Appendix A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-2341

Myron Hubbard

Appellant

v.

Missouri Department of Mental Health

Appellee

Appeal from U.S. District Court for the Western District of Missouri – Jefferson City
(2:18-cv-04201-NKL)

ORDER

The petition for rehearing en banc is denied. The petition for rehearing by the panel is also denied.

December 18, 2019

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appellate Case: 19-2341 Page: 1 Date Filed: 12/18/2019 Entry ID: 4863221

Appendix A

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 19-2341

Myron Hubbard

Appellant

v.

Missouri Department of Mental Health

Appellee

Appeal from U.S. District Court for the Western District of Missouri – Jefferson City
(2:18-cv-04201-NKL)

JUDGMENT

Before LOKEN, KELLY, and STRAS, Circuit Judges

Appellant's motion to file an overlength brief is denied.

This court has reviewed the original file of the United States District Court. It is ordered by the court that the judgment of the district court is summarily affirmed. See Eighth Circuit Rule 47A(a).

October 24, 2019

Order Entered at the Direction of the Court:

Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

Appendix B

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

MYRON HUBBARD,	)	
Plaintiff,	)	
	)	
v.	)	No. 2:18-cv-04201-NKL
	)	
MISSOURI DEPARTMENT	)	
OF MENTAL HEALTH,	)	
	)	
Defendant.	)	

ORDER

Pending before the Court is defendant Missouri Department of Mental Health's motion to dismiss, Doc. 10. For the following reasons, the Department's motion is granted.

I. Introduction

Plaintiff Myron Hubbard worked as a psychiatric nurse for the Missouri Department of Mental Health until he was denied leave and constructively discharged in 2008. Mr. Hubbard brought Title VII discrimination and Family Medical Leave Act claims against the Department and others pertaining to his discharge. See generally Hubbard

Appendix B

v. St. Louis Psychiatric Rehab. Ctr., No. 11-2082, 2013 WL 4052908 (E.D. Mo. Aug. 12, 2013) (Hubbard I). Following the dismissal of his Complaint with prejudice in Hubbard I, Mr. Hubbard brought another suit against the Department, this time alleging violation of Title VI for the same conduct. His complaint was dismissed with prejudice based on res judicata. See generally Hubbard v. Missouri Dep't of Mental Health, No. 15-722, 2016 WL 593585 (E.D. Mo. Feb. 12, 2016) (Hubbard II).

Mr. Hubbard is currently a temporary hourly employee for the South Carolina Department of Mental Health. Mr. Hubbard, proceeding pro se, now alleges that the Missouri Department of Mental Health 1) committed fraud on the court in Hubbard I and II by misrepresenting whether it

Appendix B

receives federal funds for the purpose of providing employment, resulting in a denial of Mr. Hubbard's due process rights, and 2) violated Title VI, and continues to violate Title VI through the Missouri Attorney General's Office and the South Carolina Department of Mental Health's retaliatory acts against him. The Department argues that Mr. Hubbard has failed to state a claim

upon which relief can be granted because 1) his claims are barred by res judicata, and 2) Hubbard has not pled new facts sufficient to find the Department liable under Title VI. 1 Doc. 11 (Suggestions in Support).

II. Discussion

"To survive a motion to dismiss under Rule 12(b)(6), 'a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face.'"2 Kelly v.

City of Omaha, 813 F.3d 1070, 1075 (8th Cir. 2016) (citation omitted). "[A] court should construe the complaint liberally in the light most favorable to the plaintiff," Eckert v. Titan Tire Corp., 514 F.3d 801, 806 (8th Cir. 2008), and "grant[] all reasonable inferences in favor of the plaintiff." Crooks v. Lynch, 557 F.3d 846, 848 (8th Cir.2009). Further, "pro se litigants are held to a lesser pleading standard than other parties," Topchian v. JPMorgan Chase Bank, N.A., 760 F.3d 843, 849 (8th Cir. 2014), meaning that when "the essence of an allegation is discernible, [the court construes] the complaint in a way that permits the layperson's claim to be considered within the proper legal framework."

Stone v. Harry, 364 F.3d 912, 915 (8th Cir. 2004). Dismissal is required, however, when "the allegations show on the face of the complaint there is some insuperable bar to relief." Benton v. Merrill Lynch & Co., 524 F.3d 866, 870 (8th Cir. 2008).

---

1 Because the Court finds these grounds sufficient, the Missouri Department of Mental Health's other proffered grounds for dismissal are not addressed.

