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G.VV RAO v. COUNTY OF FAIRFAX VIRGINIA, 108 E3D 42 (4TH CIR. 1997).

G.V.V. RAO v. COUNTY OF FAIRFAX VIRGINIA, 108 F.3D 42 (4TH CIR. 1997).

FACTS:

G.V.V. Rao, a county employee in the state of Virginia, appealed to the United States Court of Appeals for the Fourth Circuit following the dismissal of his Title VII discrimination claim in the U.S. District Court for the Eastern District of Virginia.[1] His employment had been terminated by appellee, the County of Fairfax.[2] In response, Mr. Rao chose to pursue a discrimination claim in the Fairfax office of the Equal Employment Opportunity Commission (EEOC).[3] He thereafter settled with the county and continued employment but soon made another discrimination claim against the county in the Fairfax office of the Civil Service Commission (CSC).[4] In 1991, after a full hearing, the CSC ruled that the county had not discriminated against Mr. Rao.[5] In 1993, he once again filed discrimination charges against the county with the EEOC, which subsequently ruled in his favor.[6] Nonetheless, the county refused conciliation and eventually terminated his employment in 1994.[7] As a result, Mr. Rao filed yet another charge of national origin discrimination and retaliation with the EEOC in 1995.[8] The EEOC issued a right to sue letter, and Mr. Rao brought an action in the Eastern District of Virginia.[9] The district court entered summary judgment against him, reasoning that the state CSC's earlier determination of non-discrimination had a preclusive effect on the Title VII discrimination claim in federal court.[10]

HOLDING:

The Fourth Circuit unanimously held that an unreviewed state agency determination was not entitled to preclusive effect in a Title VII case.[11] Therefore, the CSC's dismissal of Mr. Rao's discrimination claims did not preclude him from bringing the same claims in federal court. The CSC's findings and conclusions lacked preclusive effect in federal court even though under Virginia law the CSC's determinations would have preclusive effect in Virginia state courts.[12] The appellate court found that although the unreviewed agency determination might be accorded "substantial weight," it was not intended by Congress to have preclusive effect.[13] However, agency determinations reviewed by a state court, as opposed to an agency, *would* have a preclusive effect on Title VII actions in federal courts. The full faith and credit clause of the Constitution, as included in 28 U.S.C. § 1738, operates on the state court judgments to estop later federal claims.[14] In reaching its conclusions, the Fourth Circuit relied heavily on earlier Supreme Court decisions elucidating virtually identical principles of preclusion.[15]

ANALYSIS/ APPLICATION:

The Fourth Circuit began by reviewing 28 U.S.C. § 1738, which applies the principles of the Full Faith and Credit Clause of the United States Constitution to the federal courts. The specific section relied on by the court provides that "the records and judicial proceedings of any court of any ... state ... shall have the same full faith and credit in every court within the United States ... as they have by law or usage in the courts of such State ... from which they are taken."[16] Put another way, state court findings and conclusions have preclusive effect in federal courts. The Fourth Circuit then relied on *Allen v. McCurry,* a case in which the Supreme Court held that federal courts must give state court judgments preclusive effect when the state from which the judgment came would do so.[17] The importance of the *Allen* decision and section 1738 lies in the fact that they deal with the preclusive effect of *court* judgments, and by implication withhold preclusive effect from *agency* judgments. The Fourth Circuit grounded its opinion in that essential difference. In a footnote the Fourth Circuit stated that the CSC is not a court, because county grievance panels are defined separately from courts in the Virginia Code.[18]

The Fourth Circuit's decision was heavily influenced by two earlier Supreme Court decisions with similar fact patterns. In *Kremer v. Chemical Construction Corporation,* 456 U.S. 461 (1982), petitioner appealed a decision of the Second Circuit. The Second Circuit determined

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[1] *G.V.V. Rao v. County of Fairfax Va.,* 108 F.3d 42, 43 (4th Cir. 1997).

[2] *Rao,* 108 F.3d at 43.

[3] *Id.*

[4] *Id.*

[5] *Id.*

[6] *Id.*

[7] *Id.*

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.* at 45.

[12] *Id.* at 43 n.1.

[13] *Id.* at 45, quoting *University of Tenn. v. Elliott,* 478 U.S. 788, 795 (1986), quoting, 42 U.S.C. § 2000e- 5(b).

[14] *Id.*

[15] *Id. See, Kremer v. Chemical Constr. Corp.,* 456 U.S. 461, 470 n.7 (1982),and *University of Tenn. v. Elliott,* 478 U.S. 788, 795 (1986).

[16] *Id.* quoting 28 U.S.C. § 1738, (emphasis added).

[17] *Id.,* quoting *Allen v. McCurry,* 449 U.S. 90, 96 (1980).

