

DISTRICT COURT, BOULDER COUNTY, COLORADO Court Address: 1777 Sixth Street P.O. Box 4249, Boulder, CO, 80306-4249	DATE FILED: April 29, 2014
Plaintiff(s) FLEET RUSSELL WHITE, JR et al. v. Defendant(s) CITY OF BOULDER et al.	
△ COURT USE ONLY △	
Order: Order Re Defendants Motion To Dismiss For Failure To State A Claim Based On Claim Preclusion Or Issue Preclusion	

The motion/proposed order attached hereto: GRANTED IN PART.

The motion to dismiss is GRANTED except paragraph 21 of the attached order is stricken and the request for attorneys' fees and costs is denied. While the court finds that Plaintiffs' claims are barred under the principles of res judicata and collateral estoppel, the court finds that the claims were not substantially frivolous, groundless and vexatious, or not well grounded in fact or supported by a legal theory based on existing legal principles or a good faith argument for modification of existing law under C.R.C.P. 11(a) and C.R.S. § 13-17-102 (2) & (6) for two main reasons. (1) Plaintiffs' present a different motivation for bringing the instant action (compare Response at ¶ 21, vindication in the 2002 action, with Response at ¶ 21, transparency regarding the actions of then District Attorney Hunter in the 2014 action) and (2) the passage of time coupled with revelations about the JonBenet Ramsey murder investigation.

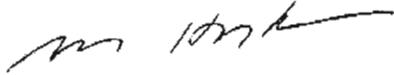
The first is self-evident based on the pleadings.

For the second, the court takes judicial notice that in the intervening twelve years between the Plaintiffs' first action in 2002 and the instant case certain aspects of the JonBenet Ramsey murder investigation have come to light (e.g. the Order in Brennen v. Garnett, 2013 CV 31393 compelling the district attorney to open for inspection portions of grand jury documents filed under seal in the JonBenet Ramsey grand jury proceedings (see http://www.courts.state.co.us/Media/Opinion_Docs/13CV31393%2010-23-13%20Order%20Directing%20Release%20of%20Official%20Action%20of%20Grand%20Jury.pdf) that revealed the grand jury issued a True Bill against John and Patsy Ramsey for Child Abuse Resulting in Death and Accessory to a Crime (see http://www.courts.state.co.us/Media/Opinion_Docs/PRamsey%20Grand%20Jury.pdf) whereafter the district attorney at the time declined to press charges). This new information makes the Plaintiffs' complaint non-frivolous but still barred under the principles of res judicata and collateral estoppel.

The passage of time also means that Plaintiffs' assertion in Response ¶ 22 that they are seeking "relief from defamation caused by publication of Ms. Krebs' false claims and allegations." purportedly made in her May 15, 2000 City of Boulder News Release (Response ¶ 11, Ex. 5) time barred under the one year statute of limitations for libel claims in Colorado, if they were ever viable at all. See C.R.S.A. § 13-80-103.

The Court being fully advised in the premises, hereby GRANTS, Defendants' Motion to Dismiss with prejudice.

Issue Date: 4/29/2014

A handwritten signature in black ink, appearing to read "Andrew Hartman", written in a cursive style.

ANDREW HARTMAN
District Court Judge

DISTRICT COURT, BOULDER COUNTY,
COLORADO
Court Address: 1777 Sixth Street, Boulder, CO 80302

Plaintiffs: FLEET RUSSELL WHITE, JR., an individual; and PRISCILLA BROWN WHITE, an individual

Defendants: CITY OF BOULDER a Colorado home rule municipality; and MARK R. BECKNER, in his official capacity as Chief of the Boulder Police Department and Custodian of records for the Boulder Police Department.

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▲ COURT USE ONLY ▲

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS FOR FAILURE TO STATE A CLAIM BASED ON CLAIM PRECLUSION OR ISSUE PRECLUSION

This matter comes before this Court on the Defendants' Motion to Dismiss. The Court, being fully advised, enters the following:

Findings of Fact

1. The Plaintiffs are witnesses in the investigation of the JonBenet Ramsey homicide.
2. In February 2000, Nancy Krebs made certain public allegations regarding the Plaintiffs' alleged involvement in the homicide.

3. The Boulder Police Department investigated Ms. Krebs' allegations and in May 2000 issued a statement that the investigation found no additional information to support Ms. Krebs' allegations.

4. In 2002, the Plaintiffs sought release of all records relating to the Boulder Police Department's investigation of Ms. Krebs' allegations pursuant to the Colorado Criminal Justice Records Act, C.R.S. § 24-72-301. The Defendants refused to release the records

5. The Plaintiffs sought to compel release of the records by filing a civil action against the Defendants in the Boulder County District Court, *White v. City of Boulder*,

6. On September 12, 2002, the Honorable Lael Montgomery held an evidentiary hearing to consider whether to order Defendants to produce the records.

