

STATE OF FLORIDA  
COMMISSION ON HUMAN RELATIONS

DAYNA R. PREVOST,

EEOC Case No. 15D201200485

Petitioner,

FCHR Case No. 2012-01669

v.

DOAH Case Nos. 13-1641  
12-3964

FLORIDA DEPARTMENT OF CHILDREN  
AND FAMILIES,

FCHR Order No. 13-049

Respondent.

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**FINAL ORDER DISMISSING PETITION FOR  
RELIEF FROM AN UNLAWFUL EMPLOYMENT PRACTICE**

This matter is before the Commission for consideration of the “Order Rejecting Remand from Florida Commission on Human Relations, Relinquishing Jurisdiction and Closing File,” dated May 10, 2013, issued in the above-styled matter by Administrative Law Judge Linzie F. Bogan.

**Findings of Fact and Conclusions of Law**

The Order before the Commission reflects that the matter had come before the Administrative Law Judge on the Commission’s “Order Remanding Case to Administrative Law Judge for Further Proceedings on Petition for Relief,” FCHR Order No. 13-028, dated April 4, 2013.

The Order before the Commission notes that the Commission’s remand order disagrees with the Administrative Law Judge’s conclusion set out in an “Order Closing File and Relinquishing Jurisdiction,” dated January 9, 2013, that the case should be dismissed for lack of jurisdiction due to the operation of the doctrine of collateral estoppel. In the Order currently before the Commission, the Administrative Law Judge concluded that, under the Administrative Procedure Act, the application of the doctrine of collateral estoppel is not a conclusion of law within the substantive jurisdiction of the Commission. Therefore, regardless of the Commission’s disagreement with the Administrative Law Judge’s application of the doctrine of collateral estoppel to this case, the Administrative Law Judge rejected the Commission’s remand order that had directed further proceedings on the Petition for Relief, and the Administrative Law Judge relinquished jurisdiction of the case back to the Commission.

The Administrative Procedure Act states that in reviewing a Recommended Order of an Administrative Law Judge an administrative agency “...may reject or modify conclusions of law over which it has substantive jurisdiction...” Section 120.57(1)(l), Florida Statutes (2012).

Case law suggests that the application of the doctrine of collateral estoppel by an Administrative Law Judge is not a conclusion of law within the “substantive jurisdiction” of an administrative agency. See, Deep Lagoon Boat Club, Ltd. v. Sheridan, 784 So. 2d 1140 (Fla. 2<sup>nd</sup> DCA 2001).

For reasons set out in the Commission’s remand order issued earlier in this case, FCHR Order No. 13-028, we believe that the Administrative Law Judge committed an error of law in applying the doctrine of collateral estoppel to this case.

Nevertheless, case law indicates that it is an appeals court, rather than the administrative agency, that has jurisdiction to correct an error of law of an Administrative Law Judge which is not within the “substantive jurisdiction” of the administrative agency. See, G.E.L. Corporation v. Department of Environmental Protection, et al., 875 So. 2d 1257 (Fla. 5<sup>th</sup> DCA 2004).

#### Exceptions

Neither party filed exceptions to the Administrative Law Judge’s “Order Rejecting Remand from Florida Commission on Human Relations, Relinquishing Jurisdiction and Closing File.”

#### Dismissal

The Petition for Relief and Complaint of Discrimination are DISMISSED with prejudice.

The parties have the right to seek judicial review of this Order. The Commission and the appropriate District Court of Appeal must receive notice of appeal within 30 days of the date this Order is filed with the Clerk of the Commission. Explanation of the right to appeal is found in Section 120.68, Florida Statutes, and in the Florida Rules of Appellate Procedure 9.110.

DONE AND ORDERED this 23rd day of July, 2013.

FOR THE FLORIDA COMMISSION ON HUMAN RELATIONS:

Commissioner Gilbert M. Singer, Panel Chairperson;  
Commissioner Lizzette Romano; and  
Commissioner Mario M. Valle

Filed this 23rd day of July, 2013,  
in Tallahassee, Florida.

\_\_\_\_\_  
/s/  
Violet Crawford, Clerk  
Commission on Human Relations  
2009 Apalachee Parkway, Suite 100  
Tallahassee, FL 32301  
(850) 488-7082

Copies furnished to:

Dayna R. Prevost  
c/o Joseph M. Herbert, Esq.  
2033 Main Street, Suite 600  
Sarasota, FL 34237

Florida Department of Children and Families  
c/o Eugenie G. Rehak, Esq.  
Post Office Box 60085  
Fort Myers, FL 33906

Linzie F. Bogan, Administrative Law Judge, DOAH

James Mallue, Legal Advisor for Commission Panel

I HEREBY CERTIFY that a copy of the foregoing has been mailed to the above listed addressees this 23rd day of July, 2013.

By: \_\_\_\_\_  
/s/  
Clerk of the Commission  
Florida Commission on Human Relations