim was barred by the doctrine of *res judicata*, we reverse.

¶ 6 I. BACKGROUND

¶ 7 A. The Circumstances That Prompted Powers' Termination

¶ 8 In September 1988, Powers, an attorney licensed to practice in the State of Illinois, began his career in state government with the Illinois Secretary of State. In January 1999, Powers transferred to the governor's office and began working as the Deputy Counsel of Personnel, Boards, and Commissions. In August 2002, Powers accepted a position as an associate director with CMS, performing essentially the same duties for the governor's office as he had performed in his capacity as deputy counsel. In October 2002, the Commission hired Powers as its executive secretary. In that capacity, Powers was responsible for drafting rules and regulations and making recommendations to the Commission's five board members on various public personnel policy appeals before the Commission.

¶ 9 In April 2003, the Commission's chairman, George Richards, received a call from the governor's office, under Governor Rod Blagojevich, informing him that at an impending press conference, the governor intended to request that the Commission terminate Powers' employment because of his role in a scheme to subvert the public employee appointment system. Unaware of the issue, Richards requested specifics about the allegations against Powers. The following day, each board member received a memorandum from the governor's counsel that alleged the following:

"The Governor's Office recently became aware of a series of improper employment transactions in the fall of 2002, which attempted to extend the term appointments of forty then-current state employees for an additional four years. Most of the employee's [*sic*] terms were set to expire in the spring of 2003. A review of the *** personnel transactions revealed that all the employees participated in a series of four transactions. First, they purported to resign from their original term appointment. Second, the following day, the appointees allegedly were 'appointed' to another vacant job within the agency. Third, four days later, they resigned from this second job. And finally, they were appointed to the original job and given a new four-year term. [Thirteen] different agencies participated in the transactions, which occurred within a two-week time frame in August and September 2002."

The memorandum concluded that Powers played a prominent role "in concocting and

implementing this employment scam." (The controversy in this case pertains to Powers' signature on personnel forms involving three different CMS employees.) Two days later, the board members discussed the allegations against Powers at its scheduled meeting and agreed to (1) place Powers on paid administrative leave and (2) request that CMS conduct an official investigation into the allegations.

¶ 10 On May 14, 2003, CMS provided the board members a memorandum outlining the results of its investigation, concluding that the following facts supported Powers' termination: (1) Powers signed personnel forms as the CMS Director in violation of section 13 of the Personnel Code (20 ILCS 415/13 (West 2002)), (2) Powers altered the effective dates of certain personnel transactions in violation of section 13 of the Personnel Code, and (3) Powers knew or should have known that the timing of the various personnel reassignments made it impossible for the employees in question to accomplish the duties contained therein. At its regularly scheduled meeting conducted the next day, the board members (1) voted to suspend Powers with pay and (2) authorized Richards to conduct a pretermination hearing and impose discipline that could include Powers' termination if Powers did not present exculpatory evidence.

¶ 11 B. Powers' Pretermination Hearing

¶ 12 On May 21, 2003, Richards informed Powers by letter that the Commission was considering disciplinary action that could include his termination effective May 29, 2003, because he had fraudulently signed personnel forms. Richards' letter listed the witnesses against Powers, advised Powers of the pretermination hearing date, and informed him that he had a right to respond. Richards' letter also contained the forms Powers signed as the CMS Director.

¶ 13 At the May 29, 2003, pretermination hearing, Richards confronted Powers with

the allegations, showed him the personnel forms he signed as CMS Director, and invited Powers to explain. Powers admitted signing the personnel forms, explaining as follows:

"I received a call from [the Bureau Chief of the Department of Personnel at CMS] indicating that [the CMS] Director had approved the new term arrangements for these three [CMS employees], but that he indicated he did not want to sign the [personnel action forms] and did not want his name on the [forms], and stated something to the effect that if the governor's office wants these [personnel transactions] processed, they'll have to sign them themselves or get somebody else to sign them ***."

