

No. \_\_\_\_\_

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IN THE  
**SUPREME COURT OF THE UNITED STATES**

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Ashley Muse-Petitioner

Vs.

State of Louisiana, Louisiana Department of Public Safety and Corrections, James LeBlanc, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections- Respondents

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**ON PETITION FOR A WRIT OF CERTIORARI TO**

**U.S. FIFTH CIRCUIT COURT OF APPEALS**

Ashley Muse

10 Melanie Drive

Monroe, La. 71203

(318)372-9541

**Appendix A** Decision of U.S. Fifth Circuit Court of Appeals

**Appendix B** Decision of U.S. Western District Court of Louisiana

**Appendix C** Denial of Petition for Panel Rehearing

**Appendix D** Denial of Motion 60

**Appendix E** Title VII of the Civil Rights Act of 1964

**Appendix F** Decision of State Court

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

October 10, 2024

No. 23-30499

Lyle W. Cayce  
Clerk

ASHLEY MUSE,

*Plaintiff—Appellant.*

RECEIVED

STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF PUBLIC  
SAFETY AND CORRECTIONS; JAMES M. LEBLANC,

*Defendants—Appellees.*

Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 3:21-CV-2419

Before WILLETT and DOUGLAS, *Circuit Judges*, and MORALES, *District Judge*.<sup>1</sup>

PER CURIAM.\*

In this employment dispute, Ashley Muse, proceeding *pro se*, contends the district court misapplied the principles of *res judicata* and collateral estoppel when it granted summary judgment to the State of Louisiana, the

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<sup>1</sup> United States District Judge for the Southern District of Texas, sitting by designation.

\* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

Appendix A

Louisiana Department of Public Safety and Corrections, and James M. LeBlanc (Secretary of the Department). We disagree and AFFIRM.

I

Ashley Muse worked as a probationary employee for the State of Louisiana Department of Public Safety and Corrections from September 2019 to February 2021. On February 8, 2021, she was terminated. Days later, she appealed her termination to the Louisiana State Civil Service Commission (“Commission”). Specifically, Muse claimed that her termination was improper due to “rule violations [and] discrimination as defined by Civil Service Rules.”

In August 2021, Muse filed a Title VII complaint. One week later, a Commission Referee presided over a two-day hearing where Muse submitted exhibits, examined witnesses, and submitted post-trial briefs. In November 2021, the Commission determined that Muse “[did] not establish racial discrimination” and also “failed to prove her separation was due to her race.” That decision became final on January 5, 2022.

Muse appealed the Commission’s decision to the Louisiana First Circuit Court of Appeal, “citing misrepresentations, incorrect case law, and lack of due process” during the Commission hearing. The Court of Appeal upheld the decision and found “no evidence that supports [her] contentions” that “she was discriminated against because of her race and that civil service rules were violated in the process of her separation.”<sup>2</sup>

Meanwhile, litigation of Muse’s Title VII discrimination complaint continued in federal court. In April 2023, approximately five months after the

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<sup>2</sup> *Muse v. La. Dep’t of Pub. Safety & Corr., Off. of Prob. & Parole*, 355 So. 3d 620, 626 (La. App. 1 Cir. 11/4/22).

Louisiana Circuit Court of Appeal upheld the Commission's rejection of Muse's claims, Louisiana filed a motion for leave to file a supplemental answer and affirmative defenses. The motion was granted, and Louisiana amended its answer to include the defenses of res judicata and collateral estoppel.

Soon after, the district court granted summary judgment in favor of Louisiana based on res judicata and collateral estoppel. Muse moved for reconsideration, and the district court denied her motion. Muse now appeals the grant of summary judgment to Louisiana and the district court's denial of her motion for reconsideration.

## II

Related to the grant of summary judgment to Louisiana, Muse makes three main arguments: (1) the district court erred in finding Louisiana had good cause to amend and add affirmative defenses; (2) the district court erred in holding her Title VII claims were barred by res judicata and collateral estoppel; and (3) the Commission lacked jurisdiction and denied Muse due process.<sup>3</sup> We address each issue in turn.

### A

First, Muse contends the district court erred in granting Louisiana's motion to amend its answer to add affirmative defenses because Louisiana did not show good cause.

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<sup>3</sup> “[W]e liberally construe briefs of *pro se* litigants and apply less stringent standards to parties proceeding *pro se* than to parties represented by counsel[.]” *Grant v. Cuellar*, 59 F.3d 523, 524 (5th Cir. 1995) (citing *Haines v. Kerner*, 404 U.S. 519, 520 (1972))).

We review a trial court’s decision on a party’s request for leave to amend pleadings for abuse of discretion.<sup>4</sup> Federal Rule of Civil Procedure 16(b) governs the amendment of pleadings after a court’s scheduling order deadline has expired and requires “good cause” and “the judge’s consent.”<sup>5</sup> We have determined that four factors are relevant to good cause: “(1) the explanation for the failure to timely move for leave to amend; (2) the importance of the amendment; (3) potential prejudice in allowing the amendment; and (4) the availability of a continuance to cure such prejudice.”<sup>6</sup> Only if the movant demonstrates good cause will “the more liberal standard of Rule 15(a),” which permits leave as “justice so requires,” apply to the district court’s decision to grant leave.<sup>7</sup>

The district court’s scheduling order required parties to file any pleading amendments by December 23, 2022. On April 10, 2023, Louisiana requested leave to file a supplemental answer and affirmative defenses. While acknowledging that there was a “technical failure” in complying with the deadline, Louisiana argued that judicial economy favored granting the motion. The district court agreed and found that Muse did not “face unfair surprise in responding to Defendants’ affirmative defenses” because she had an “adequate opportunity to respond.” The district court also found that the timing was proper since the state court decision was not final until “Plaintiff’s period to appeal the state court decision lapsed.” Because the

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<sup>4</sup> *S&W Enters., L.L.C. v. SouthTrust Bank of Ala., NA*, 315 F.3d 533, 535 (5th Cir. 2003) (citing *Herrmann Holdings Ltd. v. Lucent Techs. Inc.*, 302 F.3d 552, 558 (5th Cir. 2002)).

