

Appendix

Table of Contents of Appendix

Appendix A: Denial of Review by First Circuit.....	53
Appendix B: Dismissal Order of District Court	55
Appendix C: Proposed Rebuilding of the Home	63

Appendix A: Denial of Review by First Circuit

United States Court of Appeals For the First Circuit

No. 20-1242

JOHN S. BARTH, Plaintiff - Appellant, v.
ADAM BUCKLEY; JASON PANOS; CITY OF PEABODY; MARIANNE BOWLER,
Defendants - Appellees.

Before
Thompson and Selya,
Circuit Judges.

JUDGMENT
Entered: February 22, 2021

Plaintiff-Appellant John S. Barth appeals the district court's order dismissing his complaint based on the doctrines of res judicata and judicial immunity and based on his failure to state a claim for which relief could be granted. Our review is de novo. See, e.g., Gagliardi v. Sullivan, 513 F.3d 155, 162 (1st Cir 2008). Review of the parties' submissions and of relevant portions of the record confirms that the action was subject to dismissal, for substantially the reasons indicated by the district court. See Bell Atl. Corp. v. Twombly, 550 U.S. 544, 555 (2007) ("Factual allegations must be enough to raise a right to relief above the speculative level"); Hatch v. Trail King Ind., Inc., 699 F.3d 38, 45 (1st Cir. 2012) (describing federal res judicata principles); Cok v. Cosentino, 876 F.2d 1, 2 (1st Cir. 1989) ("Only judicial actions taken in the clear absence of all jurisdiction will deprive a judge of absolute immunity.").

We AFFIRM the district court's entry of judgment in favor of the appellees.*

By the Court:

Maria R. Hamilton, Clerk

cc:

Annapurna Balakrishna

Donald Campbell Lockhart

Douglas I. Louison

John S. Barth

* While this case was submitted to a panel that included Judge Torruella, he did not participate in the issuance of the panel's judgment. The remaining two panelists therefore issued the judgment pursuant to 28 U.S.C. § 46(d).

Appendix B: Dismissal Order of District Court

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
JOHN BARTH, Plaintiff, v.
ADAM BUCKLEY, JASON PANOS, CITY OF PEABODY, and MARIANNE BOWLER,
Defendants.
Case No. 1:19-cv-12152

ORDER GRANTING MOTIONS TO DISMISS

Plaintiff, John Barth, filed a complaint *pro se* in the United States District Court for the District of Massachusetts on October 17, 2019 alleging that Defendants Adam Buckley, Jason Panos, the City of Peabody, and Marianne Bowler violated his civil rights. Now before me are Defendants Adam Buckley, City of Peabody, and Jason Panos's Motion to Dismiss, Defendant Marianne Bowler's Motion to Dismiss, and Plaintiff's Motion for Summary Judgment. ECF Nos. 21, 23, 28. For the reasons that follow, Defendants' Motions to Dismiss are GRANTED, Plaintiff's Motion for Summary Judgment is DENIED AS MOOT, and this case is DISMISSED WITH PREJUDICE.

BACKGROUND

Plaintiff comes to this court a second time to re-litigate claims from a prior proceeding, *Barth v. City of Peabody et al.*, No. 15-13794 (D. Mass.) ("Barth I"), and to allege separate civil rights violations based upon what happened at trial. Mr. Barth filed the original lawsuit on November 9, 2015 against the City of Peabody, alleging the City had unconstitutionally taken his property without just compensation. Mr. Barth sought a declaratory judgment that the City's taking was unconstitutional, just compensation for the taking, and damages for loss of employment and future income under 42 U.S.C. § 1983. The case proceeded to a jury trial, and the jury found in favor of the City on all counts. On August 9, 2019 the Court entered final judgment and dismissed the action with prejudice. Mr. Barth filed a timely appeal to the First Circuit, which is currently pending. *Barth v. City of Peabody et al.*, No. 15-13794 (D. Mass.), appeal docketed, No. 19-1643 (1st Cir. Jun. 26, 2019).

Despite the pending appeal, Mr. Barth filed this lawsuit seeking the same relief he pursued in *Barth I*. His new complaint contains two "Counts," each of which contains several claims against the four named Defendants. Count One copies the unconstitutional takings claim against the City of Peabody almost verbatim from its predecessor. It also alleges that new Defendants Adam Buckley and Jason Panos's "perjuries and misconducts" during the earlier litigation caused the Takings Clause violation to be "ongoing," and constitute new, independent constitutional violations justifying relief under § 1983. Count Two alleges that the presiding judge from *Barth I*, the Honorable Marianne Bowler, committed her own set of constitutional violations while performing her judicial role. For the reasons

follow, this case will be dismissed with prejudice: Mr. Barth is barred from relitigating claims from his previous lawsuit, and his new civil rights claims in Counts One and Two have no merit.

