FILED
United States Court of Appeals
Tenth Circuit

April 29, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff - Appellant,

v.

MELTON TRUCK LINES,

Defendant - Appellee.

No. 22-5008
(D.C. No. 4:21-CV-00529-GKF-JFJ)
(N.D. Okla.)

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff - Appellant,

v.

MELTON TRUCK LINES,

Defendant - Appellee.

No. 22-5009
(D.C. No. 4:22-CV-00021-GKF-JFJ)
(N.D. Okla.)

ORDER AND JUDGMENT*

Before **HARTZ**, **BALDOCK**, and **McHUGH**, Circuit Judges.

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* After examining the briefs and appellate record, this panel has determined unanimously to honor the party's request for a decision on the brief without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). These cases are therefore 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 This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel.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.

APPENDIX A

Plaintiff Dawud C.S. Gabriel, proceeding pro se, appeals the district court's orders dismissing two of his disability-discrimination cases as duplicative of an earlier-filed case against the same defendant that remains pending. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

On November 16, 2021, Mr. Gabriel filed a complaint in the United States District Court for the Northern District of Oklahoma against defendant Melton Truck Lines (Melton). On December 9, 2021, and January 14, 2022, he initiated two more suits against Melton in the same court. In each case Mr. Gabriel asserted one disparate-treatment claim under the Americans with Disabilities Act, claiming that in 2020, Melton, his employer, discriminated against him because of his attention deficit hyperactivity disorder.

The three complaints, each some 200 pages long, are substantially identical except for a few pages where Mr. Gabriel alleges different instances of discriminatory conduct: The original complaint alleges that in May 2020 Melton instructed an employee to misrepresent when Mr. Gabriel could attend new-hire training, thereby delaying the start of his employment; the next complaint alleges that on August 26, 2020, a Melton supervisor made a derogatory statement to try to cause Mr. Gabriel to resign; and the third complaint alleged that in July 2020 Melton failed to reimburse Mr. Gabriel for transportation expenses that he incurred in attending his new-hire training.

On January 19, 2022, the district court issued orders directing Mr. Gabriel to show cause why his later-filed cases should not be dismissed as duplicative. After he filed responses, the district court dismissed the cases, reasoning that "all three complaints assert the same claim—disability discrimination in violation of 42 U.S.C. § 12112(a)—against the same defendant based on the same disability in the course of the same employment relationship." R. (22-5008), Vol. I at 208; R. (22-5009), Vol. I at 329. The dismissals were without prejudice to allow Mr. Gabriel the opportunity to amend the complaint in his first-filed case. Mr. Gabriel appeals both dismissals, arguing that the cases were not duplicative and that the district judge should have recused.

The district court dismissed Mr. Gabriel's later-filed cases by applying the rule against claim-splitting, which "requires a plaintiff to assert all of its causes of action arising from a common set of facts in one lawsuit." *Katz v. Gerardi*, 655 F.3d 1212, 1217 (10th Cir. 2011). "[T]he test for claim splitting is . . . whether the first suit, assuming it were final, would preclude the second suit." *Id.* at 1218. We review a district court's dismissal for claim-splitting for abuse of discretion. *See id.* at 1217.

A second suit is precluded by a prior final judgment on the merits if two conditions are satisfied: "identity of parties or privies in the two suits" and "identity of the cause of action in both suits." *Lenox MacLaren Surgical Corp. v. Medtronic, Inc.*, 847 F.3d 1221, 1239 (10th Cir. 2017) (internal quotation marks omitted). Here, there is no dispute that the parties are the same in each suit. And we conclude that the causes of action are identical as well. "Suits involve the same claim (or cause of

action) when they arise from the same transaction or involve a common nucleus of operative facts." *Lucky Brand Dungarees, Inc. v. Marcel Fashion Grp., Inc.*, 140 S. Ct. 1589, 1595 (2020) (brackets, citations, and internal quotation marks omitted). We have held that "all claims arising from the same employment relationship constitute the same transaction or series of transactions for claim preclusion purposes," *Wilkes v. Wyo. Dep't of Emp. Div. of Lab. Standards*, 314 F.3d 501, 504 (10th Cir. 2002) (internal quotation marks omitted), at least when all the facts underlying the later-filed suits "were in existence at the time the first suit was filed," *Mitchell v. City of Moore*, 218 F.3d 1190, 1202 (10th Cir. 2000). That is the situation here since the three complaints all alleged discriminatory acts arising from Mr. Gabriel's employment relationship with Melton in 2020, before all three complaints were filed. The district court did not abuse its discretion in dismissing the later suits as duplicative.