<sup>5</sup> See FED. R. CIV. P. 16(b)(4); *S&W Enters., L.L.C.*, 315 F.3d at 536.

<sup>6</sup> *Fahim v. Marriott Hotel Servs., Inc.*, 551 F.3d 344, 348 (5th Cir. 2008) (quoting *Sw. Bell Tel. Co. v. City of El Paso*, 346 F.3d 541, 546 (5th Cir. 2003) (internal citation omitted)).

<sup>7</sup> *S&W Enters., L.L.C.*, 315 F.3d at 536; see FED. R. CIV. P. 15(a).

district court considered Louisiana's explanation for its failure to timely move for leave to amend, noted the importance of the amendment, and examined the ability of Muse to cure any prejudice caused by the amendment, the district court did not abuse its discretion in granting leave to amend.

B

Second, Muse contends the district court erred in holding her Title VII claims were barred by res judicata and collateral estoppel at the summary-judgment stage.

We review summary judgment *de novo*.<sup>8</sup> Summary judgment is warranted if "no genuine dispute as to any material fact" exists and "the movant is entitled to judgment as a matter of law."<sup>9</sup> The applicability of res judicata and collateral estoppel are questions of law that we also review *de novo*.<sup>10</sup>

"When a federal court is asked to give res judicata effect to a state court judgment, the federal court must determine the preclusiveness of that state court judgment under the res judicata principles of the state from which the judgment originates."<sup>11</sup> And "preclusive effect *must* be given to a state court's review of a state agency's action on a job bias claim in a later action

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<sup>8</sup> *Spicer v. Laguna Madre Oil & Gas II, L.L.C. (In re Tex. Wyo. Drilling, Inc.)*, 647 F.3d 547, 550 (5th Cir. 2011).

<sup>9</sup> FED. R. CIV. P. 56(a).

<sup>10</sup> *Spicer*, 647 F.3d at 550 (5th Cir. 2011); *Bradberry v. Jefferson Cnty., Tex.*, 732 F.3d 540, 549 (5th Cir. 2013).

<sup>11</sup> *Jones v. Sheehan, Young & Culp, P.C.*, 82 F.3d 1334, 1338 (5th Cir. 1996) (citations omitted).

in federal court on such a claim brought under a similar federal law such as Title VII.”<sup>12</sup>

Here, because the underlying judgment is from the Louisiana Court of Appeal, Louisiana preclusion rules apply.<sup>13</sup> Louisiana law embraces the term “res judicata” as including “both claim preclusion (res judicata) and issue preclusion (collateral estoppel).”<sup>14</sup> In this vein, Louisiana Revised Statute 13:4231 states that “a valid and final judgment is conclusive between the same parties . . . with respect to any issue actually litigated and determined if its determination was essential to that judgment,” or, if the judgment is in favor of the defendant, then “all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.”

The first question is whether the parties in federal court are the same as the parties in the Commission and state-court litigation. In the appeal before the Commission, Muse and the Department of Public Safety and Corrections were the two parties. Here, in federal court, Muse sued the Department as well as the State of Louisiana and James LeBlanc. The parties are clearly not identical between the federal and state litigation. However, under Louisiana law, “[t]he preclusive effect of res judicata may bind

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<sup>12</sup> *Levitt v. Univ. of Tex. at El Paso*, 847 F.2d 221, 227 (5th Cir. 1988) (citing *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461 (1982)); see also *Stafford v. True Temper Sports*, 123 F.3d 291, 295 (5th Cir. 1997).

<sup>13</sup> See *Jones*, 82 F.3d at 1338.

<sup>14</sup> *Henkelmann v. Whiskey Island Pres. L.L.C.*, 145 So. 3d 465, 470 (La. App. 1 Cir. 5/15/14).

nonparties who are deemed to be ‘privies’ of the named parties under certain circumstances.”<sup>15</sup> Louisiana courts recognize privity when:

(1) the nonparty is a successor in interest to a named party; (2) the nonparty controlled the prior litigation; or (3) the nonparty’s interests were adequately represented by a party to the original litigation whose interests are so closely aligned to the nonparty that they may be deemed the nonparty’s virtual representative.<sup>16</sup>

Indeed, “[i]t is not sufficient to merely show that the party and the nonparty have common or parallel interests in the factual and legal issues presented in the respective actions.”<sup>17</sup> But it is sufficient to show “that the relationship between the one who is a party on the record and the nonparty is sufficiently close to afford application of the principle of preclusion.”<sup>18</sup> The Department of Public Safety and Corrections is an arm of the State, and James LeBlanc is Secretary of the Department. Therefore, while the parties before us are not *identical* to the parties in the state court litigation, they are undoubtedly in privity, as the interests of the State of Louisiana and Secretary LeBlanc were adequately represented by the Department.