1 Mr. Barth voluntarily dismissed claims against all other defendants in *Barth I*. Order Granting Pl's. Mot. for Leave to Dismiss Richard DiPietro and RK Realty Trust without prejudice, *Barth v. City of Peabody et al.*, No. 15-13794 (D. Mass.), ECF. 114.

DISCUSSION

Two motions to dismiss are before me. Defendants Adam Buckley, the City of Peabody, and Jason Panos move to dismiss Count One because Mr. Barth's claims are barred by the doctrine of res judicata, and any new legal theories fail to state a claim for which relief can be granted. Defendant Bowler moves to dismiss the remaining claims in Count Two on the grounds that she enjoys judicial immunity for her actions while presiding over the trial in *Barth I*. I consider their arguments in turn.

A. COUNT ONE – CLAIMS BARRED BY RES JUDICATA

“Federal law governs the res judicata effects of a federal court judgment in a federal question case as applied to a later case that again presents a federal question to a federal court.” *Gonzalez v. Banco Cent. Corp.*, 27 F.3d 751, 755 (1st Cir. 1994). Because both this case and *Barth I* invoked federal question jurisdiction under 28 U.S.C. § 1331, the rule of decision here is supplied by federal law. *Id.* And under federal law the doctrine of claim preclusion, or res judicata, provides that “a final judgment on the merits precludes parties from relitigating claims that were or could have been brought in a prior action.” *Universal Ins. Co. v. Office of Ins. Comm'r*, 755 F.3d 34, 37 (1st Cir. 2014). Claim preclusion has three elements: “(1) a final judgment on the merits in an earlier suit, (2) sufficient identicity between the causes of action asserted in the earlier and later suits, and (3) sufficient identicity between the parties in the two suits.” *Haag v. United States*, 589 F.3d 43, 45 (1st Cir. 2009) (internal quotations omitted). For “sufficient identicity between the causes of action,” a Court must find the two claims “derive from a common nucleus of operative facts.” *Id.* 46.

The claims in Count One that Mr. Barth previously litigated to verdict in *Barth I* meet these three elements. First, there was a final judgment in *Barth I*, where a jury rendered a verdict for the Defendant City of Peabody, and the Court entered judgment on August 9, 2019. *See Haag*, 589 F.3d at 46 (entry of final judgment by a district court counts as “final judgment on the merits” for purposes of claim preclusion). Second, Mr. Barth’s claims that Defendants Buckley, the City, and Panos violated his civil rights by unconstitutionally taking his property without just compensation are “sufficient[ly] identical[]” to meet the second element; the newly-filed complaint copies these claims almost verbatim from the previously-litigated case, easily clearing the First Circuit’s bar for whether the causes of action “derive from a common nucleus of operative facts.” *Id.* And third, parties are sufficiently identical with respect to the copied-over claims.

Claim preclusion applies to Defendants who are identical or “closely related to a defendant from the original action.” *Airfame Sys. V. Raytheon Co.*, 601 F.3d 9,

17-18 (1st Cir. 2010). Here, the City of Peabody is a defendant in both cases. Defendant Panos was the chairman of the City's Zoning Board of Appeals when Mr. Barth's property was taken, and Defendant Buckley was the City's lawyer in *Barth I*; both are sued in their official capacities only, which amounts to suing the City itself. *Will v. Michigan Dep't of State Police*, 491 U.S. 58, 71 (1989) (holding that a suit brought under § 1983 against "a state official in his or her official capacity is not a suit against the official but rather is a suit against the official's office."). Therefore, Mr. Barth's renewed civil rights claims in Count One arising from the City's unconstitutional taking are barred by res judicata.

B. COUNT ONE - PERJURY CLAIMS

Mr. Barth's complaint is not a model of clarity, but as this Circuit has noted in the past, "the fact that the plaintiff filed the complaint pro se militates in favor of a liberal reading." *Rodi v. S. New England Sch. Of Law*, 389 F.3d 5, 13 (1st Cir. 2004); *see also Boivin v. Black*, 225 F.3d 36, 43 (1st Cir. 2000) (explaining that "courts hold pro se pleadings to less demanding standards than those drafted by lawyers"). Reading Mr. Barth's complaint in such a favorable light, Count One could also be construed to allege a Section 1983 claim against Defendants Buckley and Panos for their alleged perjury during the *Barth I* litigation.