2 The Department cites Mo. Sup. Ct. R. 55.27(6) as the basis for its motion to dismiss. The Court applies Fed. R. Civ. P. 12(b)(6), the federal equivalent of the Missouri state rule.

Appendix B

The Department first argues that Mr. Hubbard's fraud and Title VI claims are barred by res judicata. Res judicata prevents re-litigation of a claim when "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties . . . ; and (4) both suits are based upon the same claims or causes of action." Elbert v. Carter, 903 F.3d 779, 782 (8th Cir. 2018) (citation omitted). "[W]hether two claims are the same . . . depends on whether the claims arise out of the same nucleus of operative fact or are based upon the same factual predicate." Murphy v. Jones, 877 F.2d 682, 684-85 (8th Cir. 1989).

Mr. Hubbard has twice brought complaints against the Missouri Department of Mental Health. Both prior complaints have been dismissed with prejudice, which amounts to judgement on the merits.3 Jaramillo v. Burkhart, 59 F.3d 78, 79 (8th Cir. 1995) ("[D]ismissal with prejudice operates as a rejection of the plaintiff's claims on the merits and res judicata precludes further litigation."). Neither party contests that jurisdiction in Hubbard I and II was proper. Mr. Hubbard, however, argues that res judicata does not apply because 1) the Department's fraud on the court continued in Hubbard II and 2) one of his claims is based on facts that occurred either during or after the last trial.

In Hubbard II, Mr. Hubbard argued that his Title VI claim should not be barred by Hubbard I because the Department fraudulently concealed the fact it received federal funds. Hubbard II, 2016 WL 593585, at ** 3–4. He makes the same allegations

here, but this time, based on statements the Department made during Hubbard II. Specifically, Mr. Hubbard points to the

---

3 Although Mr. Hubbard argues that premature dismissal in his prior cases resulted in a denial of due process, Mr. Hubbard was given the opportunity to be heard when he was afforded leave to amend his complaint multiple times and respond to the multiple motions to dismiss filed in Hubbard I. See Hubbard I, 2013 WL 4052908, at ** 1–2; Hubbard v. St. Louis Psychiatric Rehab. Ctr., 556 F. App'x 547, 548 (8th Cir. 2014) (affirming denial of leave to file fifth amended complaint given the prior opportunities Mr. Hubbard had to amend).

Appendix B

Department's statement in its motion to dismiss—that Hubbard "has not alleged, nor can he allege, that any federal funds received by the Defendants were designed to provide employment"—as evidence that the Department denied receiving federal funds. Doc. 12 (Suggestions in Opposition), ¶ 35. Mr. Hubbard asserts that the Department did receive funds designed to provide employment through the American Recovery and Reinvestment Act of 2009, the Nurse Loan Repayment Program, Disproportionate Share Hospital payments, and Missouri General Revenue Funds. Therefore, according to Mr. Hubbard, the Department's prior statement was a misrepresentation to the Hubbard II court.

First, the pages of explanation devoted to Mr. Hubbard's argument regarding the fraud exception to the res judicata doctrine in Hubbard II illustrate that his fraud claim is itself barred by res judicata. See Hubbard II, 2016 WL 593585, at ** 3–4. Although his fraud allegations differ to the extent his claim now addresses the Department's statements in Hubbard II rather than Hubbard I, "[t]he gravamen of both [actions] was the alleged concealment from the [Eastern District] court of the [Department's funding status]." Landscape Prop., Inc. v. Whisenhunt, 127 F.3d 678, 683 (8th Cir. 1997). Therefore, Mr. Hubbard's allegations regarding fraud have already been adjudicated and are barred by res judicata.

Second, Mr. Hubbard's allegations of fraud do not save the portion of his Title VI claim that has already been litigated for the same reasons stated in

Hubbard II. See Hubbard II, 2016 WL 593585, at ** 3–4 (discussing the fraud exception). Even assuming that the Department received federal funds for the purpose of providing employment, the Department's statement in its motion to dismiss did not constitute fraud. As the Hubbard II court explained, "newly discovered evidence does not preclude the application of res judicata unless the evidence . . . could not have been discovered with due diligence." Id. at * 3 (quoting Saabirah El v. City of New York, 300 Fed.