The next question is which issues were “actually litigated” and “essential to” the Louisiana Court of Appeal’s judgment. Courts in our circuit applying Louisiana law have found that the Commission’s denial of claims of race discrimination, if affirmed by a state court, “precludes the

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<sup>15</sup> *Breen v. Breen*, 370 So. 3d 1095, 1102 (La. App. 1 Cir. 7/6/23), *writ denied*, 373 So. 3d 979 (La. 12/5/23).

<sup>16</sup> *Id.* at 1102.

<sup>17</sup> *Id.* (citing *Slaughter v. Atkins*, 305 F. Supp. 3d 697, 709 (M.D. La. 2018), *aff’d*, 742 F. App’x 24 (5th Cir. 2018)).

<sup>18</sup> *B.A. Kelly Land Co., L.L.C. v. Aethon United BR L.P.*, 327 So. 3d 1071, 1078 (La. App. 2 Cir. 9/22/21), *writ denied*, 332 So. 3d 671 (La. 2/8/22).

same claims from being asserted in [a federal] action based on Title VII.”<sup>19</sup> The Commission determined that Muse’s testimony, witnesses, and evidence “[did] not establish racial discrimination,” and the state court affirmed that determination.<sup>20</sup> The issue of whether Muse suffered discrimination on the basis of race was essential to the Commission’s and state court’s respective judgments. Consequently, relitigation of the same issue here is precluded.

The final question is whether the issues in federal court—racial discrimination, harassment, and hostile work environment under Title VII of the Civil Rights Act of 1964—arise out of the same transaction or occurrence that was the subject matter of the state court litigation—racial discrimination and other civil-service rule violations.<sup>21</sup> The answer is “yes.” The evidence Muse mustered for her Commission appeal includes the same instances Muse cited for support before the district court. And it is undisputed that Muse’s suit arises from her employment with and treatment by the Department of Public Safety and Corrections—the same set of relationships and facts at issue in prior proceedings. Therefore, we conclude that Muse’s federal claims of Title VII race discrimination, harassment, and hostile work environment arise from the same transaction or occurrence as litigated in state court.<sup>22</sup> Res judicata applies, and the Louisiana Court of Appeal’s

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<sup>19</sup> *Butler v. La. Dep’t of Health & Hosps.*, No. 07-723-SCR, 2009 WL 2382556, at \*10 (M.D. La. July 31, 2009); see also *Hughes v. Arveson*, 924 F. Supp. 735, 737–38 (M.D. La. 1996); *Harrell v. La. Dep’t of Health & Hosps.*, No. 10-0156, 2011 WL 6843004, at \*2 (W.D. La. Dec. 29, 2011).

<sup>20</sup> *Muse v. La. Dep’t of Pub. Safety & Corr., Off. of Prob. & Parole*, 355 So. 3d 620, 622 (La. App. 1 Cir. 11/4/22).

<sup>21</sup> *Id.*

<sup>22</sup> Muse argues that an employee can be subject to harassment, hostile work environment, and disparate treatment without being subject to disciplinary action or termination. While this statement is correct, it misses the mark. Louisiana law uses a

affirmance of the Commission's decision precludes relitigation of the dispute.

C

Finally, Muse contends that preclusion should not apply because of various procedural deficiencies in the state administrative proceedings. Specifically, she alleges that the Commission lacked jurisdiction to hear her claim of race discrimination because she was a probationary employee, and she relies on *St. Romain v. State of Louisiana, through the Department of Wildlife and Fisheries* for support.<sup>23</sup> She also alleges that the Commission violated her due process rights.

As to the Commission's jurisdiction, Louisiana Civil Service Rule 13.10 states only three groups of people have a right of appeal to the Commission:

- (a) a state classified employee with permanent status who has been removed or subjected to one of the disciplinary actions listed in Rule 12.2(b).
- (b) a state classified employee who has been discriminated against in any employment action or decision because of his political or religious beliefs, sex or race.
- (c) a state classified employee who has been adversely affected by a violation of any provision in the Civil Service Article or of any Civil Service Rule other than a rule in Chapter 10.

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"transaction or occurrence" test, not *true res judicata* or claim preclusion. *See La. Rev. Stat. 13:4231*. Therefore, the claims themselves need not be identical if the issues addressed in the cases arise from the same transaction or occurrence. And it is clear that the claims before the federal court are the same issues that formed the basis of Muse's state-court claims.

<sup>23</sup> 863 So. 2d 577 (La. App. 1 Cir. 11/12/03), *writ denied*, 871 So. 2d 348 (La. 3/26/04)).

Muse, as a probationary state employee alleging race discrimination, had a right to appeal her termination to the Commission. And the Commission, under Louisiana law, had the jurisdiction to review it.

Moreover, Muse's reliance on *St. Romain* is misplaced. There, the court held that "the claims of a probationary employee alleging discrimination *in the review of his or her application to gain permanent status* . . . fall outside the ambit of the [Commission's] jurisdiction."<sup>24</sup> Muse does not allege discrimination in the review of her application to gain permanent status, or that she even applied for permanent status. Instead, she alleges that discrimination was the reason for her termination. Because Muse alleged discrimination during and upon termination of her employment, Louisiana law dictates that her claims fell within the jurisdiction of the Commission despite her status as a probationary employee.<sup>25</sup>

As to Muse's point on procedural due process, "[s]tate proceedings failing to satisfy the requirements of constitutional due process are not accorded preclusive effect."<sup>26</sup> We have defined the fundamental

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<sup>24</sup> *St. Romain*, 863 So. 2d at 584 (emphasis added).