[18] *Id.* at 45-46 n.3.

that petitioner's federal Title VII claim was precluded by a New York state court's review of an earlier state agency determination of non-discrimination. The Supreme Court affirmed the Second Circuit, holding that Section 1783 does indeed apply to Title VII claims, and therefore state agency decisions reviewed by state courts have preclusive effect on claims brought in federal courts.[19] The Court stated that the opposite would hold true if the state agency determination had not been reviewed by a state court, even if state law would hold otherwise.[20] In a footnote, the Kremer Court stated that "since it is settled that decisions by the EEOC do not preclude a trial de novo in federal court, it is clear that unreviewed administrative determinations by state agencies also should not preclude such review even if such a decision were to be afforded preclusive effect in a State's own courts."[21]

In the second case relied on by the Fourth Circuit in Rao, *University of Tennessee v. Elliott,* 478 U.S. 788 (1986), the Court solidified its stance with regard to the preclusive effect of agency decisions. In *Elliott,* a university employee was found not to have been discriminated against after a full state agency hearing similar to the CSC hearing given to Mr. Rao.[22] Prior to the hearing, the employee filed a Title VII claim in the District Court for the Western District of Tennessee.[23] The district court held that the employee's federal court claim was precluded by the administrative law judge's dismissal at the state agency level.[24] Relying on *Kremer,* the Sixth Circuit reversed.[25] It held that the employee was entitled to a trial de novo even if state law would give preclusive effect to the agency determination.[26] The court found the doctrine of res judicata (preclusion) inapplicable to state agency determinations when claimants later brought Title VII claims in federal court.[27] The appellate court then proceeded to extend this nonpreclusion doctrine to other Reconstruction civil rights statutes, including section 1983.[28] The Supreme Court affirmed the Sixth Circuit's determination that unreviewed state agency action does not preclude federal Title VII claims, but reversed the Sixth Circuit's application of this doctrine to Reconstruction civil rights statutes because common law rules of preclusion still applied to those statutes.[29] The Court found that nothing in the Reconstruction statutes hinted at a congressional desire for the common law rules of preclusion to lose their effect.[30] In contrast, Congress expressly stated in Title VII that federal courts should give "substantial weight" to agency determinations in discrimination cases.[31] The Court reasoned that this language would be superfluous if Congress did not intend for those state agency determinations ever to be reviewed by federal courts at all.[32] Therefore, the Court in *Elliott* found that federal courts could review unreviewed state agency decisions in Title VII actions.[33]

The Fourth Circuit in *Rao* concluded its analysis by reviewing the uniform acceptance of *Elliott* by the other circuit courts and by stating "that despite the 'adjudicatory' nature of the CSC hearing, the October 1991 decision remains, at bottom, an unreviewed state administrative determination which is not entitled to any preclusive effect in a Title VII case."[34] Under the circumstances, the Fourth Circuit vacated the granting of summary judgment in favor of the County of Fairfax and remanded the case to the district court for a determination on the merits.[35]

CONCLUSION:

In *Rao,* the Fourth Circuit held that an unreviewed state agency determination does not preclude a Title VII action in federal court.[36] This broad holding contains few restraints. The individual who claims discrimination must bring a Title VII action in the federal court and he or she must not have had an earlier discrimination case in a state court.[37] Any state court determination based on the same episode of discrimination will preclude the federal Title VII action on full faith and credit grounds.[38] The court implied by reference to previous cases that a discrimination action brought under a different civil rights statute will also be precluded by rules of common law preclusion.[39]

The effect of this holding can be stated quite simply. Any party wishing to bring a Title VII claim should file a claim of discrimination at the state agency level. The party should pursue that claim through full administrative channels, including a full hearing. If unsuccessful, the claimant may then bring an action in state court—if review is provided for by statute—or in federal court.

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[19] *Kremer v. Chemical Constr. Corp.,* 456 U.S. 461, 467 (1982).

[20] *Kremer,* 456 U.S at 469.

[21] Id. at 470 n.7.

[22] *University of Tenn. v. Elliott,* 478 U.S. 788, 791 (1986).

[23] *Elliot,* 478 U.S. at 790.

[24] *Id.* at 792.

[25] *Id.*

[26] *Id.* at 793.

[27] *Id.*

[28] *Id.* at 794.

[29] *Id.* at 796-797.

[30] *Id.* at 797.

[31] *Id.* at 795, quoting, 42 U.S.C. § 2000e5(b).

[32] *Id.*

[33] *Id.* at 796.

[34] *Rao,* 108 F.3d at 45.

[35] *Id.* at 46.

[36] *Id.* at 45.

[37] *Id.*

[38] *Id.*

[39] *Id.*

However, the party must remain cognizant of the fact that final agency action will only be reviewed by federal courts if the claim falls under Title VII and if no review on the claim has been completed by a state court. Otherwise, preclusion principles will bar the claim. This holding merely gives a discrimination claimant, in certain instances, a choice between state and federal forums following adverse agency determination.

The Fourth Circuit leaves one essential question unanswered by its decision in Rao. Is there any minimum level of review necessary in the state court in order to trigger preclusion in federal courts? Put another way, would state court review of a minor procedural issue in a particular discrimination claim preclude de novo review on the merits in federal court? Although I think that federal review would still be possible, the opinion in *Rao* does not give a clear answer to this question.

Summary and Analysis Prepared by:
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