Powers explained further that in his capacity—at that time—as a CMS associate director, he believed he had the authority to sign the personnel forms. Thereafter, Roberts terminated Powers' employment. The following day, CMS approved Powers' termination.

¶ 14 In June 2003, Powers appealed his termination and also filed a separate motion, requesting that the board members limit their role in deciding the merits of his appeal. Specifically, Powers contended that because "due process requires *** that the individual or individuals making the ultimate determination on the merits of the appeal be persons who are disinterested in the outcome of the appeal," the Commission's board members must refrain from making or being substantively involved in deciding the merits of his appeal. In September 2003, the board members voted unanimously to deny Powers' motion.

¶ 15 C. Powers' Posttermination Hearing

¶ 16 At a June 2003 posttermination hearing that was continued to September 2003,

the administrative law judge (ALJ) considered evidence presented by the parties with regard to the following amended charges alleged by the Commission:

"POWERS is hereby discharged from his position as Executive Secretary of the *** Commission for one or more of the following reasons:

1. On or about September 6, 2002, through September 13, 2002, you signed your name in the box labeled 'Director of [CMS],' on the Personnel Action Forms *** for [three CMS] employees ***, such that a review of the form[s] would make it appear as if you were the Director of CMS. Your actions constitute an unlawful act under the Personnel Code in violation of 20 ILCS 415/13 [(West 2002)].

2. On or about August 16, 2002, through September 30, 2002, you directed and/or were personally involved in a series of four employment transactions with regard to one or more of the following [three] CMS employees *** and/or one or more of the following [three] Department of Corrections *** employees ***. Such conduct and/or directions were entered into in an attempt to

circumvent and avoid public policy and the clear intent of [Illinois Administrative] Code, Title 80, §302.820, which is conduct rendering you incapable of fulfilling the job of upholding the Personnel Code of the State of Illinois."

¶ 17 In November 2003, the ALJ issued his written determination, making, in part, the following findings: (1) the CMS Director is the only official authorized to make term appointments within CMS; (2) Powers knew that the CMS Director (a) had refused to sign the personnel action forms that sought to extend the term appointments of the three CMS employees at issue and (b) did not want his name to appear on those forms; (3) Powers later signed the personnel action forms as the CMS Director; (4) Powers has not held the position of CMS Director; (5) the Commission's executive secretary is required to operate independently, uphold the rules of the Personnel Code, and provide accurate and truthful information to the Commission; and (6) the board members' concerns about Powers' ability to effectively perform his duties as executive secretary were warranted.

¶ 18 Based on his findings, the ALJ concluded that Powers violated section 13 of the Personnel Code in that he made a false statement by signing his name as the CMS Director on the personnel forms at issue. The ALJ recommended Powers' termination from his executive secretary position. In December 2003, Powers filed an objection to the ALJ's recommendations. Later that month, the board members adopted the ALJ's recommendation and upheld Powers' termination.

¶ 19 D. The Intervening State and Federal Court Filings

¶ 20 In January 2004, Powers filed a complaint for administrative review pursuant to section 3-103 of the Civil Procedure Code. In May 2005, Powers filed a motion, requesting leave to amend his complaint and join certain state officials, alleging that the state officials had violated his rights under the first and fourteenth amendments to the United States Constitution (U.S. Const., amends. I, XIV). Powers' motion informed the circuit court that at the time he initiated his complaint for administrative review, he also filed a civil action in federal court, alleging constitutional tort claims pursuant to section 1983 of the Civil Rights Act. In September 2005, the court accepted the parties' stipulation, urging the court to grant Powers' motion to amend his complaint. In November 2005, Powers served his amended complaint on the appropriate state officials.

¶ 21 In December 2005, the Commission and the state officials filed a notice of removal to the United States District Court, informing the circuit court that (1) they had earlier filed a notice of removal with the United States District Court, Central District of Illinois under/ Title 28 of the United States Code, which pertained to federal jurisdiction and venue (28 U.S.C. §§ 1331, 1446 (2000); 28 U.S.C. § 1441 (Supp II, 2002)); (2) the district court granted their notice; and (3) the removal to federal court effectively stayed Powers' state court filings during the pendency of the federal case.