<sup>25</sup> See *Harris v. Dep't of Pub. Safety & Corr. - Dixon Corr. Inst.*, 370 So. 3d 43, 49 n.6 (La. App. 1 Cir. 6/2/23) (holding a probationary employee is still a "classified employee" within the meaning of the Louisiana Civil Service Rules); *Terry v. Dep't of Police*, 23 So. 3d 974, 976 (La. App. 4 Cir. 10/7/09), *writ denied*, 25 So. 3d 142 (La. 1/22/10) ("Except when there is an allegation of discrimination . . . , there is no provision for appeal by a probationary employee." (quoting *Walton v. French Mkt. Corp.*, 654 So. 2d 885, 87 (La. App. 4 Cir. 4/26/95))); *Harness v. New Orleans Recreation Dev. Comm'n*, 222 So. 3d 820, 822 (La. App. 4 Cir. 6/14/17) (same (quoting *Terry*, 23 So. 3d at 976)).

<sup>26</sup> *Morales v. New Orleans City*, No. 23-30340, 2024 WL 3026779, at \*4 (5th Cir. June 17, 2024) (citing *Kremer*, 456 U.S. at 482-83).

requirement of due process in this context to mean “the opportunity to be heard” as well as “notice and an opportunity to respond.”<sup>27</sup>

Muse claims the Commission violated her due process rights because it failed to give her “prior notice of the reasons for her termination that would be asserted in the . . . hearing [and] denied her [the] right to present evidence in opposition and [the] right to cross-examine adverse witnesses.” She also argues that she was deprived of her right to a neutral decisionmaker because the Commission is a state agency, and she was disputing termination by the state.

Yet, the record reflects Muse received a two-day hearing, in which she testified, presented witnesses on her behalf, cross-examined witnesses,<sup>28</sup> and both introduced and examined evidence. Muse maintains that she was “not given fair notice” of the reasons for her termination, arguing (it seems) that the Commission should not have permitted Louisiana to ask Muse questions about other potential reasons for her termination outside of alleged racial discrimination. But Muse’s briefing before us does not cite any authority supporting her argument that the substance of the Commission proceedings violated her due process rights.<sup>29</sup>

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<sup>27</sup> *Id.* (first quoting *Matthews v. Eldridge*, 424 U.S. 319, 333 (1976), and then quoting *Dearman v. Stone Cnty. Sch. Dist.*, 832 F.3d 577, 583 (5th Cir. 2016) (internal citation omitted)).

<sup>28</sup> Muse contends that she did not get to cross-examine “all witnesses” but fails to identify which witnesses she was not allowed to question.

<sup>29</sup> *Rollins v. Home Depot USA, Inc.*, 8 F.4th 393, 397 & n.1 (5th Cir. 2021) (noting that a party forfeits an argument by failing to adequately support it with citation to authority); *see also United States v. Gonzalez*, No. 23-50193, 2024 WL 1478874, at \*2 (5th Cir. Apr. 5, 2024) (“[P]ro se litigants—like all other parties—remain subject to rules of waiver and forfeiture. So, litigants—even *pro se* ones—may not press issues ‘that were not presented to the district court for its consideration in ruling on the motion.’” (quoting *Grogan v. Kumar*, 873 F.3d 273, 277 (5th Cir. 2017)) (footnote omitted)).

For these reasons, we hold that Muse’s due process rights were not violated by the Commission proceedings or by the Louisiana Court of Appeal’s affirmance of the Commission’s decision.

### III

Last, we consider whether the district court erred in denying Muse’s motion for reconsideration. Muse points to alleged clerical error, newly discovered evidence, “void judgment,” fraud, lack of due process, and misrepresentations as reasons for reconsideration, all of which invoke the substantive question of the strength of the district court’s reasons for granting summary judgment in the first place.

We review denials of motions for reconsideration *de novo*.<sup>30</sup> For the reasons stated above, in addition to Muse’s failure to meet the heightened standard for Rule 60(b) motions,<sup>31</sup> the district court did not err in denying Muse’s motion for reconsideration of its grant of summary judgment to Louisiana.

### IV

We must give preclusive effect—or “full faith and credit”—to a state-court decision that “comes from a judicially reviewed action by an administrative body.”<sup>32</sup> As such, Muse’s Title VII claims of race discrimination, harassment, and hostile work environment are precluded under Louisiana law.

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<sup>30</sup> *Lartigue v. Northside Indep. Sch. Dist.*, 100 F.4th 510, 518 (5th Cir. 2024).

<sup>31</sup> FED. R. CIV. P. 60(b). Muse’s Rule 60(b) motion rehashes many of her previous arguments, and those added are largely unsupported.

<sup>32</sup> *Stafford*, 123 F.3d at 295 (emphasis omitted).

**For the reasons discussed above, we AFFIRM the district court's summary judgment and the denial of Muse's motion for reconsideration.**

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION**

**ASHLEY MUSE**

**CASE NO. 3:21-CV-02419**

**VERSUS**

**JUDGE TERRY A. DOUGHTY**

**STATE OF LOUISIANA ET AL**

**MAG. JUDGE KAYLA D. MCCLUSKY**

**MEMORANDUM RULING**

Pending before the Court is a Motion for Summary Judgment [Doc. No. 75] filed by Defendants, State of Louisiana (“Louisiana”), (Louisiana Department of Public Safety & Corrections (“Dept. of Public Safety”), and James M. LeBlanc (“LeBlanc”), (collectively “Defendants”). An Opposition [Doc. No. 84] was filed by Plaintiff Ashley Muse (“Muse”), and a Reply [Doc. No. 88] was filed by Defendants.

For the reasons set forth herein, Defendants’ Motion for Summary Judgment is **GRANTED**.