Appendix B

App'x 103, 104 (2nd Cir. 2008)). Since Mr. Hubbard conceded that he discovered the Department's funding status on his own, the fraud exception to the res judicata doctrine does not apply. Accordingly, Mr. Hubbard's Title VI claim, to the extent it is based on his termination in 2008 and application for employment in 2010, fails because these claims have already been adjudicated. See Doc. 1-2, pp. 151–211 (Petition); Hubbard I, 2013 WL 4052908, at * 1; Hubbard II, 2016 WL 593585, at ** 1–2.

Mr. Hubbard argues that res judicata does not apply to his Title VI claim for retaliation, however, because the alleged conduct occurred after both Hubbard I and II. The Department argues that Mr. Hubbard's new allegations do not state a claim against the Department because he only pleads discriminatory acts committed by others.

Title VI provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." 42 U.S.C. § 2000d. In addition to pleading "Federal financial assistance," Valentine v. Smith, 654 F.2d 503, 512 (8th Cir. 1981), a Title VI retaliation claim requires a showing "(1) that [Hubbard] engaged in protected activity; (2) that [the defendant] took a material adverse employment action against [him], and (3) that a causal connection existed between the protected activity and the adverse action." Peters v. Jenney, 327 F.3d 307, 320 (4th Cir. 2003).

With respect to the second element, Mr.

Hubbard asserts that 1) the Missouri Department of Mental Health's attorney, the Missouri Attorney General's Office, retaliated against him by misrepresenting his income and falsifying certificates of service in a child support matter, and 2) his current employer, the South Carolina Department of Mental Health, retaliated against him by assisting the Missouri Attorney General in submitting false evidence in the child support matter

Appendix B

and discriminating against him during the course of his employment in South Carolina. Doc. 1-2, pp. 142–51 (Petition).

Even taking these statements as true, Mr. Hubbard has not shown that the defendant took material adverse employment action against him, nor has Mr. Hubbard provided any basis for imputing the actions of the Attorney General or the South Carolina Department of Mental Health to the Missouri Department of Mental Health.4 In other words, he has failed to show that the defendant in this case, as opposed to someone else, took material adverse employment action against him. For this reason, Mr. Hubbard has failed to state a claim for retaliation.

III. Conclusion

For the foregoing reasons, the Department of Mental Health's motion to dismiss, Doc. 10, is granted. Mr. Hubbard's claims against the Missouri Department of Mental Health are dismissed with prejudice.

s/ NANETTE K. LAUGHREY
NANETTE K. LAUGHREY
United States District Judge

Dated: December 19, 2018

Appendix B

4 In arguing fraud on the court, Mr. Hubbard asserts that the Department "gave complete authority to their attorney to act on their behalf" and that "the Defendants benefitted from the acts of their attorney." Doc. 1-2, p. 91 (Petition). "'[A] plaintiff's obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions[.]'" Benton, 524 F.3d at 870 (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555 (2007)). Thus, even if Mr. Hubbard intends to argue that the Attorney General was acting on behalf of the Department of Mental Health during the child support proceeding, Mr. Hubbard's conclusory statements are insufficient.

Appendix B

Appendix C

United States Court of Appeals
For the Eighth Circuit

No. 16-1507

Myron Hubbard
Plaintiff - Appellant
v.
Missouri Department of Mental Health;
St.Louis Psychiatric Rehabilitation Center;
Metropolitan St. Louis Psychiatric Center
Defendants – Appellees

Appeal from United States District Court for the Eastern District of Missouri - St. Louis

---

Submitted: October 20, 2016
Filed: October 24, 2016
[Unpublished]

Before SMITH, BENTON, and, SHEPHERD, Circuit Judges.

PER CURIAM.

Myron Hubbard appeals the dismissal of his Title VI action. Having jurisdiction under 28 U.S.C. § 1291, this court affirms.

Appellate Case: 16-1507 Page: 1 Date Filed: 10/24/2016 Entry ID: 4461747

Appendix C

Following de novo review, this court finds the district court[1] properly concluded Hubbard's claims are barred by res judicata and that Hubbard was not entitled to an equitable exception to the doctrine.See Laase v. Cty. of Isanti, 638 F.3d 853, 856 (8th Cir. 2011) (de novo review of dismissal based on res judicata); Magee v. Hamline Univ., 775 F.3d 1057,1059 (8th Cir. 2015) (listing res judicata factors);Walker v. Trinity Marine Products, Inc., 721 F.3d 542, 545 (8th Cir. 2013) (plaintiff invoking equitable estoppel must show she has changed position to her detriment in reasonable reliance on another's misleading representation). Nor was Hubbard entitled to relief from the prior judgment, which was affirmed on appeal, under Fed. R. Civ. P. 60. See Superior Seafoods, Inc. v. Tyson Foods, Inc., 620 F. 3d 873, 878 (8th Cir. 2010) (Rule 60(d)(3) relief is extraordinary form of relief, and is available only when it would be unconscionable to allow judgment to stand); In re SDDS, Inc., 225 F.3d 970, 972 (8th Cir. 2000) (Rule 60(b) motion cannot be used to collaterally attack court of appeals ruling in lieu of petition for review in United States Supreme Court).

