

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Wallin v. Dycus

420 F. App'x 787 (10th Cir. 2010) · No. 10-1242 · Decided December 2, 2010

SUMMARY

The Tenth Circuit affirmed the dismissal of Oloyea D. Wallin’s second 42 U.S.C. § 1983 action against correctional officials on claim-preclusion grounds. The court held that the prior action was decided on the merits, involved the same parties and cause of action, and afforded Wallin a full and fair opportunity to litigate; it also denied his motion to proceed in forma pauperis.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Murphy; Gorsuch; Holmes
JURISDICTION	Federal
DECIDED	December 2, 2010
DOCKET	10-1242
DISPOSITION	affirmed
PROCEDURAL POSTURE	Wallin appealed the district court's dismissal of his second 42 U.S.C. § 1983 action on claim-preclusion grounds.
STANDARD OF REVIEW	De novo review of the application of claim-preclusion principles.
PRECEDENTIAL VALUE	Unpublished and nonprecedential; persuasive value only, subject to stated exceptions.
PARTIES	Oloyea D. Wallin v. F. Dycus, Mr. Gilbert, Mr. Domenico, Ms. Traub

TOPICS

- res judicata
- section 1983
- appellate procedure
- standard of review
- civil procedure

PRACTICE AREAS

- Civil procedure
- Civil rights
- Appellate procedure

QUESTIONS PRESENTED

1. Whether Wallin's second § 1983 action was barred by claim preclusion.

2. Whether Wallin had a full and fair opportunity to litigate the claims in his first action.
3. Whether the two actions arose from the same cause of action under the transactional approach.

HOLDINGS

1. The second action was barred by claim preclusion because the prior action ended in a judgment on the merits, involved the same parties or privies, arose from the same cause of action, and afforded Wallin a full and fair opportunity to litigate.
2. The two lawsuits involved the same cause of action because they arose from the same facts and therefore from the same transaction, event, or occurrence.
3. Wallin had a full and fair opportunity to litigate the claims in the first action.

KEY QUOTATIONS

“Claim preclusion bars a lawsuit when four elements are present: (1) a prior suit ended with a judgment on the merits; (2) the parties in both suits are identical or in privity; (3) the second suit is based on the same cause of action as the first; and (4) the plaintiff had a full and fair opportunity to litigate the claim in the prior suit.”

“In short, we affirm the district court’s order dismissing Mr. Wallin’s second lawsuit on claim preclusion grounds for substantially the same reasons the district court gave in its thoughtful opinion.”

FACTUAL BACKGROUND

Wallin, an inmate at Colorado's Kit Carson Correctional Center, filed two § 1983 actions concerning his treatment there. He admitted that the facts underlying both actions were the same, and the record showed that he had an opportunity to shape and amend his first lawsuit and otherwise litigate the claims.

PROCEDURAL HISTORY

Wallin, a prisoner, filed two § 1983 actions concerning his treatment at Kit Carson Correctional Center. The first action ended in summary judgment against him, which the Tenth Circuit affirmed. The district court then dismissed the second action as barred by claim preclusion, and Wallin appealed. The Tenth Circuit affirmed and denied his motion to proceed in forma pauperis.

DISPOSITION

affirmed

CASES CITED

- Wallin v. Dycus, 2009 WL 2490127, at *8 (D. Colo. Aug. 13, 2009)
- Wallin v. Dycus, 381 F. App'x 819, 825 (10th Cir. 2010)
- Plotner v. AT&T Corp., 224 F.3d 1161, 1168 (10th Cir. 2000)
- Plotner v. AT&T Corp., 224 F.3d 1161, 1169 (10th Cir. 2000)

OPINION

GORSUCH, J.

FILED United States Court of Appeals Tenth Circuit December 2, 2010 UNITED STATES COURT OF APPEALS Elisabeth A. Shumaker Clerk of Court TENTH CIRCUIT OLOYEA D. WALLIN, Plaintiff-Appellant, v. No. 10-1242 (D.C. No. 07-CV-00318-WDM) F. DYCUS, MR. GILBERT, MR. (D. Colo.) DOMENICO, MS. TRAUB, Defendants-Appellees. ORDER AND JUDGMENT * Before MURPHY, GORSUCH, and HOLMES, Circuit Judges.

Oloyea D. Wallin, a prisoner at Colorado's Kit Carson Correctional Center, filed two actions under 42 U.S.C. § 1983 concerning his treatment there. The first action ended when the district court granted summary judgment against Mr. Wallin, see *Wallin v. Dycus*, 2009 WL 2490127 at *8 (D. Colo. Aug. 13, 2009), and we affirmed that decision, see *Wallin v. Dycus*, 381 F. App'x 819, 825 (10th Cir.

2010). After granting summary judgment in the first case, the district court * After examining appellant's brief and the appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2) and 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. raised the possibility that Mr. Wallin's second case was barred by the doctrine of claim preclusion (i.e., *res judicata*).

Eventually, the district court concluded that the second case was indeed so precluded and entered judgment on this basis, a ruling that led to this appeal. After an independent review of the record, we conclude the district court was correct in holding Mr. Wallin's second case is barred by claim preclusion. Claim preclusion bars a lawsuit when four elements are present: (1) a prior suit ended with a judgment on the merits; (2) the parties in both suits are identical or in privity; (3) the second suit is based on the same cause of action as the first; and (4) the plaintiff had a full and fair opportunity to litigate the claim in the prior suit.

Plotner v. AT&T Corp., 224 F.3d 1161, 1168 (10th Cir. 2000). On appeal, we review *de novo* the application of these principles. *Id.* Even giving Mr. Wallin's *pro se* filings before us the solicitous consideration they are due, he appears to contest only the third and fourth claim preclusion elements.

On the third element, however, Mr. Wallin admits "the facts of both actions are the same," *Aplt. Opening Brief* at 3, and our independent review confirms that there can be no doubt his lawsuits are both based on the same cause of action. See *Plotner*, 224 F.3d at 1169 (explaining the Tenth

Circuit has adopted the Restatement (Second) of Judgment's transactional approach to defining "cause of action" and thus bars "all claims or legal theories of recovery that arise from the same transaction, event, or occurrence").

On the fourth -2- element, Mr. Wallin complains he lacked a full and fair opportunity to litigate certain of his claims in his first lawsuit. Like the district court, we cannot agree. The record shows that Mr. Wallin had ample opportunity to shape his first lawsuit, including the opportunity (which he exercised) to amend his complaint.

In short, we affirm the district court's order dismissing Mr. Wallin's second lawsuit on claim preclusion grounds for substantially the same reasons the district court gave in its thoughtful opinion. Mr. Wallin's motion to proceed on appeal in forma pauperis is denied. ** ENTERED FOR THE COURT Neil M. Gorsuch Circuit Judge ** Mr. Wallin was initially allowed by the clerk's office to file this appeal without prepayment of the filing fee only because he filed the appeal before his third strike for purposes of 28 U.S.C. § 1915 became effective.

Given our denial of ifp status in this order, however, Mr. Wallin remains liable for payment of the filing fee. -3-