¶ 22 E. The Proceedings in Federal Court

¶ 23 1. *The Determination of the United States District Court, Central District*

¶ 24 Before the district court, Powers argued, in pertinent part, that he was denied his property interest in his job as the Commission's executive secretary without due process. *Powers v. Richards*, No. 04-3024, 2006 WL 1749611, at *1 (C.D. Ill. June 20, 2006) (not reported). In

response, the Commission filed a motion for summary judgment, which the district court later granted. *Id.* In so doing, the district court rejected Powers' contentions that (1) his pretermination and posttermination hearings violated his due-process rights, (2) the Commission "had made up its mind to fire him" at the pretermination hearing, (3) the Commission should not have "participated" in the posttermination hearing, and (4) the Commission should not have participated in reviewing the ALJ's findings or his subsequent objections. *Powers*, at *6.

¶ 25 With regard to Powers' due-process claim, the district court noted that Powers was provided notice, an explanation of the evidence against him, and an opportunity to present evidence on his behalf. *Powers*, at *5. In addition, the district court noted that Powers' posttermination hearing "contained most, if not all, of the protections of a full-blown bench trial." *Id.* The district court found Powers' final argument unpersuasive because it concluded that the Commission's review of the ALJ's findings is not constitutionally required. *Powers*, at *6. In this regard, the district court stated that Powers was "entitled to a notice and a hearing [and that] [h]e received all the of the notices and hearings that were required during the pre-termination and post-termination hearings." *Id.* Powers appealed the district court's determination.

¶ 26 2. *The Determination of the United States Court of Appeals, Seventh Circuit*

¶ 27 The Seventh Circuit affirmed the district court's grant of summary judgment in the Commission's favor. *Powers v. Richards*, 549 F.3d 505, 513 (7th Cir. 2008). Specifically, the Seventh Circuit characterized Powers' argument that the board members decided to terminate his employment prior to the pretermination hearing as "speculation." *Powers*, 549 F.3d at 512. The court of appeals also rejected Powers' argument that because his posttermination hearing was constitutionally deficient, he should have received a comprehensive pretermination hearing. In

this regard, the Seventh Circuit addressed Powers argument as follows:

"As long as a more-searching post-termination procedure is *available*, the pre-termination proceedings need only establish that there are reasonable grounds to support the removal of the employee. [Citation.] Powers cannot dispute that Illinois gave him the right to a full hearing—where he was represented by counsel and allowed to conduct discovery, present evidence, and cross-examine witnesses—and that he took full advantage of it. If his post-termination hearing fell short of due-process requirements, his remedy was to raise a constitutional challenge to those proceedings, not to use the alleged deficiencies as grounds to attack his pre-termination hearing. Indeed, Powers must have understood this because he actually raised constitutional challenges to his post-termination hearing. The district court, however, dismissed all of the claims relating to the post-termination hearing. Powers does not argue in his briefs on appeal that this decision was incorrect. Thus, he has abandoned any argument that the district court should have considered his claims regarding his post-termination hearing. [Citations.]" (Emphasis in original.) *Powers*, 549 F.3d at 512-13.

¶ 28

F. The Circuit Court Proceedings

¶ 29

In April 2010, the circuit court entered an order acknowledging that (1) Powers' amended complaint for administrative review had been stayed pending "ancillary litigation" and

(2) given this litigation had concluded, the matter before the court was ready to proceed.