The judgment is affirmed. The pending motions are denied as moot.

---

[1]The Honorable Ronnie L. White, United States District Judge for the Eastern District of Missouri.

Appendix D

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MYRON HUBBARD)
Plaintiff)
v.) No. 4:15CV722 RLW
MISSOURI DEPARTMENT)
OF MENTAL HEALTH,et al)
Defendants,)

MEMORANDUM AND ORDER

This matter is before the Court on Defendants' Motion to Dismiss (ECF No. 14). Also pending are two Motions for Summary Judgment (ECF Nos. 16, 26) and a Motion to Add Citation of Support and to Strike (ECF No. 33) filed by the Plaintiff. Upon review of the motions and related memoranda, the Court will grant Defendants' Motion to Dismiss and deny Plaintiffs motions as moot.

Background

On November 29, 2011, Plaintiff filed Complaint against St. Louis Psychiatric Rehabilitation Center ("SLPRC") for alleged violations of the Family Medical Leave Act, 29 U.S.C.§ 2601, et seq., ("FMLA"). (Compl., Case No. 4:11CV2082 JAR, ECF No. 1) Plaintiff amended his Complaint to

include the State of Missouri and Missouri Department of Mental Health ("DMH") and to add to his FMLA claims allegations of gender and race discrimination, employment discrimination, wrongful discharge, and hostile work environment in violation of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e, et seq., the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the U.S. Constitution, and the Civil Rights Act of 1991. (Am. Compl. iJ 4, Case No. 4:11CV2082 JAR, ECF. No. 46) On April

Appendix D

2, 2013, United States District Judge John A. Ross dismissed Plaintiffs Amended Complaint with prejudice. (Mem. and Order of 4/2/13, Case No. 4:11CV2082 JAR, ECF Nos. 58, 59) Plaintiff then filed a motion to reconsider, and on August 12, 2013, Judge Ross again granted Defendants' motion to dismiss and dismissed Plaintiffs Amended Complaint with prejudice. (Mem. and Order of 8/12/13, Case No.4:11CV2012 JAR, ECF Nos. 78, 79) The Eighth Circuit Court of Appeals affirmed Judge Ross' order dismissing Plaintiffs amended pro se complaint. Hubbard v. St. Louis Psychiatric Rehab. Ctr., 556 Fed. App'x 547 (8th Cir. 2014).

On May 6, 2015, Plaintiff filed a Complaint against Defendant DHM. (Compl., ECF No. 1) He filed an Amended Complaint against DHM, SLPRC, and Metropolitan St. Louis Psychiatric Center ("MSLPC") on May 13, 2015. (Am. Compl., ECF No. 3) In the Amended Complaint, Plaintiff alleges that Defendants wrongfully denied FMLA benefits in violation of Title VI of the Civil Rights Act of 1964,42 U.S.C. § 2000d, et seq., prohibiting discrimination by recipients of federal financial assistance. (Am. Compl. ~ 1, ECF No. 3) Plaintiff specifically claims that the Defendants discriminated against him based on his race, African-American,and discriminatorily denied him FMLA leave while Defendants were receiving federal funds. (Id.) Defendants filed a Motion to

Dismiss on July 13, 2015, arguing that Plaintiffs Amended Complaint is barred by the doctrine of res judicata. Further, Defendants assert that Plaintiff has failed to state a claim under Title VI. (Mot. to Dismiss, ECF No. 14) In addition to filing a response in opposition to Defendant's Motion to Dismiss, Plaintiff has filed a Motion for Relief from Judgment under Fed. R. Civ. P. 60 and a Motion for Summary Judgment (ECF No. 16); a second Motion for Summary Judgment (ECF No. 26); and a Motion to Add Citation of Support to Summary Judgment and Motion to Strike (ECF No. 33).

