

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

RUFUS WEST,

Plaintiff,

v.

MEMORANDUM and ORDER
06-C-037-S

JON LITSCHER, CINDY O'DONNELL, SANDY
HAUTAMAKI, JOHN RAY, KELLY COON, ELLEN
RAY, CHRISTINE BEERKIRCHER, SHARON
ZUNKER, GERALD BERGE, PETER HUIBREGTSE,
GARY BOUGHTON, NANCY SALMON, BRAD HOMPE,
JOHN SHARPE, GARY MAIER, TWILA HAGAN, MERWIN,
COLLETTE CULLEN, CHRISTINE APPLE, JENI BONDLE,
NATALIE WILMOT, TODD EVERS, DANIEL LEFFELER,
MICHAEL SNOTGRASS, JEFFREY STOLESON, MARK
CARPENTER, JOHN MURRAY, DARYL FLANNERY, JOHN
DUSSMAUL, DARREN MILLER, TIMOTHY MASON, JEFFREY
HOFFMAN, CRAIG TOM, LISA KRACHEY, SGT. GEBHART,
JAMES KRUEGER, HENRY BRAY, SUZANNE BRAY, STEVE ECK,
NICHOLAS FURER, PATRICK HILGER, CHAD LOMEN, THOMAS
BELZ, MATHEW SCULLION, JOEY YANSKE, ROBERT SHANNON,
DANE ESSER, PHILLIP FRIEDRICH, KEITH WEIGEL, C.O.
SCHECKEL, GARY WETTER, JOANNE GROVIER, ERIC HUNT,
MICHAEL SHERMAN, RUSSELL BAUSCH, TODD BAHLMAN, JAMES
REID, JANE HEIN, PHILLIP HENNEMAN, THOMAS BROWN, SHAWN
GALLINGER, REED TREFZ, MARY [DAWSON] UPDIKE, RANDY
WILLIAMS, JOHN HACKETT, JUSTIN MCLIMONS, WENDY CHRIST,
JOSHUA BROWN, SANDRA GRONDIN, TIMOTHY JONES, C.O. HEISZ,
STEVEN CLEVEN, DOUGLAS STOWALL, JOSEPH BOLAND, C.O.
BEARCE, BRADLEY ASSPERSON, DAVID EWING, C.O. MCNALLIS,
THOMAS KOENIG, C.O. SCHIETER, RANDY STARKEY, C.O. RUETTER,
JOSEPH WHITAKER, GREGORY SCHAEFER, C.O. ROHNER, MICHAEL
SLANEY, RICHARD SCHNEIDER, MARY TAYLOR, L. BROWN, SHARON
PETERSON, JOLENE MILLIN, PATTY BOEBEL, RENAE WALTZ, PAMELA
BARTELS, PAT [REID] HARVILLE, RUTH COPSEY, KATIE MCQUILLAN,
JEANE HARLE, KEN LANGE, SHIRLY OLSON, RONALD REIMER, LOIS
RUSTAD, YASMIN YUSUF SAFAVI, GERT HASSELHOFF, C.O. TRUMM,
C.O. WINGER, C.O. REITTER, C.O. HANEY, SUE WATERS, BRENT
BROWN, C.O. GILARD and WISCONSIN DEPARTMENT OF CORRECTIONS,

Defendants.

The above entitled case was removed to this Court from state court on January 26, 2006. Defendants move to dismiss plaintiff's complaint on the basis of res judicata. This motion has been fully briefed and is ready for decision.

Plaintiff has moved to remand this case to state court and for substitution of judge. Since plaintiff is pursuing both federal and state law claims his motion to transfer his state law claims back to state court will be denied. This Court is not biased against plaintiff and will not recuse himself. 28 U.S.C. §144 and §455.

Defendants argue that this case should be dismissed because both plaintiff's state and federal law claims are barred by the doctrine of res judicata. Res judicata bars a claim where there was: 1) judgment on the merits in an earlier action; (2) identity of parties or privies in the two suits and 3) identity of the cause of action between both suits. Brzostowski v. Laidlaw Waste Sys. Inc., 49 F.3d 337, 338 (7th Cir. 1995).

Plaintiff's previous case, West v. Litscher et al., 04-C-237-S, was dismissed with prejudice because plaintiff failed to comply with this Court's order requiring him to provide signed medical authorizations to the defendants. This is an adjudication on the merits. LeBeau v. Taco Bell, Inc., 892 F.2d 605, 607 (7th Cir. 1989).

All but 13 of the 112 named defendants were named in the previous law suit and all defendants were Department of Corrections employees. A state agency and its employees are in privity. See Northern Sates Power Company v. Bugher, 189 Wis. 2d 541, 552, 525 N.W. 2d 723 (1995). Accordingly, there is identity of the parties or privies in the two suits.

The operative facts in both cases are identical, the deprivation of food and medications for failure of the plaintiff to follow institution policies and procedures. Res judicata extends to all grounds for recovery that might have been presented in prior litigation if based on the same set of operative facts. Licari v. City of Chicago, 298 F.3d 664, 667 (7th Cir. 2002).

Both plaintiff's state and federal law claims are barred by the doctrine of res judicata. Accordingly, defendants' motion to dismiss will be granted and this action will be dismissed with prejudice.

Plaintiff is advised that in any future proceedings in this matter he must offer argument not cumulative of that already provided to undermine this Court's conclusion that his claim must be dismissed. See Newlin v. Helman, 123 F.3d 429, 433 (7th Cir. 1997).

ORDER

IT IS ORDERED that plaintiff's motion for substitution of judge is DENIED.

West v. Litscher, et al., 06-C-37-S

IT IS FURTHER ORDERED that plaintiff's motion to remand his state law claims is DENIED.

IT IS FURTHER ORDERED that defendants' motion to dismiss plaintiff's complaint and all claims contained therein on the grounds of res judicata is GRANTED.

IT IS FURTHER ORDERED that judgment be entered in favor of defendants against plaintiff DISMISSING his complaint and all claims contained therein with prejudice and costs.

Entered this 1st day of March, 2006.

BY THE COURT:

S/

JOHN C. SHABAZ
District Judge