FILED
United States Court of Appeals
Tenth Circuit

August 10, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

RYAN ANDERSON,

Plaintiff - Appellant,

v.

JASON W. POLLARD,

Defendant - Appellee.

No. 21-5019
(D.C. No. 4:20-CV-00314-JED-JFJ)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **BACHARACH**, **MURPHY**, and **CARSON**, Circuit Judges.

Appearing pro se, Plaintiff Ryan Anderson alleges Defendant Jason W. Pollard intentionally caused him emotional distress by blocking his communications with a potential lover. This civil action marks Plaintiff's third attempt to hold Defendant liable for emotional distress. The district court, like the two times before, dismissed Plaintiff's complaint for failure to state a claim. Our jurisdiction arises under 28 U.S.C. § 1291. We affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

According to Plaintiff, he was friends with Defendant and Defendant's then-wife ("wife") when, at some point, the couple lost Plaintiff's phone number and communication stopped. Plaintiff and wife tried to reconnect after losing touch, but Defendant repeatedly blocked her attempts and ignored Plaintiff's requests to keep the "communication lines open."

Before filing this lawsuit, Plaintiff sued Defendant two other times on this same set of facts—Anderson v. Pollard, 18-CV-686 (E.D. Va. March 1, 2019) ("Anderson I") and Anderson v. Pollard, 18-CV-582, 2019 WL 10813621, at *1 (N.D. Okla. April 8, 2019) ("Anderson II"). In Anderson I, the United States District Court for the Eastern District of Virginia granted Plaintiff leave to proceed *in forma pauperis* and dismissed Plaintiff's complaint sua sponte as frivolous and for failure to state a claim. In Anderson II, Plaintiff tried again in the Northern District of Oklahoma. That district court allowed Plaintiff's suit to go forward despite Plaintiff filing a photocopy of his complaint from Anderson I. Defendant moved to dismiss for failure to state a claim and the district court granted the motion. Anderson II, 2019 WL 10813621, at *1.

Unassuaged, Plaintiff filed this third suit against Defendant based on the same facts as his prior lawsuits. Plaintiff's hand-written complaint alleges Defendant's actions deprived him of a potential lover, wife, and "child-bearer" and requests damages of seventy-five million dollars, "or more practically," two-and-a-half million dollars. The district court granted Plaintiff leave to proceed *in forma pauperis*, but determined claim preclusion barred his action. As a result, the district

court dismissed for frivolity and failure to state a claim.[1, 2] See 28 U.S.C. § 1915(e)(2)(B).

Section 1915(e)(2)(B) mandates dismissal if the court determines the action or appeal is frivolous, malicious, or fails to state a claim on which relief may be granted. A complaint fails to state a claim when "it is obvious that the plaintiff cannot prevail on the facts he has alleged and it would be futile to give him an opportunity to amend." Perkins v. Kan. Dep't of Corr., 165 F.3d 803, 806 (10th Cir. 1999) (citation omitted). We review the district court's dismissal for failure to state a claim and its ruling on claim preclusion de novo. Perkins, 165 F.3d at 806; Fundamentalist Church of Jesus Christ of Latter-Day Saints v. Horne, 698 F.3d 1295, 1301 (10th Cir. 2012) (citation omitted).

[1] Plaintiff claims the district court erred in four ways. First, the district court erred when it found his suit frivolous and without merit. Second, the district court erred when it held Plaintiff failed to state a claim. Id. Third, the district court erred by "allowing the guilty or liable off the hook improperly." Plaintiff specifies that the district court's dismissal of his case, its failure to send his summons, complaint, request for admissions, and interrogatories to Defendant, and its failure to award money damages, let Defendant "off the hook." Fourth, the district court failed to adequately consider all of Plaintiff's arguments.

[2] Plaintiff also accuses Defendant of perjury in this lawsuit. We agree with the district court that Defendant committed no perjury because he provided no testimony in Anderson II, and in any event, no cause of action for perjury exists under either federal or Oklahoma law. See Cooper v. Parker-Hughey, 894 P.2d 1096, 1100 (Okla. 1995) (concluding "no Oklahoma statute specifically allows a civil cause of action against one who commits perjury"); Morgan v. Graham, 228 F.2d 625, 627 (10th Cir. 1956) ("[A]n unsuccessful litigant who has lost his case because of perjured testimony may not maintain a civil action for damages against the person who commits the perjury.").

An action barred under the doctrine of claim preclusion fails to state a claim for which relief can be granted. See Johnson v. Spencer, 950 F.3d 680, 693–94 (10th Cir. 2020) (affirming district court's dismissal for failure to state a claim on grounds of claim preclusion against the defendant). For claim preclusion to bar an action, three elements must exist: (1) "a [final] judgment on the merits in an earlier action"; (2) the same "identity of parties or privies in the two suits"; and (3) the same "identity of the cause of action in both suits."[3] Id. at 693 (alteration in original) (quoting Lenox MacLaren Surgical Corp. v. Medtronic, Inc., 847 F.3d 1221, 1239 (10th Cir. 2017)).

The district court's decision in Anderson II bars Plaintiff's claim here. First, the district court granted Defendant's motion to dismiss for failure to state a claim.

[3] Although an exception applies for parties resisting claim preclusion if a court denied them a "full and fair opportunity to litigate" their previous action, that exception does not apply here. Johnson, 950 F.3d at 693 (citation omitted). The full and fair opportunity standard applies when a deficiency exists in a prior action "that would undermine the fundamental fairness of the original proceedings." Id. at 709 (internal quotations and citation omitted). Courts typically ask whether "significant procedural limitations [existed] in the prior proceeding, whether the party had the incentive to litigate fully the issue, or whether effective litigation was limited by the nature or relationship of the parties." SIL-FLO, Inc. v. SFHC, Inc., 917 F.2d 1507, 1521 (10th Cir. 1990).

In his previous actions, Plaintiff asserted three counts: (1) lowering quality of life and opportunity loss; (2) money laundering and tax evasion; and (3) intentional emotional abuse. Anderson II, 2019 WL 10813621, at *1. The district court recognized that no private cause of action exists for count two, and Plaintiff failed to satisfy the requirements of counts one and three. Id. at *2–3. Because we see no significant procedural limitations, limitations on effective litigation, or any disincentives to litigate in Plaintiff's prior actions, we conclude the exception does not apply here.

And under Rule 41(b), if a court grants a defendant's motion to dismiss for failure to state a claim, it is a final judgment on the merits. See Stan Lee Media, Inc. v. Walt Disney Co., 774 F.3d 1292, 1298 (10th Cir. 2014) (citation omitted). Second, Plaintiff sued the *same* defendant in both actions. And third, Plaintiff identified the same cause of action—intentional infliction of emotional distress for blocking communications with a potential lover—in both cases.[4] Because claim preclusion bars Plaintiff's action, the district court correctly dismissed his Complaint.

AFFIRMED.

Entered for the Court

Joel M. Carson III
Circuit Judge

[4] Plaintiff admits "his complaint is a 'refiling' of the previous action."