

ISSUES PREVIOUS LITIGATED AND DECIDED IN FEDERAL COURT ARE BARRED BY COLLATERAL ESTOPPEL FROM BEING RELITIGATED IN STATE COURT.

This case came before the Supreme Court of Arkansas from an interlocutory appeal of an order from the Circuit Court of Prairie County.¹ Graham was a police officer for the Des Arc Police department when he arrested Iris Cawthorn for disorderly conduct and refusal to submit to arrest.² The appellee Cawthorn was convicted of both offenses in district court.³ She appealed both charges to the circuit court, which overturned her conviction for disorderly conduct. Cawthorn also brought suit against Graham in his individual and official capacities in federal district court under 42 U.S.C. § 1983, the Arkansas Constitution, and the American Civil Rights Act.⁴ In her federal suit, Cawthorn alleged that she had been arrested without probable cause and had excessive force used against her; she had been arrested because she exercised her rights to free speech and her right to petition the government; and the constitutional violations were caused by a failure to train, supervise, and have a policy against excessive force implemented and ratified by Des Arc policy makers.⁵

The Arkansas Supreme Court looked at the finding of facts and conclusions of law from the federal district court.⁶ Officer Graham lawfully arrested Cawthorn's son and took him to the sheriff's office for processing.⁷ Cawthorn knew of a pending arrest warrant for her son and was not surprised he was arrested.⁸ Cawthorn went to the police station to check on her son because he had breathing issues that sometimes required an inhaler.⁹ Once Cawthorn arrived at the jail the facts are unclear what exactly occurred, but Graham advised Cawthorn that she needed to leave so he could process her son.¹⁰ As Cawthorn drove away, she met an ambulance headed toward the sheriff's office, so she turned around out of concern that it was summoned for her son.¹¹

When she arrived at the sheriff's office, she asked to speak with Graham again.¹² During this time she became loud, so staff members asked Graham to go speak with her.¹³ While speaking with Graham, Cawthorn became loud and belligerent, distracting other workers in the office.¹⁴ Graham told her that she needed to leave and if she did not end the disturbance she

¹ Graham v. Cawthorn, 2013 Ark. 160, at 1, 427 S.W.3d 34, 36.

² *Id.* at 2, 427 S.W.3d at 37.

³ *Id.*, 427 S.W.3d at 37.

⁴ *Id.* at 9, 427 S.W.3d at 42.

⁵ *Id.* at 2, 427 S.W.3d at 37.

⁶ *Id.* at 2–9, 427 S.W.3d at 37–42.

⁷ Graham at 2, 427 S.W.3d at 37.

⁸ *Id.* at 3, 427 S.W.3d at 37.

⁹ *Id.*, 427 S.W.3d at 37.

¹⁰ *Id.*, 427 S.W.3d at 37.

¹¹ *Id.*, 427 S.W.3d at 37.

¹² *Id.*, 427 S.W.3d at 37–38.

¹³ Graham at 3, 427 S.W.3d at 38.

¹⁴ *Id.* at 4, 427 S.W.3d at 38.

would be arrested.¹⁵ She refused to comply with his request and at this time Graham advised her that she was under arrest.¹⁶

At this point, Graham placed his hands on Cawthorn's hand to make the arrest.¹⁷ She twisted out of his arms and Graham put one arm around her shoulder with one hand on her neck, pinning her against the counter with his body and told her again she was under arrest.¹⁸ He told her that if she did not submit to arrest, that she would be pepper sprayed, a threat that he ultimately did not carry out nor was she ever handcuffed.¹⁹ After she calmed down, she was escorted to a holding area where her son was held.²⁰

At no point did she advise Graham that she was in pain during the arrest nor was she immediately treated for any injuries.²¹ Approximately eight months after the incident, Cawthorn had an MRI on her back and neck, and while she admitted to having pain in the areas before the arrest, she claimed that the arrest made them worse.²² She claimed that she lost income due to the arrests, suffered embarrassment, and that the event worsened her depression.²³ She was convicted of disorderly conduct and refusing to submit to an arrest in state District Court, but on appeal, the Circuit Court overturned her disorderly conduct conviction.²⁴

At the conclusion of the federal action, the federal court found that neither Graham nor the police department violated federal law.²⁵ The federal court found that Graham's use of force did not exceed what was reasonable for the situation.²⁶ Graham acted in an objectively reasonable manner given the circumstances surrounding the arrest.²⁷ The court also found that Cawthorn failed to present sufficient evidence under section 1983 to support her failure to train and supervise claim and that she also failed to prove that Des Arc had a policy or custom of allowing officers to use excessive force while making arrests.²⁸ Additionally, the Court concluded that her section 1983 claim based on the First Amendment failed as well and that Graham did not arrest Cawthorn based on what she was saying, but because her escalating behavior disrupted police work at the sheriff's office.²⁹

After Cawthorn's federal case was dismissed, she brought a virtually identical suit against Graham as an individual and in his official capacity in the Prairie County Circuit Court.³⁰ Graham filed a motion for judgment on the pleadings arguing that the suit was barred by

¹⁵ *Id.*, 427 S.W.3d at 38.