**I. BACKGROUND**

This suit arises out of an Employment Discrimination claim against Muse’s former employer.<sup>1</sup> Muse contends that while working as a Probation and Parole Officer she was “denied training, subjected to microaggressions, harassment, a hostile work environment, termination, and disparate treatment because of her race.”<sup>2</sup> Plaintiff filed suit in this Court on August 10, 2021, under Title VII of the Civil Rights Act of 1964.<sup>3</sup>

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<sup>1</sup> [Doc. No. 1]

<sup>2</sup> [Id. at ¶6]

<sup>3</sup> [Id.]

**Appendix  
B**

The Defendants have alleged that Muse's claims against them are barred by res judicata and collateral estoppel because the Louisiana Civil Service Commission found that there was no discrimination here, and the Civil Service Commission denied her application for review. Further, Muse brought this case before the Louisiana Court of Appeal for the First Circuit, and it upheld the decision that she was not discriminated against in her employment and termination from employment. Therefore, Muse's claims are redundant.

## II. LAW AND ANALYSIS

### A. Standard of Review

Summary judgment is appropriate when the evidence before a court 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 fact is "material" if proof of its existence or nonexistence would affect the outcome of the lawsuit under applicable law in the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is "genuine" if the evidence is such that a reasonable fact finder could render a verdict for the nonmoving party. *Id.*

"[A] party seeking summary judgment always bears the initial responsibility of informing the district court of the basis for its motion, and identifying those portions of 'the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any,' which it believes demonstrate the absence of a genuine issue of material fact." *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986) (quoting *Anderson*, 477 U.S. at 247). "The moving party may meet its burden to demonstrate the absence of a genuine issue of material fact by pointing out that the record contains no support for the non-moving party's claim." *Stahl v. Novartis Pharm. Corp.*, 283 F.3d 254, 263 (5th Cir. 2002). Thereafter, if the non-movant is unable to identify anything in

the record to support its claim, summary judgment is appropriate. *Id.* “The court need consider only the cited materials, but it may consider other materials in the record.” Fed. R. Civ. P. 56(c)(3).

In evaluating a motion for summary judgment, courts “may not make credibility determinations or weigh the evidence” and “must resolve all ambiguities and draw all permissible inferences in favor of the non-moving party.” *Total E & P USA Inc. v. Kerr-McGee Oil and Gas Corp.*, 719 F.3d 424, 434 (5th Cir. 2013) (citations omitted). While courts will “resolve factual controversies in favor of the nonmoving party,” an actual controversy exists only “when both parties have submitted evidence of contradictory facts.” *Little v. Liquid Air. Corp.*, 37 F.3d 1069, 1075 (5th Cir. 1994). To rebut a properly supported motion for summary judgment, the opposing party must show, with “significant probative evidence,” that a genuine issue of material fact exists. *Hamilton v. Segue Software, Inc.*, 232 F.3d 473, 477 (5th Cir. 2000) (emphasis added). “If the evidence is merely colorable, or is not significantly probative,’ summary judgment is appropriate.” *Cutting Underwater Tech. USA, Inc. v. Eni U.S. Operating Co.*, 671 F.3d 512, 517 (5th Cir. 2012) (quoting *Anderson*, 477 U.S. at 248).

Relatedly, there can be no genuine dispute as to a material fact when a party fails “to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp.*, 477 U.S. at 322-23. This is true “since a complete failure of proof concerning an essential element of the nonmoving party’s case necessarily renders all other facts immaterial.” *Id.* at 323.

### **B. State Civil Service Proceedings**

Muse was terminated on February 8, 2021.<sup>4</sup> Muse appealed her treatment and separation to the State Civil Service Commission.<sup>5</sup> A Civil Service Referee presided over a three-day trial.<sup>6</sup> In this proceeding, Muse argued she was discriminated against in her employment. She submitted exhibits, cross-examined witnesses, and submitted post trial briefs arguing that she was discriminated against and terminated based on race.<sup>7</sup>

The Civil Service Referee rendered a decision that Muse's separation from employment was proper and not based upon discrimination.<sup>8</sup> The Civil Service Commission denied Muse's application for review.<sup>9</sup> Muse then appealed the decision to the Louisiana First Circuit Court of Appeal, which affirmed the Civil Service Commission's decision.<sup>10</sup> No writ application to the Supreme Court of Louisiana was filed by Muse. This is considered a final judgment.

### **C. Res Judicata and Collateral Estoppel**

Res judicata is a doctrine that provides that once a final judgment on the merits has been entered in a case, the parties involved, and are precluded from re-litigating claims that either were or could have been raised in that case. *Allen v. McCurry*, 449 U.S. 90, 94 (1980). When a federal court is asked to give res judicata effect to a state court judgment, the federal court must determine the preclusiveness of that state court judgment under the res judicata principles from which the judgment originated. *Jones v. Sheehan, Young & Culp, PC*, 82 F.3d 1334, 1338 (5<sup>th</sup> Cir. 1996).

In Louisiana, La. R.S. 13:4231 reads as follows:

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<sup>4</sup> [Doc. No. 75-4]

<sup>5</sup> [Doc. No. 75-5]

<sup>6</sup> [Doc. No. 75-6]

<sup>7</sup> [Id]

<sup>8</sup> [Doc. No. 75-7]

<sup>9</sup> [Doc. No. 75-5]

<sup>10</sup> *Muse v. Louisiana Department of Public Safety & Corrections* 355 So.3d 620 (La. App. 1st Cir. 2022).