Appendix D

Legal Standards

A complaint must be dismissed under Federal Rule 12(b)(6) for failure to state a claim upon which relief can be granted if the complaint fails to plead "enough facts to state a claim to relief that is plausible on its face." Bell Atlantic Corp. v. Twombly, 550 U.S. 544,570 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level .... " Id. at 555. Courts must liberally construe the complaint in the light most favorable to the plaintiff and accept the factual allegations as true. See Schaaf v. Residential Funding Corp., 517 F.3d 544, 549 (8th Cir. 2008) (stating that in a motion to dismiss, courts accept as true all factual allegations in the complaint);Eckertv. Titan Tire Corp., 514 F.3d 801,806 (8th Cir. 2008) (explaining that courts should liberally construe the complaint in the light most favorable to the plaintiff). However, "[w]here the allegations show on the face of the complaint there is some insuperable bar to relief, dismissal under Rule 12(b)(6) is appropriate." Benton v._Merrill Lynch & Co., 524 F.3d 866, 870 (8th Cir. 2008) (citation omitted).

To dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(l), "'the complaint must be successfully challenged on its face or on the factual truthfulness of its averments.'" Swiish v. Nixon, No. 4:14-CV-2089 CAS, 2015 WL 867650, at Appendix D

*2 (E.D. Mo. Feb. 27, 2015)(quoting Titus v. Sullivan, 4 F.3d 590, 593 (8th Cir. 1993)). "The standard for a motion to dismiss under Rule 12(b)(6) applies equally to a motion to dismiss for lack of subject matter jurisdiction which asserts a facial challenge under Rule 12(b)(l)." Id.

Discussion

Defendants first argue that res judicata bars the relitigation of Plaintiffs claim. Plaintiff asserts that res judicata does not apply because Defendants are equitably estopped from benefitting from their wrongdoing; Defendants fraudulently concealed the fact that they

Appendix D

received federal funds, thus preventing Plaintiff from making a Title VI claim in the previous litigation; and the judgment was procured through fraud under Federal Rule of Civil Procedure 60. The Court liberally construes Plaintiff's pro se pleadings. Jackson v. Nixon, 747 F.3d 537, 544 (8thCir. 2014).

"Under claim preclusion, also called res judicata, 'a final judgment on the merits of an action precludes the parties ... from relitigating issues that were or could have been raised in that action.'" Knutson v. City of Fargo, 600 F.3d 992, 996 (8th Cir. 2010) (quoting Allen v. McCurry, 449 U.S. 90, 94 (1980)). To establish res judicata, "a party must show: '(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action.'" Magee v. Hamline Univ., 775 F.3d 1057, 1059 (8thCir. 2015) (quoting Yankton Sioux Tribe v. US. Dep 't of Health & Human Servs., 533 F.3d 634, 639 (8th Cir. 2008)). In determining whether a second lawsuit is precluded, courts look to "'whether the claims arise out of the same nucleus of operative facts as the prior claim.'" Id. (quoting Costner v. URS Consultants,Inc.,153 F .3d 667, 673 (8th Cir. 1998)). Where the claims arise from the same set of facts, "[t]he legal theories of the two claims are

relatively insignificant because'a litigant cannot attempt to relitigate the same claim under a different legal theory of recovery.'" United States v. Gurley, 43 F.3d 1188, 1195 (8th Cir. 1994) (quoting Poe v. John Deere Co., 695 F.2d 1103, 1105 (8th Cir. 1982)). Further, even where the second suit names a new party, res judicata still applies where "a defendant stands in privity with a defendant in the prior suit." Daley v. Marriott Int'/, Inc., 415 F.3d 889, 896-97 (8th Cir. 2005).

Appendix D

Plaintiff does not dispute that jurisdiction in the previous action was proper and that the first suit before Judge Ross resulted in a final judgment on the merits. Similarly, he acknowledges that both suits are similar. In addition, Plaintiff asserts in his Amended Complaint that MSLPC, along with SLPRC, are facilities of the DMH. (Am. Compl. P. 1, ECF No. 3) Therefore, MSLPC and the Defendants in the first suit "are in privity because they have 'a close relationship, bordering on near identity.'"Daley, 415 F.3d at 897 (quoting Gurley, 43 F.3d at 1197) Further, Plaintiffs Amended Complaint pertains to alleged discrimination while he was employed at the SLPRC, as he alleged in the first suit. (Compare Pl.'s Am. Compl. ~~ 4-17, ECF No. 3 with Pl.'s Am. Compl. ~~ 16-17, 38-47, Case No. 4:11CV2082 JAR, ECF No. 45) The Court thus finds as an initial matter that because Plaintiffs Title VI complaint involves the same parties or their privies, and his claim arises from the same nucleus of operative facts as the first case, Plaintiffs claim is barred by the doctrine of res judicata.