¶ 30 In June 2010, Powers filed an opening memorandum in accordance with the circuit court's scheduling order. In his memorandum, Powers argued, in pertinent part, the following regarding the Commission's board members:

"Because the individuals charged under the [Personnel Code] with the responsibility for deciding the legitimacy of Powers' discharge were the same individuals who made that decision, Powers requested that each of them refrain from deciding the merits of his appeal. He proposed that the Commission and himself jointly select a person that would perform the role normally entrusted to members of the Commission under the [Personnel Code]. That individual would review the recommendations of the [ALJ] and either accept, modify[,] or reject that recommendation, the normal role performed by members of the Commission. He further proposed that the members of the Commission adopt as the final decision of the Commission the decision made by that individual. This process would avoid a needless clash between Powers['] rights under the Due Process Clause and the manner in which decisions are made under the [Personnel Code]. Powers' request was denied. Ultimately, the individuals who decided Powers' appeal were the same individuals who terminated him from employment with the

Commission."

¶ 31 In July 2010, the Commission filed a written response in support of the administrative decision, claiming, in part, that Powers received all the due process he was entitled to at his posttermination hearing, in that he received a "fair opportunity" to present his version of events before a neutral ALJ. The Commission noted that after the ALJ heard Powers' appeal and concluded that his termination was warranted, the Commission's role was merely to either accept, reject, or modify the ALJ's recommendation.

¶ 32 Following oral arguments presented at a December 3, 2010, hearing, the circuit court took the matter under advisement for 14 days. (The record does not contain a transcript of the proceedings that occurred at that hearing.) Ten days later, the Commission filed a motion objecting to Powers' proposed order. Specifically, the Commission argued that the court should not enter judgment in Powers' favor because Powers' due-process claim was barred by the doctrine of *res judicata*, in that it had been litigated in federal-court proceedings. The Commission also reiterated that it did not violate Powers' due-process rights because his appeal was heard by an impartial ALJ. On December 17, 2010, Powers filed a response claiming that although he "attempted to claim that members of the Commission violated his rights in the federal proceeding, the Court, without reaching the merits of those claims, dismissed them insofar as they related to the actions taken by [the board members of the Commission]." Powers also claimed that "the use of existing [board] members of the Commission, even those who did not participate in either [his] discharge or earlier discharge appeal, contains an unacceptable risk of bias because it could taint the view of the other two members."

¶ 33 In January 2011, the circuit court entered an order, reversing Powers' termination,

finding as follows:

"That the Commission, [by] denying the request made by Powers, and instead[,] allowing his discharge appeal to be decided by the individuals who discharged him from employment with the Commission, deprived Powers of his rights under the Due Process Clause of the Fourteenth Amendment to the United States and Article I, Section 2 of the Illinois Constitution of 1970."

¶ 34 This appeal followed.

¶ 35 II. THE CIRCUIT COURT'S REVERSAL OF POWERS' TERMINATION

¶ 36 Prior to addressing the Commission's argument that the circuit court erred by reversing Powers' termination, we first clarify the court's basis for that reversal. In its January 2011 order, the court identified—by name—the board members who (1) participated in suspending Powers after receiving CMS' May 2003 investigation report and (2) appointed Richards to conduct a pretermination hearing with authority to terminate Powers' employment if warranted. The court then determined that because four board members—who later adopted the ALJ's posttermination hearing recommendation—were not sufficiently neutral, "their participation in considering the merits of the discharge appeal deprived Powers of his constitutional right to due process of law." Thus, the court reversed Powers' termination because it found that the Commission's adoption of the ALJ's recommendation to terminate Powers employment did not comport with due-process protections because the board members were interested parties.

¶ 37 In its brief to this court, the Commission contends, in pertinent part, that the

question of whether Powers' posttermination hearing satisfied the requirements of due process was previously adjudicated by the federal court, and thus, the circuit court was barred from considering it by the doctrine of *res judicata*. In response, Powers contends that he was "prevented from litigating his due[-]process claims before the District Court." Specifically, Powers asserts that the Commission is relying "on *dictum* in the District Court opinion[,] granting summary judgment that Powers' administrative proceeding afforded him all the rights he was entitled under the Due[-]Process Clause." In this regard, Powers claimed the following:

"While it is true that the District Court in the closing part of its opinion did speak to Powers' due process claim, it is perplexing at best why it did. That particular due[-]process claim was no longer an issue in the federal case at the time of the summary judgment proceeding. When [the Commission] *** filed their motion for summary judgment [in the federal proceeding], the remaining issues in that case were: a) whether Powers' political affiliation rights under the First Amendment were compromised ***; and b) whether the pre-termination proceeding complied with Powers' due[-]process rights ***."