Except as otherwise provided by law, a valid and final judgment is conclusive between the same parties, except on appeal or other direct review, to the following extent:

- (1) If the Judgment is in favor of the plaintiff, all causes of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and merged in judgment.
- (2) If the judgment is in favor of the defendant, all cause of action existing at the time of final judgment arising out of the transaction or occurrence that is the subject matter of the litigation are extinguished and the judgment bars a subsequent action on those causes of action.
- (3) A judgment in favor of either plaintiff or the defendant is conclusive, in any subsequent action between them, with respect to any issue actually litigated and determined if its determination was essential to that judgment.

Louisiana embraces the broad term of “res judicata” to include both claim preclusion (res judicata) and issue preclusion (collateral estoppel). *Henkelmann v. Whiskey Island Pres. LLC*, 145 So.3d 465, 470 (La. App. 1st Cir. 2014). Claim preclusion and issue preclusion are distinct principles. Under claim preclusion or res judicata, a judgment on the merits precludes the parties from relitigating matters that were or could have been raised in that action *Id.* Res judicata applies when: (1) there is a prior valid judgment; (2) the prior judgment is final; (3) the parties in the prior suit and in the present suit are the same; (4) the cause or causes of action asserted in the second suit existed at the time of the final judgment in the first litigation; and (5) the cause or causes of action asserted in the second suit arose out of the transaction or occurrence that was the subject matter of the first litigation. *Gabriel v. LaFourche Parish Water Dist.*, 112 So.3d 281, 284 (La. App. 1st Cir. 2013).

Under issue preclusion or collateral estoppel, “once a court decides an issue of fact or law necessary to its judgment, that decision precludes relitigations of the same issue in a different cause

of action between the same parties. *Henkelmann*, 145 So.3d at 470. The criteria used to determine whether a party is precluded from relitigating an issue is: (1) whether the issue at stake is identical to the one involved in the prior litigation; (2) whether the issue was actually litigated; and (3) whether the determination of the issues was necessary to the judgment in the prior litigation. *McDonald v. Cason*, 801 So.2d 1255, 1262 (La. App. 3d Cir. 2001).

#### **D. Analysis**

Muse's claims in the original Complaint,<sup>11</sup> and the Amended Complaint,<sup>12</sup> involve Title VII employment discrimination involving harassment, a hostile work environment, and/or racial discrimination. Muse's claims are barred. The Louisiana Civil Service Commission is vested by the Louisiana Constitution<sup>13</sup> with full authority to hear and decide such employee cases. The reasons for the exclusive grant of power to hear and decide these cases is to preclude the district courts from having concurrent jurisdiction with the Civil Service Commission. *Russo v. Jefferson Water Parish Department*, 1998 WL 19629 (E.D. La. 1/16/1998). A civil service employee must first successfully challenge his separation with the Civil Service Commission before he can pursue damages or a money judgment in district court. *Winn v. New Orleans City*, 2015 WL 10713690 (E.D. La. 1/4/2015).

Claims such as those of Muse have been held to be barred by res judicata. *Hughes v. Arveson*, 924 F. Suppl. 735, 737-38 (M.D. La. 1996).

Muse has asserted Title VII claims based upon discrimination in employment training, changing voice mails, in dispersing cars to drive, in assigning officers to work hospital duty, denial

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<sup>11</sup> [Doc. No. 1]

<sup>12</sup> [Doc. No. 24]

<sup>13</sup> Louisiana Constitution, Article 10, Section 12(B)

of property rights and due process being denied a position because of her race, and discrimination in all aspects of her employment due to race.<sup>14</sup>

The issues raised in this federal proceeding all arose from the alleged discrimination that Muse has already litigated. In a similar case involving Title VII claims, the court dismissed the claims based upon both collateral estoppel and res judicata. *Hughes v. Arreson*, 924 F.Supp. 735 (M.D. La. 1996).

Both the Fifth Circuit and the Supreme Court of the United States have dismissed similar claims under Title VII. *Levett v. University of Texas*, 847 F.2d 221, 227 (5th Cir. 1998); and *Kramer v. Chemical Construction Corp.*, 456 U.S. 461 (1982).

All of Muse's claims that could have been brought or were brought were based upon alleged discrimination Muse already had the full opportunity to be heard.

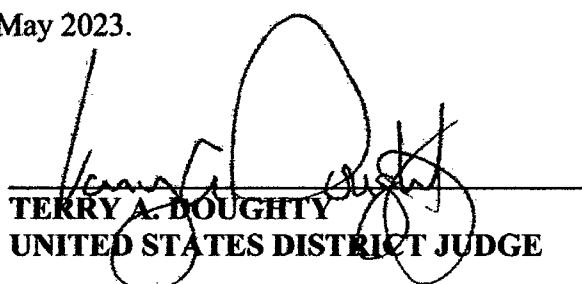
This Court finds all of Muse's claims in this proceeding are barred by res judicata and by collateral estoppel.

### III. CONCLUSION

For the reason set forth herein,

**IT IS ORDERED, ADJUDGED, AND DECREED** that the Motion for Summary Judgment [Doc. No.75] filed by State of Louisiana, Louisiana Department of Public Safety & Corrections, and James M. LeBlanc is **GRANTED**, and all of Muse's claims against Defendants are hereby **DISMISSED WITH PREJUDICE**.