However, Plaintiff argues that exceptions to the res judicata doctrine exist such that this Court should not bar Plaintiffs cause of action. Specifically, Plaintiff argues that Defendants fraudulently withheld the fact that they received federal funding, thus preventing Plaintiff from raising a Title VI claim in the previous suit.

Appendix D

Additionally, he claims that the Title VI claim did not exist at the time of the previous case. The record belies Plaintiffs assertion.

First, Plaintiff is unable to demonstrate that Defendants fraudulently concealed the fact that it received federal funding. "As a general rule, newly discovered evidence does not preclude the application of res judicata unless the evidence was either fraudulently concealed or could not have been discovered with due diligence." Saabirah El v. City of New York, 300 Fed. App'x 103, 104 (2nd Cir. 2008) (citation omitted). Conclusory allegations of fraud are

Appendix D

insufficient to demonstrate fraudulent concealment. Id. Here, Plaintiff fails to point to any evidence showing that the Defendants fraudulently withheld their federal funding status. Id. (finding plaintiffs allegations to be wholly conclusory and noting that discovery had not taken place when refusing to find fraudulent concealment of evidence to overcome res judicata). Indeed, no discovery had taken place prior to dismissal of Plaintiffs first cause of action. Further, Plaintiff concedes that he discovered this fact on his own and while the former case was still pending. Thus, Plaintiff is unable to show fraudulent concealment on the part of Defendants, and his Title VI claim could have been, and eventually was, discovered with due diligence.

In addition, Plaintiff contends that this Court should estop Defendants from using res judicata in this instance because Defendants unfairly took advantage of Plaintiff through false language and induced Plaintiff to not bring a Title VI claim in the previous action. Assuming that equitable estoppel is applicable in this context, a plaintiff "must show that [he] has changed [his] position to [his] detriment in reasonable reliance on another's misleading representation." Walker v. Trinity Marine Prods., Inc., 721 F.3d 542, 545 (8th Cir. 2013) (citation omitted). Here, Plaintiff does not allege that the Defendants made any representations upon which Plaintiff detrimentally

relied, and the Court finds that Plaintiff has failed to establish equitable estoppel.

Plaintiff also argues that this Court should apply Fed. R. Civ. P. 60 and overturn the judgment in the previous litigation.[1] Under certain circumstances, Rule 60 provides relief from

---

[1]Plaintiff cites to Rule 60(b) as grounds for relief. However, that provision applies only to relief from the final judgment by the issuing court. This Court did not issue the judgment from which Plaintiff seeks relief, and therefore, the grounds cited by Plaintiff are not applicable. See, e.g., Greater St. Louis Const. Laborer's Welfare Fund v. Tricamo Contracting Co., Inc., No. 4:08CV1479 JCH, 2011 WL 572457 (E.D. Mo. Feb. 15, 2011) (denying defendant's Rule 60(b)

a judgment, despite the principles of resjudicata. Hamilton v. PAS, Inc., No. , 2015 WL 2120539, at *2 (E.D. Ark. Apr. 27, 2015). "Rule 60(d)(3) permits an independent action to set aside a previous judgment due to fraud on the court when the previous case involved egregious misconduct representing a corruption of the judicial process, such as bribery of a judge or jury or fabrication of evidence by counsel." Id (citations omitted). "[R]elief is only available where it would be manifestly unconscionable to allow the judgment to stand." Superior Seafoods, Inc. v.Tyson Foods, Inc., 620 F.3d 873, 878 (8th Cir. 2010) (citation and internal quotation omitted). Thus, relief through an independent action in equity that alleges fraud on the court is an extraordinary form of relief. Id

In the instant case, Plaintiff has not demonstrated that he is entitled to such extraordinary relief from the judgment issued by Judge Ross. "[F]raud on the court is distinct from mere fraud upon a party." Id Plaintiff has pointed to no evidence of fraud on the court. In the previous case, the court allowed Plaintiff to amend his complaint four times over an 18 month period. Hubbard v. St. Louis Psychiatric Rehab. Ctr., 556 Fed. App'x 547 (8th Cir. 2014); Hubbardv. St. Louis Psychiatric Rehab. Ctr., No. 4:11-CV-2082-JAR, 2013 WL 4052908 (E.D. Mo. Aug. 12, 2013). Judge Ross noted that the Court "allowed Plaintiff numerous opportunities to plead his claim, and he

has file four complaints against Defendants, each in response to their motion to dismiss." Hubbard, 2013 WL 4052908, at *3. With each amended complaint, Defendants filed a motion to dismiss responding to the new complaint. Defendants did not conceal information regarding its funding status from the court, as such status was not at issue. Thus, for the foregoing reasons, the Court finds that Plaintiff is unable

---

motion to vacate the court's prior order because defendant failed to show that special circumstances justified vacating the order).