We agree with the Commission.

¶ 38 "The doctrine of *res judicata* provides that a final judgment on the merits rendered by a court of competent jurisdiction bars any subsequent actions between the same parties or their privies on the same cause of action." (Internal quotation marks omitted.) *Nelson v. Chicago Park District*, 408 Ill. App. 3d 53, 60, 945 N.E.2d 634, 642 (2011). The bar extends to

what was actually decided in the first suit, along with those matters that could have been litigated in that proceeding. *City of Chicago v. Saint John's United Church of Christ*, 404 Ill. App. 3d 505, 512, 935 N.E.2d 1158, 1166 (2010).

¶ 39 "The purpose of *res judicata* is to promote judicial economy by requiring parties to litigate, in one case, all rights arising out of the same set of operative facts and also [to] prevent[] the unjust burden that would result if a party could be forced to relitigate what is essentially the same case." *Henstein v. Buschbach*, 248 Ill. App. 3d 1010, 1015-16, 618 N.E.2d 1042, 1046 (1993). Three requirements must be satisfied before the doctrine of *res judicata* can apply: (1) a final judgment on the merits by a court of competent jurisdiction; (2) an identity of cause of action; and (3) an identity of parties or their privies. *Saint John's United Church of Christ*, 404 Ill. App. 3d at 512, 935 N.E.2d at 1167. We review *de novo* whether a claim is barred by the doctrine of *res judicata*. *Nelson*, 408 Ill. App. 3d at 60, 945 N.E.2d at 642.

¶ 40 In addressing Powers' contention that he was prevented from litigating his due-process claims before the District Court, we find the supreme court's decision in *River Park, Inc. v. City of Highland Park*, 184 Ill. 2d 290, 703 N.E.2d 883 (1998), instructive.

¶ 41 In *River Park, Inc.*, 184 Ill. 2d at 292, 703 N.E.2d at 884, River Park sued the City of Highland Park in federal court under section 1983 of the Civil Rights Act, seeking reversal of the city's refusal to rezone land it owned. Following the dismissal of its federal suit, River Park asserted several state claims against the city regarding its zoning decision that it had not asserted in federal court. *Id.* The trial court dismissed River Park's suit, finding, in part, that the federal court's dismissal of its complaint also barred its state claims under the doctrine of *res judicata*. *Id.* The supreme court reversed the appellate court's partial reinstatement of River Park's state

claims, agreeing with the trial court that those claims were barred. *Id.*, at 293, 703 N.E.2d at 885.

¶ 42 In so concluding, the supreme court rejected River Park's assertion that it could not have brought its state claims in federal court because the district court would have lacked subject-matter jurisdiction. *Id.*, at 317, 703 N.E.2d at 896. Specifically, the supreme court stated the following:

"Contrary to [River Park's] assertion, a district court is not required to dismiss pendent state claims after dismissing the claim from which its original jurisdiction stems. Instead, a district court has the discretion to exercise supplemental jurisdiction over pendent state claims under these circumstances." *Id.*, at 317-18, 703 N.E.2d at 896.

In his brief to this court, Powers admits that he specifically requested the district court to "review the Commission's administrative decision." Based on our review of the district court's order, it exercised its supplemental jurisdiction and proceeded as Powers requested. Thus, we reject Powers' contention that he was prevented from litigating his due-process claims before the district court.

¶ 43 We note that the circuit court's January 2011 order reversing Powers' termination did not mention the issue we now find dispositive despite (1) the Commission's December 2005 filing, informing the court that Powers' claims had been removed to the district court; (2) the court's April 2010 order, acknowledging that Powers' request for administrative hearing had been stayed pending resolution of federal proceedings; and (3) the written briefs filed by both parties on the applicability of the *res judicata* doctrine prior to the court's final order.