To the extent the complaint makes these claims, however, none is actionable under federal civil rights law. Count One alleges that Defendants Buckley and Panos each made false statements at various points during *Barth I*, either on the witness stand or in court filings. Compl. at ¶¶ 41-64. Both the Supreme Court and the First Circuit have addressed the issue of whether individuals are subject to Section 1983 liability for allegedly committing perjury, either during trial or in motion practice. *See, e.g., Briscoe v. LaHue*, 460 U.S. 325, 329 (1983) (holding that § 1983 does not allow recovery of damages against a private party or government actor for testimony in a judicial proceeding); *Scarpa v. Desmond*, 2 F.3d 1148 (1st Cir. 1993) (same). Because the new allegations against Defendants Buckley and Panos are limited to their contributions to the *Barth I* litigation, and since those are not constitutional violations actionable under § 1983, Mr. Barth has failed to state a claim against either Defendant. I will, therefore, grant Buckley and Panos's motion to dismiss the perjury claims in Count One.

C. COUNT TWO - JUDICIAL IMMUNITY

Mr. Barth also brings a scattershot of allegations against the presiding judge in *Barth I*, the Honorable Marianne Bowler. He alleges Judge Bowler violated his rights under the Due Process and Equal Protection Clauses of the Fourteenth Amendment by abusing her public office for private gain, committing "perjury in jury instructions," and engaging in "ex parte communication with the defendants." Compl., ¶¶ 34-38, 65-90. He further contends that Judge Bowler took his property without just compensation and conspired to violate federal civil rights laws. *Id.* Reaching further, Mr. Barth also asks the Court to remove Judge Bowler "for disability or corruption" and to initiate disbarment proceedings against her. *Id.* Defendant Bowler moves to dismiss these claims under the doctrine of judicial immunity. For the reasons that follow, I will dismiss the claims against Defendant

Bowler in Count Two, as she is immune for those acts performed in her judicial role during *Barth I*.

As the First Circuit has repeatedly held, “it is an axiom of black letter law that when a judge carries out traditional adjudicatory functions, he or she has absolute immunity for those actions.” *Zenon v. Guzman*, 924 F.3d 611, 616 (1st Cir. 2019). Those “traditional adjudicatory functions” are defined by “the nature of the act itself, *i.e.*, whether it is a function normally performed by a judge, and to the expectations of the parties, *i.e.*, whether they dealt with the judge in his judicial capacity.” *Mireles v. Waco*, 502 U.S. 9, 12 (1991). Inversely, a judge is not immune when “carrying out a nonjudicial action, or in instances where a judge takes an action, though seemingly ‘judicial in nature,’ that is ‘in the complete absence of all jurisdiction.’” *Guzman*, 924 F.3d at 616, quoting *Stump v. Sparkman*, 435 U.S. 349, 362 (1978). Under the well-established doctrine of judicial immunity, therefore, Defendant Bowler is immune from § 1983 liability for carrying out duties “normally performed by a judge” in with *Barth I*.

All of Mr. Barth’s allegations against Defendant Bowler stem from her performing her judicial functions, and are thus barred. He alleges that Judge Bowler caused a verdict to be entered against him by “ignor[ing] definitive memoranda of law, obstruct[ing] process, communicat[ing] privately with defendant Buckley before and during the trial, and commit[ing] abuse of office and perjury on all issues of federal law in ordering the jury...to make a plainly and extremely unconstitutional decision.” Compl., at 5. Consideration of legal memoranda, communication with counsel, and the issuance of jury instructions are all squarely within the definition of duties “normally performed by a judge,” and do not open Defendant Bowler up to potential liability under § 1983. Nowhere does Mr. Barth allege that Defendant Bowler lacked jurisdiction for her actions. The First Circuit and other courts in this District have routinely dismissed cases alleging similar civil rights violations. *See, e.g. Guzman*, 924 F.3d 616; *Bauersachs v. Massing*, Civil Action No. 19-10295-ADB, 2019 WL 4918271, at * 3 (D. Mass. Oct. 4, 2019). I likewise find that Mr. Barth’s § 1983 claims based on Defendant Bowler’s handling of *Barth I* are barred by the doctrine of judicial immunity, and I will grant the motion dismiss the claims in Count Two.

CONCLUSION

Because I find Mr. Barth’s claims in Counts One and Two of his Complaint are without merit or are barred by the doctrines of res judicata or judicial immunity, I will GRANT Defendants’ Motions to Dismiss (ECF Nos. 21, 28), will DENY AS MOOT Plaintiff’s Motion for Summary Judgment (ECF No. 23), and will dismiss this case with prejudice.

SO ORDERED.

Dated this 12th day of February, 2020.

/S/ Lance E. Walker

LANCE E.WALKER, U. S. DISTRICT JUDGE

Appendix C: Proposed Rebuilding of the Home