Appendix D

to overcome the application of res judicata to the present case, and his Amended Complaint will be dismissed on that basis.

Out of an abundance of caution, however, the Court notes that Plaintiff is unable to state a claim under Title VI, which provides that "[n]o person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under activity received Federal financial assistance." 42 U.S.C. § 2000d. Defendants argue that Plaintiffs claim should be dismissed because he has not alleged, nor can he allege, that the federal funds received by Defendants were designed to provide employment.

"To establish a prima facie case under Title VI, a plaintiff must demonstrate that [his] race, color, or national origin was the motive for the alleged discriminatory conduct." Nelson v. Special Admin. Bd. o/St. Louis Public Schs., 873 F. Supp. 2d 1104, 1115 (E.D. Mo. 2012) (citation omitted). While individuals may file a suit under Title VI for intentional discrimination, "the statute provides that a plaintiff may allege a Title VI claim in the employment context only where the statutory grant of funds or the federally assisted program at issue is specifically intended to provide employment." Id. (citation omitted).

Plaintiffs Amended Complaint is void of any indication that the Missouri Department of Mental Health or the two Defendant facilities are designed with a primary objective of providing employment. Id. Further, the Court finds that discovery would not reveal that DMH's purpose is anything other than the provision of mental health services. Id. Indeed, DMH provides programs for drug and alcohol abuse; mental illness; and developmental disabilities. See DMH Programs, available at http://dmh.mo.gov/programs.html; see also Baugh v. Ozarks Area Cmty. Action Corp., No.09-03177-CV-S-DGK, 2010 WL 1253718, at *4 (W.D.Mo. Mar. 31, 2010) (noting

that defendant's primary objective did not appear to be providing employment where the website described seven programs, including family planning and housing). In addition, while DMH does provide "employment services" in its programs, these services are to enhance "community employment options for persons with developmental disabilities." See Youth Transition and Employment Services, available at http://dmh.mo.gov/dd/progs/employment.html. Plaintiff does not fall within this category. The Court therefore finds that Plaintiff has failed to state a claim for relief under Title VI and his Amended Complaint should be dismissed on that basis.[2]

On a final note, the Court has thoroughly reviewed Plaintiffs two motions for summary judgment, and the motion to add citations and to strike. In those documents, Plaintiff presents the same facts and arguments as those contained in the previous cause of action. These pleadings further buttress the Court's finding that res judicata applies to this suit. Further, because the Court has determined that dismissal is warranted in this case, the granting of Defendants' Motion to Dismiss renders moot Plaintiffs motion for summary judgment. Adem v. JeffersonMem 'l Hosp. Ass'n, No. 4:11-CV-2102-JAR, 2012 WL 5493856 (E.D. Mo. Nov. 13, 2012).

Appendix D

Accordingly,

IT IS HEREBY ORDERED that Defendants' Motion to Dismiss (ECF No. 14) is GRANTED.

---

[2]Defendants also contend that SLPRC and MSLPC are not entities subject to suit and that Plaintiffs Title VI claim is barred by the statute of limitations. Because the Court finds that Plaintiffs Amended Complaint is barred by the doctrine of res judicata and otherwise fails to state a claim, the Court need not address Defendants' other grounds for dismissal. See Marez v. Saint-Gobain Containers, Inc., No. 4:09CV999 MLM, 2009WL 5220160, at *6 (E.D. Mo. Dec. 31 , 2009).

IT IS FURTHER ORDERED that Plaintiffs Motions for Summary Judgment (ECF Nos. 16, 26) and Motion to Add Citation of Support and to Strike (ECF No. 33) are DENIED as MOOT.

A separate order of dismissal will accompany this Memorandum and Order. Dated this 12th day of February, 2016.

