

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 17-3063

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Oct 16, 2017
DEBORAH S. HUNT, Clerk

JOSEPH MIGLIORI,	)	
	)	
Plaintiff-Appellant,	)	ON APPEAL FROM THE UNITED
	)	STATES DISTRICT COURT FOR
v.	)	THE NORTHERN DISTRICT OF
	)	OHIO
HONEYWELL, INC., et al.,	)	
	)	
Defendants-Appellants.	)	

ORDER

Before: COLE, Chief Judge; DAUGHTREY and DONALD, Circuit Judges.

Joseph Migliori, an Ohio resident proceeding pro se, appeals the district court's dismissal of his complaint against his former employer and union alleging breaches of a collective bargaining agreement ("CBA"). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In 1986, Migliori began working at Honeywell under the classification of "Fireman's Engineer Licensed," primarily in the powerhouse area of Honeywell's operations. During his employment there, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America ("International UAW"), Local 533 ("Local 533"), represented a group of Honeywell employees, including Migliori. A CBA governed the terms of Migliori's employment and included terms regarding recall to work and eligibility for retiree healthcare benefits. Migliori was laid off from Honeywell in December 1998, but retained recall rights under the CBA.

According to Migliori's complaint, Honeywell used millwrights to perform work in the powerhouse area that was reserved to persons qualified as Fireman's Engineer Licensed and, after he was laid off, used outside contractors to perform work that was normally done by "the stationary engineer" when he had recall rights, in violation of the CBA. Migliori stated that, beginning in December 1998, he filed several union grievances and wrote letters to the union complaining about these actions.

In April 2008, Migliori filed a federal complaint against Honeywell and Local 533 in the district court, alleging that Honeywell violated the "Lines of Demarcation" in the CBA by using millwrights to perform the work of the Fireman's Engineer Licensed classification and, as a result, he was wrongfully laid off. He further alleged that Local 533 breached its duty of full and fair representation by refusing to adequately investigate and represent him with respect to the union grievances he had submitted. Because Migliori failed to serve process on Honeywell after the issuance of an order to show cause, the district court dismissed the case for failure to prosecute. The district court denied Migliori's motion to reopen the case. Migliori did not appeal.

Migliori continued to submit grievances and letters to the union after the dismissal of his lawsuit. In June 2011, he retired from Honeywell. Shortly thereafter, in January 2012, Migliori filed a second pro se lawsuit against Honeywell, International UAW, and Local 533, alleging that Honeywell breached the CBA by hiring millwrights and outside contractors to perform work reserved to the Fireman's Engineer classification, failing to recall him to work after his layoff and instead using outside contractors, and denying him retiree health care benefits. He also alleged that International UAW and Local 533 breached their duty of fair representation by failing to investigate or pursue his grievances. Finally, he alleged that the defendants engaged in a conspiracy to deprive him of his employment, retiree health benefits, and access to the CBA's grievance and appeals process. He demanded \$250 million in damages and injunctive relief.

After Migliori retained counsel, the parties eventually settled the matter. Pursuant to a confidential settlement agreement, Honeywell agreed to pay Migliori a lump sum and the defendants agreed to allow Migliori to enroll himself and his dependents in the Group Health

Plan for Hourly Employees and Retirees of Honeywell International Inc., Consumer Product Group, Filters and Spark Plugs Plant, Fostoria, Ohio, consistent with the coverage provided to other similarly situated retirees. In exchange, Migliori agreed to dismiss the lawsuit with prejudice; to release and forever discharge Honeywell and the union from any and all lawsuits or other actions, whether known or unknown, based on anything that occurred before the agreement was signed; and never to file a lawsuit or become a member of a class action against Honeywell or the union based on any of the released and discharged claims. The parties entered a stipulation agreeing that all of Migliori's claims would be dismissed with prejudice. Pursuant to that stipulation, the district court dismissed the matter on August 30, 2012. No appeal was filed.

In May 2016, Migliori commenced this pro se lawsuit against Honeywell, International UAW, and Local 533. Again, Migliori alleged that Honeywell violated the CBA by failing to recall him to work, using millwrights and outside contractors to perform the work of employees in the Fireman's Engineer classification, and denying him retiree health benefits and that International UAW and Local 533 breached its duty of fair representation. In fact, Migliori's 2016 complaint was identical to his 2012 complaint with one exception—he demanded \$500 million in damages in his 2016 complaint.