**MONROE, LOUISIANA**, this 10<sup>th</sup> day of May 2023.



**TERRY A. DOUGHTY**  
UNITED STATES DISTRICT JUDGE

<sup>14</sup> [Doc. No. 24, Counts 16, 17, 18, 19, 20, 22 and 25]

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

ASHLEY MUSE

CASE NO. 3:21-CV-02419

VERSUS

JUDGE TERRY A. DOUGHTY

STATE OF LOUISIANA ET AL

MAG. JUDGE KAYLA D. MCCLUSKY

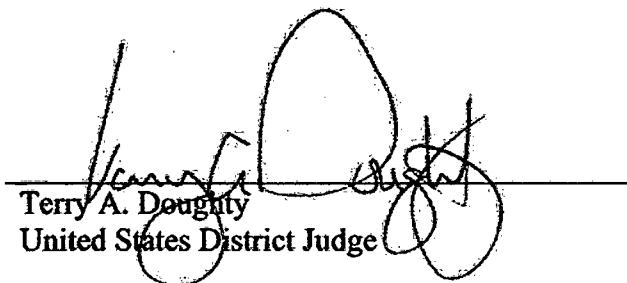
**JUDGMENT**

For the reasons set forth in the Memorandum Ruling,

**IT IS ORDERED, ADJUDGED, AND DECREED** that the Motion for Summary Judgment [Doc. No.75] filed by Defendants State of Louisiana, Louisiana Department of Public Safety & Corrections, and James M. LeBlanc is **GRANTED**, and all claims of Ashley Muse in this proceeding are **DISMISSED WITH PREJUDICE**.

**IT IS FURTHER ORDERED** that the Motion for Summary Judgment [Doc. No. 72] filed by Ashley Muse is **DENIED AS MOOT**.

MONROE, LOUISIANA, this 10th day of May 2023.

  
\_\_\_\_\_  
Terry A. Doughty  
United States District Judge

# United States Court of Appeals for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

November 25, 2024

Lyle W. Cayce  
Clerk

ASHLEY MUSE,

*Plaintiff—Appellant,*

DEFENDANT

STATE OF LOUISIANA; LOUISIANA DEPARTMENT OF PUBLIC  
SAFETY AND CORRECTIONS; GARY WESTCOTT,

*Defendants—Appellees.*

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Appeal from the United States District Court  
for the Western District of Louisiana  
USDC No. 3:21-CV-2419

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## ON PETITION FOR REHEARING

Before WILLETT and DOUGLAS, *Circuit Judges*, and MORALES, *District Judge*.\*

PER CURIAM:

IT IS ORDERED that the petition for rehearing is DENIED.

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\* United States District Judge for the Southern District of Texas, sitting by designation.

Appendix C

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF LOUISIANA  
MONROE DIVISION

ASHLEY MUSE

CASE NO. 3:21-CV-02419

VERSUS

JUDGE TERRY A. DOUGHTY

STATE OF LOUISIANA ET AL

MAG. JUDGE KAYLA D. MCCLUSKY

**MEMORANDUM ORDER**

Pending before the Court is a Motion for Reconsideration entitled “Motion for Relief from a Judgment or Order” [Doc. No. 91] filed by Plaintiff Ashley Muse (“Muse”). An Opposition [Doc. No. 93] was filed by Defendants, State of Louisiana (“Louisiana”), Louisiana Department of Public Safety & Corrections (“DPS”), and James M. LeBlanc (“LeBlanc”), (collectively “Defendants”). A Reply [Doc. No. 94] was filed by Muse.

For the reasons set forth herein, Muse’s Motion for Reconsideration [Doc. No. 91] is **DENIED**.

**I. BACKGROUND**

This suit arises out of an Employment Discrimination claim against Muse’s former employer.<sup>1</sup> Muse contends that while working as a Probation and Parole Officer she was “denied training, subjected to microaggressions, harassment, a hostile work environment, termination, and disparate treatment because of her race.”<sup>2</sup> Muse filed suit on August 10, 2021, under Title VII of the Civil Rights Act of 1964.<sup>3</sup>

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<sup>1</sup> [Doc. Nos. 1 and 24]

<sup>2</sup> [Doc. No. 1 at ¶6]

<sup>3</sup> [Doc. No. 1 at ¶5]

Appendix  
D

Muse was terminated on February 8, 2021.<sup>4</sup> Muse appealed her treatment and separation to the State Civil Service Commission.<sup>5</sup> A Civil Service Referee presided over a three-day trial.<sup>6</sup> In this proceeding, Muse argued she was discriminated against in her employment on the basis of race. She submitted evidence, cross-examined witnesses, and submitted post-trial briefs arguing that she was discriminated against and terminated on the basis of race.<sup>7</sup>

The Civil Service Referee rendered a decision that Muse's separation from employment was proper and not based upon discrimination.<sup>8</sup> The Civil Service Commission denied Muse's application for review.<sup>9</sup> Muse then appealed the decision to the Louisiana First Circuit Court of Appeal, which affirmed the Civil Service Commission's decision on November 4, 2022. *Harris v. Louisiana Department of Public Safety & Corrections*, 355 So.3d 620 (La. App. 1st Cir. 2022).

On May 10, 2023, this Court granted<sup>10</sup> Defendants' Motion for Summary Judgment<sup>11</sup> which dismissed all of Muse's claims on the basis of res judicata and collateral estoppel. On June 5, 2023, Muse filed the pending Motion to Reconsider on the basis of Federal Rule of Civil Procedure ("FRCP"), Rule 60.

## II. LAW AND ANALYSIS

In her Motion for Reconsideration, Muse maintains that she is entitled to relief on the basis of FRCP Rule 60(a) (clerical error), 60(b)(2) (newly discovered evidence); 60(b)(3) (fraud perpetuated on the court); 60(b)(4) (void judgment); and 60(b)(6) (any other reasons justifying

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<sup>4</sup> [Doc. No. 75-4]

<sup>5</sup> [Doc. No. 75-5]

<sup>6</sup> [Doc. No. 75-6]

<sup>7</sup> [Id.]