7. On September 26, 2002, Judge Montgomery ordered Defendants to submit the records for *in camera* review. Judge Montgomery concluded in part as follows:

The Court find an ongoing public interest in protecting the integrity of the underlying investigation however, and based on Chief Beckner's testimony, finds that some of the police interviews in the Krebs matter may harm the ongoing investigation by showing just how much the police do or do not know or by disclosing otherwise unknown witnesses.

The Court therefore orders Respondents to deliver to the Court under seal copies of the documents and evidence pertaining to the Krebs allegations and subsequent investigation for an *in camera* review. Based on that review the Court will determine what, if any, part of the file may be released to Petitioners.

8. On November 3, 2002, Judge Montgomery issued a ruling and order directing release of redacted transcripts of Ms. Krebs' two interviews as well as Detective Tom Trujillo's summary of those interviews. Judge Montgomery did not order the release of any other records. Neither party appealed Judge Montgomery's order.

9. The investigation into the JonBenet Ramsey homicide is open and ongoing.

10. The only records Defendants have that are responsive to the Plaintiffs' request are the records Judge Montgomery reviewed *in camera* in 2002.

Conclusions of Law

11. Issue preclusion and claim preclusion preserve judicial resources by preventing the relitigation of stale claims. *Dave Peterson Elec., Inc. v. Beach Mountain Builders, Inc.*, 167 P.3d 175, 176 (Colo. App. 2007).

12. “Claim preclusion works to preclude relitigation of matters that have already been decided as well as matters that could have been raised in a prior proceeding but were not.” *Argus Real Estate, Inc. v. E-470 Public Highway Authority*, 109 P.3d 604, 608 (Colo. 2005). Claim preclusion bars relitigation of a claim if there is:

- (1) finality of the first judgment;
- (2) identity of subject matter;
- (3) identity of claims for relief; and
- (4) identity of parties to the two actions.

Id. at 607

Claim preclusion serves the dual purpose of protecting litigants from the burden of relitigating the same issue with the same party or his or her privy and of promoting judicial economy by preventing needless litigation. *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326, 99 S.Ct. 645, 649, 58 L.Ed.2d 552 (1979). Claim preclusion bars not only the claims actually litigated in the first proceeding, but also those that could have been litigated. *Lobato v. Taylor*, 70 P.3d 1152, 1165 (Colo. 2003).

Wall v. City of Aurora, 172 P.3d 934, 937 (Colo. App. 2007)

13. Issue preclusion, also known as collateral estoppels, bars relitigation of an issue that is identical to an issue that has been actually litigated and necessarily adjudicated in a prior proceeding, *Stanton v. Schultz*, 222 P.3d 303, 307 (Colo. 2010).

14. Claim or issue preclusion are appropriate grounds for dismissal for failure to state a claim if the elements of the defense are evident from the pleadings, *Bristol Bay Productions, LLC v. Lampack*, 312 P.3d 1155 (Colo. 2013). If the Court considers additional material, it is appropriate to convert the motion to dismiss to a motion for summary judgment

15. The judgment in *White v. City of Boulder*, _____ is final.

16. The instant Complaint and the Complaint in *White v. City of Boulder*, _____ address the same subject matter, that is, the production of the same records.

17. The instant Complaint and the Complaint in *White v. City of Boulder*, _____ seek the same relief, that is, the production of the same records.

18. The instant Complaint and the Complaint in *White v. City of Boulder*, _____ involve the same parties.

19. As Judge Montgomery stated in her September 26, 2002 Ruling and Order, “Respondents have a legitimate interest in preventing disclosure of investigatory files of any open case. It is in

the public interest that disclosure of police investigations be limited for all of the reasons Chief Beckner testified to.”

20. Claim and issue preclusion bar the instant Complaint.

21. Plaintiffs’ claims are substantially frivolous, groundless and vexatious, not well grounded in fact or supported by a legal theory based on existing legal principles or a good faith argument for modification of existing law.

The Court being fully advised in the premises, hereby GRANTS, Defendants’ Motion to Dismiss with prejudice. Under C.R.C.P. 11(a) and C.R.S. § 13-17-102 (2) & (6), the Court awards the Defendants the amount of their reasonable expenses incurred because of the filing of the Complaint, including reasonable attorney's fees.

IT IS SO ORDERED THIS _____ DAY OF _____, 2014.

District Court Judge