We also reject the argument that the district judge lacked impartiality and should have recused himself. Mr. Gabriel bases his argument on rulings by the district judge. But "adverse rulings cannot in themselves form the appropriate grounds for disqualification." *United States v. Wells*, 873 F.3d 1241, 1252 (10th Cir. 2017) (internal quotation marks omitted).

The judgments of the district court are **AFFIRMED**. All pending motions are **DENIED** as moot.

Entered for the Court

Harris L Hartz
Circuit Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAWUD CANAAN STURRUP GABRIEL,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 22-CV-21-GKF-JFJ
	)	
MELTON TRUCK LINES,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

JUDGMENT OF DISMISSAL

Pursuant to the court's order of January 24, 2022, it is hereby ordered, adjudged, and decreed that this case is dismissed without prejudice.

ENTERED this 24th day of January, 2022.

GREGORY K. FRIZZELL
UNITED STATES DISTRICT JUDGE

APPENDIX C

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OKLAHOMA

DAWUD CANAAN STURRUP GABRIEL,

Plaintiff,

v.

MELTON TRUCK LINES,

Defendant.

Case No. 22-CV-21-GKF-JFJ

ORDER

Plaintiff Dawud Canaan Sturrup Gabriel has initiated four *pro se* civil actions in the Northern District of Oklahoma against defendant Melton Truck Lines. Three of these cases are currently pending: Case No. 21-CV-493-JFH-SH, filed November 16, 2021; Case No. 21-CV-529-GKF-JFJ, filed on December 9, 2021; and this action, filed January 14, 2022. On January 19, 2022, the court entered an Order to Show Cause why this action should not be dismissed as duplicative of the earlier actions. [Doc. 4]. On January 20, 2022, Mr. Gabriel filed his response. For the following reasons, Mr. Gabriel's action is dismissed without prejudice.

Within the federal court system, "the general principle is to avoid duplicative litigation." *Colo. River Water Conserv. Dist. v. United States*, 424 U.S. 800, 817 (1976). For this reason, a plaintiff must "assert all of its causes of action arising from a common set of facts in one lawsuit." *Katz v. Gerardi*, 655 F.3d 1212, 1217 (10th Cir. 2011). "By spreading claims around in multiple lawsuits in other courts or before other judges, parties waste scarce judicial resources and undermine the efficient and comprehensive disposition of cases. *Id.* Accordingly, "[a]s part of its general power to administer its docket, a district court may stay or dismiss a suit that is duplicative of another federal court suit." *Powell v. Correctional Healthcare Mgmt., Inc.*, 2019 WL 113783,

APPENDIX B

at *2 (W.D. Okla. Jan. 4, 2019) (quoting *Curtis v. Citibank, N.A.*, 225 F.3d 133, 138 (2d Cir. 2000)). "The power 'is meant to foster judicial economy and the comprehensive disposition of litigation. The doctrine is also meant to protect parties from the vexation of concurrent litigation over the same subject matter.' " *Ford v. Mischeviz*, 68 F. App'x 877, 878 (10th Cir. 2003) (quoting *Curtis*, 225 F.3d at 138).

In issuing its order to show cause, the court noted that each of the three cases filed by Mr. Gabriel involve the same parties and substantially the same allegations and that much of the complaints appeared duplicative of one another. [Doc. 4]. In his response to the court's order to show cause, Mr. Gabriel points to page 191 of each of the three complaints, respectively, to show that "the claims of each of the matters in question are not similar." [Doc. 5, p. 1].

Beginning on page 191 of each respective complaint, Mr. Gabriel offers two to four pages of allegations labeled his "Statement of Claim" providing different details regarding Mr. Gabriel's alleged disparate treatment by Melton Truck Lines: in Case No. 21-cv-493-JFH-SH, Mr. Gabriel alleges that defendant lied to him about the number of job applicants who applied before him, in order to delay the start of his New Hire Training; in Case No. 21-cv-529-GKF-JFJ, he focuses his allegations on an employee of defendant who "played psychological games" to get Mr. Gabriel to resign his position as a Commercial Truck Driver; and in this case, Mr. Gabriel alleges he was discriminated against when defendant failed to reimburse him for airfare to Tulsa to report to New Hire Training. [*See* Doc. 5, pp. 1-2 (Mr. Gabriel's summary of distinctions)]. Mr. Gabriel argues that his multiple suits should be allowed to proceed based on these differences.

However, all three complaints assert the same claim—disability discrimination in violation of 42 U.S.C. §12112(a)—against the same defendant based on the same disability in the course of the same employment relationship. Simply put, Mr. Gabriel alleges that his employer