¹⁶ *Id.*, 427 S.W.3d at 38.

¹⁷ *Id.*, 427 S.W.3d at 38.

¹⁸ *Id.* at 3, 427 S.W.3d at 38.

¹⁹ Graham at 4, 427 S.W.3d at 38.

²⁰ *Id.*, 427 S.W.3d at 38.

²¹ *Id.*, 427 S.W.3d at 39.

²² *Id.* at 5, 427 S.W.3d at 39.

²³ *Id.*, 427 S.W.3d at 39.

²⁴ *Id.*, 427 S.W.3d at 39.

²⁵ Graham at 9, 427 S.W.3d at 43.

²⁶ *Id.* at 6, 427 S.W.3d at 39–40.

²⁷ *Id.*, 427 S.W.3d at 40.

²⁸ *Id.*, 427 S.W.3d at 40.

²⁹ *Id.* at 7, 427 S.W.3d at 40–41.

³⁰ *Id.* at 9, 427 S.W.3d at 42.

collateral estoppel and that he was entitled to qualified immunity.³¹ The circuit court denied Graham's motion and he brought the motion to the Arkansas Supreme Court on interlocutory appeal.³²

On appeal, Graham claimed that collateral estoppel bars relitigation of facts and issues already decided in federal court.³³ Alternatively, he argues that his actions are entitled to qualified immunity.³⁴ Cawthorn countered that collateral estoppel does not apply because her state-law claims raise different issues than those decided by federal court and that the legal standard for evaluation of the claims are different.³⁵ In addition, she argued that the actions are not barred by collateral estoppel because the federal court declined to exercise supplemental jurisdiction over her state-law claims.³⁶

To apply collateral estoppel four elements must be available: 1) the issue sought to be precluded must be the same as involved in prior litigation; 2) the issue must have been actually litigated; 3) the issue must have been determined by a valid and final judgment; and 4) the determination must have been essential to the judgment.³⁷ The Court found that, with one exception, the federal court had resolved all of Cawthorn's claims.³⁸

The Court held that the tests the federal court used to determine probable cause and excessive force were the same tests that were used under Arkansas law.³⁹ The Court also found that the claims were actually litigated and were determined by a valid and final judgment, and was therefore barred by collateral estoppel.⁴⁰ Similarly, Cawthorn failed to prove her policy and custom claim in federal court and she did not contend that it would be different under state law; therefore, she is collaterally estopped from raising the issue in state court.⁴¹

The issue of whether Graham violated Cawthorn's right to remonstrate was not resolved by federal court, so she is not barred from raising the issue in state court.⁴² Graham contended that he was entitled to qualified immunity because he acted as a reasonable officer in his position would have acted, given the circumstances.⁴³ Qualified immunity claims and motions for summary judgment are precluded only when the plaintiff "has asserted a constitutional violation, demonstrated the constitutional right is clearly established, and raised a genuine issue of fact as to whether the official would have known that the conduct violated the clearly established right."⁴⁴ The Court held that the clearly established standard was not met in the case because the right to remonstrate, as Cawthorn understood it at the time of arrest, was not clearly

³¹ Graham at 9, 427 S.W.3d at 42.

³² *Id.*, 427 S.W.3d at 42.

³³ *Id.* at 9–10, 427 S.W.3d at 42–43.

³⁴ *Id.* at 10, 427 S.W.3d at 43.

³⁵ *Id.*, 427 S.W.3d at 42–43.

³⁶ *Id.*, 427 S.W.3d at 43.

³⁷ Graham at 10, 427 S.W.3d at 43.

³⁸ *Id.* at 12, 427 S.W.3d at 44.

³⁹ *Id.*, 427 S.W.3d at 44.

⁴⁰ *Id.* at 13, 427 S.W.3d at 44.

⁴¹ *Id.* at 15, 427 S.W.3d at 45.

⁴² *Id.*, 427 S.W.3d at 45.

⁴³ Graham at 15, 427 S.W.3d at 45–46 (relying on ARK. CODE ANN. § 21-9-301).

⁴⁴ *Id.* at 16, 427 S.W.3d at 46. (relying on *Smith v. Brt*, 363 Ark. 126, 211 S.W.3d 485 (2005)).

established.⁴⁵ Lastly, Cawthorn alleged a failure to train and supervise claim against Graham; however, these claims cannot be sustained because they should have been levied against the employer and not the individual.⁴⁶

⁴⁵ *Id.* at 17, 427 S.W.3d at 46.

⁴⁶ *Id.*, 427 S.W.3d at 47.