RONNIE L. WHITE
UNITED STATES DISTRICT JUDGE

Appendix D

Appendix E

United States Court of Appeals
for the Eighth Circuit

No. 13-2877

Myron Hubbard
Plaintiff - Appellant
v.
St. Louis Psychiatric Rehabilitation Center; State of Missouri Department of Mental Health
Defendants – Appellees

Appeal from United States District Court for the. Easter District of Missouri – St. Louis

---

Submitted: February 6, 2014
Filed: February 11, 2014
[Unpublished]

Before BENTON, BOWMAN, and SHEPHERD, Circuit Judges.

PER CURIAM.

Myron Hubbard appeals the district court's[1] order dismissing his amended pro se complaint against his former employer the Missouri Department of Mental Health (MDMH), and the St. Louis Psychiatric Rehabilitation Center (Center), the MDMH facility where Hubbard had worked as a registered nurse. Hubbard asserted various civil claims, including that defendants denied him leave he was entitled to under the Family and Medical Leave Act (FMLA). Upon careful review, see Butler v. Bank of Am., N.A., 690 F.3d 959, 961 (8th Cir.2012) (de novo review of dismissal for failure to state claim), we conclude dismissal was appropriate: defendants were immune from suit for alleged violations of the FMLA's self-care provision, see Coleman v. Court of Appeals of Md., 132 S. Ct. 1327, 1338 (2012); Hubbard did not show he had exhausted administrative remedies before bringing his Title VII claim, see Richter v. Advance Auto Parts, Inc., 686 F.3d 847, 850-51 (8th Cir. 2013) (per curiam) (Title VII exhaustion requirements); and the Eleventh Amendment barred Hubbard's other claims against defendants, see Murphy v. State of Ark., 127 F.3d 750, 754 (8th Cir. 1997). We further conclude that the district court did not abuse its discretion in denying Hubbard leave to amend and add an additional party, given the many opportunities Hubbard had to amend his complaint over the 18-month course of this litigation. See

Moses.com Sec., Inc. v. Comprehensive Software Sys., Inc., 406 F.3d 1052, 1065-66 (8th Cir. 2005). Accordingly, we affirm. See 8th Cir. R. 47B.

[1]The Honorable John A. Ross, United States District Judge for the Eastern1 District of Missouri.

Appendix F

Rule 11. Signing Pleadings, Motions, and Other Papers; Representations to the Court; Sanctions

(a) SIGNATURE. Every pleading, written motion, and other paper must be signed by at least one attorney of record in the attorney's name—or by a party personally if the party is unrepresented. The paper must state the signer's address, e-mail address, and telephone number. Unless a rule or statute specifically states otherwise, a pleading need not be verified or accompanied by an affidavit. The court must strike an unsigned paper unless the omission is promptly corrected after being called to the attorney's or party's attention.

(b) REPRESENTATIONS TO THE COURT. By presenting to the court a pleading, written motion, or other paper—whether by signing, filing, submitting, or later advocating it—an attorney or unrepresented party certifies that to the best of the person's knowledge, information, and belief, formed after an inquiry reasonable under the circumstances:

(1) it is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation;

(2) the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law;

(3) the factual contentions have evidentiary support or, if specifically so identified, will likely

have evidentiary support after a reasonable opportunity for further investigation or discovery; and

(4) the denials of factual contentions are warranted on the evidence or, if specifically so identified, are reasonably based on belief or a lack of information.

https://www.law.cornell.edu/rules/frcp/rule_11

18 U.S. Code § 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;
(2) makes any materially false, fictitious, or fraudulent statement or representation; or
(3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;

https://www.law.cornell.edu/uscode/text/18/1001

Appendix F

575.020. Concealing an offense — penalties. —

1. A person commits the offense of concealing an offense if he or she:

(1) Confers or agrees to confer any pecuniary benefit or other consideration to any person in consideration of that person's concealing of any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence thereof; or

(2) Accepts or agrees to accept any pecuniary benefit or other consideration in consideration of his or her concealing any offense, refraining from initiating or aiding in the prosecution of an offense, or withholding any evidence thereof.

Title VI Of The Civil Rights Act Of 1964 42 U.S.C. § 2000d Et Seq.

Title VI, 42 U.S.C. § 2000d et seq., was enacted as part of the landmark Civil Rights Act of 1964. It prohibits discrimination on the basis of race, color, and national origin in programs and activities receiving federal financial assistance. As President John F. Kennedy said in 1963:

> Simple justice requires that public funds, to which all taxpayers of all races [colors, and national origins] contribute, not be spent in any fashion which encourages, entrenches, subsidizes or results in racial [color or national origin] discrimination.