

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

WILLIAM VON FLOWERS,

Plaintiff,

v.

MARIO CANZIANI,

Defendant.

OPINION AND ORDER

04-C-0892-C

This is a civil suit for money damages in which plaintiff alleges violations of his constitutional rights under 42 U.S.C. § 1983. Although this claim was originally filed in the Circuit Court for Dane County, Wisconsin, it was removed to this court in November, 2004. Subsequently, defendant filed a motion to dismiss on two grounds: plaintiff was barred from proceeding in this or any other federal court because of a sanction imposed on him by the Court of Appeals for the Seventh Circuit and plaintiff's claims are barred under the doctrine of res judicata. On December 7, 2004, this court denied defendant's motion to dismiss on the first ground and set briefing on the second ground. Briefing is now complete and the motion is ready for decision.

Defendant contends that the doctrine of res judicata bars plaintiff's claim because plaintiff raised the same allegations in a previous suit, Von Flowers v. Canziani, 02-C-1167 (E.D.Wis).

I conclude that the criteria for applying the doctrine of res judicata are met in this case. First, plaintiff's suit in this court involves the same parties and same cause of action as his prior suit in the Eastern District of Wisconsin. Second, plaintiff's Eastern District suit ended with a judgment on the merits. Therefore, I will grant defendant's motion to dismiss.

As a general rule, the court examines only the allegations in the complaint to determine whether they are sufficient to state a cause of action. General Electric Capital Corp. v. Lease Resolution Corp., 128 F.3d 1074, 1080-81 (7th Cir. 1997). If a district court considers matters outside the pleadings, Rule 12(b) requires the court to treat the motion as one for summary judgment under Fed. R. Civ. P. 56. "The courts, however, have crafted a narrow exception to this rule to permit a district court to take judicial notice of matters of public record without converting a motion for failure to state a claim into a motion for summary judgment." Id.; see also 5A Wright & Miller, Federal Practice and Procedure § 1357 (2d ed. 1990) (noting that exception applies to "matters of public record, orders, items appearing in the record of the case, and exhibits attached to the complaint"). "This exception has allowed courts to avoid unnecessary proceedings when an undisputed fact in the public record establishes that plaintiff cannot satisfy the 12(b)(6) standard." General

Electric, 128 F.3d at 1081.

In this case, defendant supported his motion to dismiss with documents related to plaintiff's previous suit against defendant, Von Flowers v. Canziani, 02-C-1167 (E.D.Wis). These documents are a matter of public record. Therefore, I may consider them in deciding defendant's motion without converting the motion to one for summary judgment.

From the complaint and the public record of plaintiff's previous case, I find the following facts.

FACTS

At the time he filed his complaint in this action, plaintiff William Von Flowers was a patient at the Wisconsin Resource Center. He was involuntarily committed to the facility in accordance with Wis. Stat. Chapter 980. Defendant Mario Canziani was the security director at the Wisconsin Resource Center when plaintiff resided at that institution and continues to hold that position.

In his complaint, plaintiff alleges that defendant violated his civil rights by requiring him to remove his hair braids before traveling to off-site medical and dental appointments. Plaintiff suggests that defendant's policy was unconstitutional for two reasons: it is racist and it subjected him to treatment that should have been reserved for those who entered the institution under criminal sentences.

Two years before he filed this lawsuit, plaintiff brought suit against the same

defendant in the Eastern District of Wisconsin. In Von Flowers v. Canziani, 02-C-1167 (E.D.Wis.), plaintiff contended that defendant was infringing upon his civil rights by requiring him to remove his hair braids before leaving the facility for medical and dental appointments. He cited racism as the reason that the policy should be deemed unconstitutional. Judge Griesbach reviewed cross-motions for summary judgment and ruled in favor of defendant. In dismissing plaintiff's action, Judge Griesbach held:

The defendant's motion will be granted, as it is supported with persuasive affidavits and arguments that fatally undercut the plaintiff's claim (footnote omitted). In short, a requirement that a Chapter 980 patient confined in a secure facility remove his braids is simply not a deprivation of any kind of protected liberty interest. It is not a denial of due process, *see Thielman v. Lekan*, 282 F.3d 478, 484 (7th Cir. 2002), and it certainly does not rise to the level of liberty deprivation protected by the substantive component of the due process clause. While such a requirement could be found unconstitutional under the Equal Protection Clause if it were applied in a discriminatory manner, the undisputed facts are that the rule is applied to all patients in an even-handed manner. And there is no evidence that suggests the defendant acted with discriminatory purpose or intent. *Sims v. Mulcahy*, 902 F.2d 524, 538-39 (7th Cir. 1990).

OPINION

The doctrine of res judicata prohibits parties from relitigating issues that were decided in a previous lawsuit, as well as any issues that could have been raised in the

previous lawsuit. Brzostowski v. Laidlaw Waste Systems, Inc., 49 F.3d 337, 338 (7th Cir. 1995). In determining whether to apply the doctrine of res judicata, a court must consider three questions: whether the plaintiff's complaint involves the same parties as a prior suit filed by the plaintiff; whether the plaintiff's complaint involves the same cause of action as a prior suit filed by him; and whether the plaintiff's prior suit ended with a judgment on the merits. Id. A court may apply the doctrine only if it can answer all three questions affirmatively. Id.

Plaintiff's complaint clearly involves the same parties as plaintiff's previous complaint. In this suit and in Von Flowers v. Canziani, 02-C-11167 (E.D.Wis.), Von Flowers was the sole plaintiff and Mario Canziani was the sole defendant.

In addition, plaintiff's complaint in this case involves the same cause of action as his previous complaint. In both complaints, plaintiff challenges the Wisconsin Resource Center's policy requiring residents to remove hair braids before being escorted to off-site medical and dental appointments. Although plaintiff's complaint in this court adds a fresh reason why defendant's policy violated his civil rights, namely, that it subjected him to treatment which should have been reserved for criminal inmates, the "core of operative facts" remains the same in both suits. See Brzostowski, 49 F.3d at 338-39. Both suits center on the Wisconsin Resource Center's policy not to allow plaintiff to attend appointments

because he refused to undo his hair braids. Plaintiff could have raised his current claim of improper treatment of civilly committed inmates in his earlier suit. See Walsh Construction Co. of Ill. v. National Union Fire Insurance Co. of Pittsburgh, 153 F.3d 830, 832 (7th Cir. 1998) (“[C]laim preclusion applies to issues that were actually decided or could have been decided in the original suit”).

Finally, plaintiff’s previous suit concluded with a judgment on the merits, although plaintiff refuses to recognize it as such. Instead he argues that it ended with a grant of summary judgment, and summary judgment orders do not constitute judgments on the merits. This is simply not the case. A grant of summary judgment is a judgment “on the merits” and serves to preclude future identical claims. See, e.g., Spiegel v. Continental Ill. Nat. Bank, 790 F.2d 638, 645 (7th Cir. 1986).

Because defendant has shown that the previous judgment against plaintiff meets the three criteria for imposing a res judicata bar in this case, I will grant his motion to dismiss.

ORDER

IT IS ORDERED that defendant Mario Canziani's motion to dismiss plaintiff's 28 U.S.C. § 1983 claim is GRANTED on the ground that it is barred under the doctrine of res judicata. The clerk of court is directed to enter judgment in favor of defendant and close this case.

Entered this 7th day of February, 2005.

BY THE COURT:

BARBARA B. CRABB
District Judge