

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Cyrus French Wicker v. Board of Public Instruction of Dade County,
Florida

288 F.2d 297 (5th Cir. 1961) · No. No. 18602 · Decided May 11, 1961

SUMMARY

The Fifth Circuit affirmed a district court judgment for the Board of Public Instruction of Dade County, Florida, concluding that the appellant's claim concerning an alleged 1928 land-purchase resolution was barred by res judicata. The court relied on its prior decision holding that there was no legal or equitable basis for the suit.

CASE DETAILS

COURT	United States Court of Appeals for the Fifth Circuit
WRITING FOR THE COURT	JONES, Circuit Judge; BROWN, Circuit Judge; CONNALLY, District Judge
JURISDICTION	Federal
DECIDED	May 11, 1961
DOCKET	No. 18602
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from a district court judgment for the Board of Public Instruction of Dade County, Florida, in an equity action concerning an alleged purchase of land. The Fifth Circuit treated the action as barred by res judicata based on prior litigation between the parties.
PRECEDENTIAL VALUE	Published federal appellate decision
PARTIES	Cyrus French Wicker v. Board of Public Instruction of Dade County, Florida

TOPICS

- res judicata
- appellate procedure
- civil procedure
- real estate
- municipal law

PRACTICE AREAS

- Civil procedure
- Appellate practice
- Real property
- Municipal law

QUESTIONS PRESENTED

1. Whether the present equity action was barred by res judicata because the same parties had previously litigated the same claim and the Fifth Circuit had already determined that the action had no basis in law or equity.

HOLDINGS

1. The prior judgment barred the present action under res judicata, requiring affirmance of the district court's judgment for the Board of Public Instruction.

KEY QUOTATIONS

“Res judicata requires that the judgment of the district court for the appellee be Affirmed.” (288 F.2d at 297)

FACTUAL BACKGROUND

Wicker's equity action was based on a May 9, 1928, purchase resolution adopted by the Board of Public Instruction of Dade County, Florida. The resolution allegedly authorized the purchase, for \$40,000, of 6 1/2 acres of land in Miami, Florida. Wicker presented the same underlying claim and theory in an earlier appeal to the Fifth Circuit.

PROCEDURAL HISTORY

The parties had previously litigated the matter in the Supreme Court of Florida and in the Fifth Circuit. In the prior federal appeal, the court held that there was no basis in law or equity for Wicker's suit. Wicker presented the same formulation of his case in the present appeal, and the court affirmed the district court judgment for the appellee on res judicata grounds.

DISPOSITION

affirmed

CASES CITED

- Wicker v. Board of Public Instruction, 156 Fla. 7, 22 So. 2d 255
- Wicker v. Board of Public Instruction, 159 Fla. 430, 31 So. 2d 635
- Wicker v. Board of Public Instruction, 182 F.2d 764 (5th Cir. 1950)

OPINION

PER CURIAM.

288 F.2d 297 Cyrus French WICKERv.BOARD OF PUBLIC INSTRUCTION OF DADE COUNTY, FLORIDA. No. 18602. United States Court of Appeals Fifth Circuit. March 30, 1961, Rehearing Denied May 11, 1961. Cyrus French Wicker, Miami, Fla., for appellant. Daniel S.

Pearson, George C. Bolles, Edward F. Boardman, Boardman, Bolles & Prunty, Miami, Fla., for appellee.

Before JONES and BROWN, Circuit Judges, and CONNALLY, District Judge. PER CURIAM. 1 The parties to this appeal have been before the Supreme Court of Florida on two occasions¹ and they have previously appeared here.² 2 In his brief the appellant thus states his case: 3 'This suit is an action in equity based upon an admitted purchase resolution of the Board of Public Instruction of Dade County, Florida, adopted and spread upon the Minutes at its regular meeting on May 9, 1928, for the sum of \$40,000.00 therein named as the purchase price for 6 1/2 acres of land situated in the City of Miami, Dade County, Florida * * *' 4 In the same language he stated his case in his prior appeal to this court.

In the decision there it was said that there was no basis in law or in equity for the appellant's suit. Res judicata requires that the judgment of the district court for the appellee be 5 Affirmed. 1 Wicker v. Board of Public Instruction, 156 Fla. 7, 22 So.2d 255; Wicker v. Board of Public Instruction, 159 Fla. 430, 31 So.2d 635 2 Wicker v. Board of Public Instruction, 5 Cir., 1950, 182 F.2d 764