<sup>8</sup> [Doc. No. 75-7]

<sup>9</sup> [Doc. No. 75-8]

<sup>10</sup> [Doc. No. 90]

<sup>11</sup> [Doc. No. 75]

relief). A liberal construction of this rule is particularly appropriate where equitable considerations are involved. *Johnson Waste Materials v. Marshall*, 611 F.2d 593 (5th Cir. 1980).

**A. Clerical Error**

FRCP Rule 60(a) states:

The court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.

In her Motion for Reconsideration, Muse argues the Judgment dismissing her claim is incorrect for legal reasons, not because of a clerical error. Therefore, FRCP Rule 60(a) is not applicable.

**B. Newly Discovered Evidence**

FRCP Rule 60(b)(2) allows the court to relieve a party from a final judgment when there is newly discovered evidence that, with reasonable diligence, could not have been discovered in time to move for a new trial under FRCP Rule 59(b).

A party must show that (1) it exercised reasonable diligence in obtaining the information, and (2) that the evidence is material and controlling and clearly would have produced a different result if it had been presented before the original verdict. This is a high threshold. The court will not reopen a judgment if the evidence is merely cumulative or impending and would not have changed the result. *Hesling v. CSX Transp. Inc.*, 396 F.3d 632, 639 (5th Cir. 2005).

Muse argues that she was made aware of the exact incidents that led to her separation on August 18, 2021, through the testimony of Cole Gralapp. She maintains that since she was not aware of this testimony, it was not litigated and could not have been res judicata. Evidently, the alleged testimony occurred during her Civil Service Hearing and would still be res judicata because it was also related to Muse's claims of racial discrimination.

Additionally, Muse fails to meet the high threshold required. She does not allege what the alleged testimony was and/or whether it was material, whether she exercised reasonable diligence, and how the testimony would have changed the result.

**C. Void Judgment**

Muse further argues the state court judgment is void because the Civil Service Commission excluded its subject matter jurisdiction. FRCP Rule 60(b)(4) allows the court to grant a party relief when the judgment is void.

Not only was this issue not alleged by Muse in her complaint<sup>12</sup> and Amended Complaint,<sup>13</sup> but Muse has not provided any evidence or law to support this. This argument will not be considered by this Court.

**D. Fraud**

FRCP Rule 60(b)(3) allows a court to relieve a party from a final judgment when there has been fraud. The moving party has the burden of proving the misconduct by clear and convincing evidence. *Rozier v. Ford Motor Co.*, 573 F.2d 1332, 1339 (5th Cir. 1978). Muse has not met that burden. Her allegations of fraud relate to the state court proceeding, not this proceeding. None of the allegations affect the judgment of this Court.

**E. Other Reasons**

FRCP Rule 60(b)(6) allows the court to relieve a party from a final judgment when there is any other reason that justifies relief. Extraordinary circumstances or hardship are required. *U.S. v. McDonald* 86 F.R.D. 204 (N.D. Ill. 1980). Muse simply reasserts the arguments she previously made and has not provided extraordinary circumstances.

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<sup>12</sup> [Doc. No. 1]

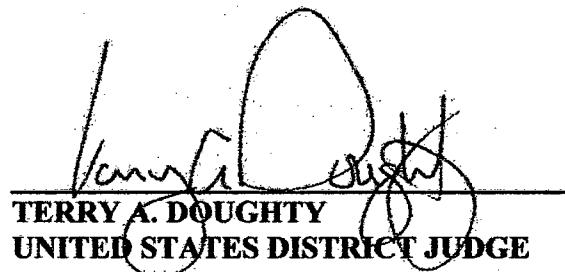
<sup>13</sup> [Doc. No. 24]

**III. CONCLUSION**

For the reasons set forth herein,

**IT IS ORDERED** that Muse's Motion for Reconsideration [Doc. No. 91] is **DENIED**.

MONROE, LOUISIANA this 14<sup>th</sup> day of July 2023.



A handwritten signature in black ink, appearing to read "Terry A. Doughty", is written over a horizontal line. Below the line, the name is typed in a bold, uppercase font.

**TERRY A. DOUGHTY**  
**UNITED STATES DISTRICT JUDGE**

No. \_\_\_\_\_

IN THE

SUPREME COURT OF THE UNITED STATES

Ashley Muse-Petitioner

Vs.

State of Louisiana, Louisiana Department of Public Safety and Corrections, James LeBlanc, in his official capacity as Secretary of the Louisiana Department of Public Safety and Corrections- Respondents

PROOF OF SERVICE

I, Ashley Muse, do swear or declare that on this date February 21<sup>st</sup> 2025, 2025, as required by Supreme Court Rule 29, I have served the enclosed MOTION FOR LEAVE TO PROCEED INFORMA PAUPERIS and PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within 3 calendar days.

The names and address of those served are as follows:

John B. Saye, Special Assistant Attorney General, HAMMONDS, SILLS, ADKINS, GUICE, NOAH & PERKINS, LLP, 1881 Hudson Circle, Monroe, Louisiana 71201

Per 28 U.S. Code §1746, I declare under penalty of perjury that the forgoing is true and correct.

Executed on February 21<sup>st</sup> 2025  
22nd

*Ashley Muse*

RECEIVED	Signature
MAR - 7 2025	
OFFICE OF THE CLERK SUPREME COURT, U.S.	