FILED 03/23/22

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

NO. 17-90003-D

ARTHUR O. ARMSTRONG,

Petitioner,

Verses

CITY OF CONYERS,

Respondent.

On Appeal from the United States District Court
for the Northern District of Georgia

BEFORE: TJOFLAT, HULL, and MARCUS, Circuit Judges.

BY THE COURT:

The Court hereby amends the last two paragraphs of its March 24, 2017 order as follows: The Clerk is DIRECTED not to accept for filing, and to take no action on any pro se pleadings – including, but not limited to, petition for a writ of mandamus or requests for permission to appeal under Federal Rules of Appellate Procedure 5 ----- that seek relief from the June 2003 judgment in case no. 1:02-cv-2629-FWS from the Northern District of Georgia, or any other matter in that proceeding from which Armstrong has already appealed or failed to timely appeal, The Clerk need not provide notice to Armstrong when it takes no action on any pro se pleadings as Armstrong is on notice of this order's direction to the Clerk. The Clerk will not return Armstrong's unacceptable pleadings, **SO ORDERED**.

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT
NO. 04-11355

D. C. NO. 04-00017-CV-RWS-1

ARTHUR O. ARMSTRONG

Plaintiff- Appellant

Vs.

CITY OF CONYERS
CONYERS POLICE DEPARTMENT

Defendant-Appellees

Appeals from the United States District Court For the Northern District of Georgia

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(Filed June 17, 2005)

Before: BLACK, PRYOR and FAY, Circuit Judges, PER CURIAM

Arthur O. Armstrong, proceeding pro se, appeals a district court order dismissing as duplicative his civil rights action brought pursuant to 42 U.S.C. 1983.1. On appeals, Armstrong argues that the district court erred in finding that the instant lawsuit was barred by the doctrine of res judicata because he previously had filed a similar lawsuit. In the first lawsuit, district court case number 02-cv-02629-RWS, the district court granted summary judgment in favor of the defendants, a decision that this Court affirmed on appeal number, 03-13509. In his brief, Armstrong claims that the doctrine of res judicata does not apply because "the party was different and there had been no final judgment on the merits"

This Court reviews that the district court's legal determination that a claim is barred by the doctrine of res judicata de novo, Rags v Rubbermaid, Inc., 193 F. ed 1235, 1238 (11th Cir., 1999).

The doctrine of res judicata bars the filing of claims which were raised in an earlier proceeding. Id., A claim is barred by the doctrine of res judicata if all four of the elements are present. "There is a final judgment on the merits; (2) the decision was rendered by a court of competence jurisdiction; (3) the parties or those in privity with them, are identical in both suits; and (4) the same cause of action is involved in both cases. "If the case arises out of the same nucleus of operative fact, or is based on the same factual predicate as a former action, the two cases are really the same claim or cause of action for the purpose of res judicata. See id at 1239. Privity exists where the nonparty's interest are adequately represented by the party in the original suit or the party in the original suit are so aligned to to a nonparty's interest as to be his virtual representative. "N.A.A.C.P. v. Hunt, 891 F. 2d. "There is a final judgment on the merits; (2) the decision arises, 1555, 1560-61 (11th Cir. 1990) (Internal quotation omitted).

The district court correctly determined that Armstrong's new lawsuit was barred by the doctrine of res judicata. It is clear that the first second and fourth elements are met. Despite Armstrong's contention to the contrary, it is clear that there was a final judgment on the merits that rendered by the Court of competent jurisdiction. The district Court decision was affirmed on appeal by this Court. It is also clear that the same cause of action was involved in both cases because the new case arose out of the same nucleus of operative fact as the original action – a traffic stop that occurred on July 5, 2002, where Armstrong received several citations and where his daughters were telephoned.

The remaining element remaining is the third element, requiring the parties or those in privity with them, be identical in both suits. Armstrong claims that res judicata does not apply because the parties to the case are different. To the extent that the parties differs, res judicata still applies because the parties in both cases are in privity with one another. This is because the nonparties' interest as adequately represented by the parties in the original suit. See

N.A.A.C.P. ... 891 F. 2d at 1560-61.

Upon review of the record and upon consideration of the parties' brief, we find no reversible error. For the foregoing reasons, we affirm.

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

ARTHUR O. ARMSTRONG, . :

. Plaintiff, :

Vs. :

CITY OF CONYERS, et al :

Defendants. :

FILED IN
COURT'S . OFFICE
MAR. 4, 2004

ORDER

Now before the Court for consideration and Plaintiff Arthur O. Armstrong's motion to Reopen action [34-1], to amend pleading [35-1], for Relief [45-1], for permission to file instant action [47-2], and to Proceed in Forma Pauperis [48-1]. After reviewing the entire record, the Court enters the following Order.

On June 17, 2003, this Court entered an Order denying Plaintiff's Motion for Summary Judgment and granting Defendants' Motion for Summary Judgment. The Eleventh Circuit Court of Appeals affirmed that Judgment on December 1, 2003.

Plaintiff's Motion to Reopen action [34-1], to amend pleading [35-1], and for relief [42-1] attempt to relitigate issues already decided by this Court and affirmed by the Court of Appeals. Accordingly, they are hereby DENIED as moot.

From Plaintiff's Motion for Permission to file instant action [47-1], and for Judgment pursuant to Rule 60

APPENDIX B

(b)[47-2], it appears that Plaintiff wishes to open another action alleging the same events and issues already decided in this case against substantially the same Defendants with the addition of Rockdale County and several names City of Conyers police officials. Plaintiff has also filed with this Court a request to proceed in Forma Pauperis. Plaintiff has failed to comply with the requirements set forth in 28 U.S.C. S. 1915(a)(1) for proceeding in Forma Pauperis. More over because the issues in his proposed new action have already been decided, the Court finds that the new action is frivolous; therefore, Plaintiff's Motion to proceed in Forma Pauperis [48-1], and Motion for Permission to file instant action [47-1] are hereby **DENIED**.

See 28 U.S.C.S. 1915 (e)(2), (providing the court shall dismiss claims or action that are frivolous).

Although this Court has cautioned Plaintiff about the nature of his filings, a review of Plaintiff's motions in this case reveals a consistent pattern of frivolous filing. The Eleventh Circuit recognizes this Court's authority to impose restrictions on Plaintiff's ability to file. See generally Procup v. Strickland, 702 F. 2d. 1069 (11 Cir. 1986).(outlining potential restrictions) As Propup explained "Federal court have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions. The court has a responsibility to prevent a single litigants from unnecessarily encroaching on the judicial machinery needed by others " Id, at 1073-74(internal citations omitted).

The Court finds that it is necessary to enjoin Plaintiff from making future filing in this case to protect the court's jurisdiction. Accordingly, the Court hereby ENJOIN Plaintiff Arthur O. Armstrong from making future filing in this case and from attempting to open new action without complying with the following procedures. If Plaintiff wishes

FOURTH AMENDMENT

The right of the people to be secured in their persons, house, paper and offices against unreasonable searches and seizures shall not be violated, and no warrant shall issue but upon probable cause supported by oath or affirmation, and particularly describing the place to be searched and persons or thing to be seized.

FOURTEENTH AMENDMENT

All persons born or naturalized in the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the law.

42 U.S.C.S. 1983: Civil Action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

APPENDIX C