The defendants filed motions to dismiss Migliori's complaint for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). They argued that Migliori's claims were barred by res judicata and the terms of the 2012 settlement agreement. Additionally, Honeywell argued that Migliori's claims were barred by the statute of limitations. Honeywell also filed a motion to enforce the settlement agreement. Migliori did not respond to the defendants' motions to dismiss. Instead, he filed several other motions, including a "motion for an [injunctive] stay," in which he sought an order preventing Honeywell from terminating retiree health benefits as it had notified Migliori it would be doing effective January 1, 2017; a "motion [for] summary judgment and U.A.W. to lo[]se its charter"; a "motion [to] refund union dues and union officers to lo[]se their pensions"; and a "motion to prevent healthcare to be stopped on January 1, 2017 and union contracts are protected by the Fourteenth Ame[n]dment restraining order." The district court granted the defendants' motions and dismissed the complaint as barred by res

judicata. The court denied Migliori's motion for summary judgment and denied all other pending motions as moot.

Migliori now appeals. He argues that the defendants' actions and the district court's decision violate the terms of the CBA and asserts that the district court "did not uphold the healthcare reform act and denied healthcare based on a pre-existing condition" and that "[t]he contract previously signed by all parties is in violation due to the elimination of healthcare coverage as of January 1st 2017." In addition, Migliori argues for the first time that the district court and his counsel coerced him into signing the 2012 settlement agreement and release. Migliori submitted three supplemental filings in addition to his brief. He attached to two of these supplemental filings a copy of the short-form settlement agreement that the parties reached in 2012 prior to executing the long-form settlement agreement that resulted in dismissal of Migliori's second lawsuit. Honeywell has moved to strike the short-form settlement agreement from the record.

We review a dismissal of a complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) de novo. *Taylor v. Geithner*, 703 F.3d 328, 332 (6th Cir. 2013); *City of Columbus v. Hotels.com, L.P.*, 693 F.3d 642, 648 (6th Cir. 2012). A complaint survives a motion to dismiss only if it "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). We also review res judicata determinations de novo. *Browning v. Levy*, 283 F.3d 761, 772 (6th Cir. 2002). Although the defendants relied on and attached to their motions records from Migliori's previous lawsuits, the district court was not required to treat the motions to dismiss as ones for summary judgment because the documents were referred to in the complaint and were "central" to Migliori's claims. *See Gavitt v. Born*, 835 F.3d 623, 640 (6th Cir. 2016).

Res judicata applies when there is "(1) a final decision on the merits by a court of competent jurisdiction; (2) a subsequent action between the same parties or their privies; (3) an issue in the subsequent action which was litigated or which should have been litigated in the prior action; and (4) an identity of the causes of action." *Kane v. Magna Mixer Co.*, 71 F.3d 555,

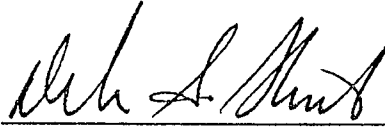
560 (6th Cir. 1995). These elements are present here. Migliori's 2012 and 2016 complaints were identical, except with respect to the amount of damages sought. Further, the dismissal of the 2012 complaint with prejudice, pursuant to the parties' settlement agreement, constitutes a final decision on the merits. *See Warfield v. AlliedSignal TBS Holdings, Inc.*, 267 F.3d 538, 542 (6th Cir. 2001); *King v. S. Cent. Bell Tel. & Tel. Co.*, 790 F.2d 524, 528-29 (6th Cir. 1986). Thus, the district court properly dismissed Migliori's complaint on res judicata grounds.

Migliori's arguments concerning the recent termination of his retiree healthcare benefits provide no basis for relief because he never raised this issue in his complaint. Instead, he raised it only in a motion for injunctive relief, in which he sought an order enjoining Honeywell from proceeding with the termination of benefits. Because the relief Migliori sought was beyond the scope of his complaint, the district court properly denied the motion. Moreover, the defendants pointed out, and Migliori did not dispute, that, at the time he filed his motions for injunctive relief in the district court, he was a putative member of a class of plaintiffs suing Honeywell for terminating retiree healthcare benefits and seeking the same relief sought by Migliori in his motions. *See Watkins v. Honeywell Int'l Inc.*, No. 3:16-cv-01925-JGC (N.D. Ohio 2016). Aside from the fact that Migliori did not properly raise a claim concerning Honeywell's termination of retiree healthcare benefits in his complaint, his motions for injunctive relief were properly denied because any such claim would be duplicative of those raised in the *Watkins* class action. *See Groseclose v. Dutton*, 829 F.2d 581, 584-85 (6th Cir. 1987).

Finally, Migliori argues that he was coerced into signing the settlement agreement in 2012. In support of this argument, he has submitted a copy of the short-form settlement agreement that the parties signed before executing the long-form settlement agreement. Because Migliori failed to raise this argument in the district court, he has forfeited the issue on appeal. *See McMillan v. LTV Steel, Inc.*, 555 F.3d 218, 228-29 (6th Cir. 2009). As for the short-form settlement agreement, Migliori did not file it in the district court, and therefore it is not part of the record on appeal. *See Fed. R. App. P. 10(a)*.

Accordingly, we **GRANT** Honeywell's motion to strike and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", written over a horizontal line.

Deborah S. Hunt, Clerk

2. Plaintiff is required to reimburse Honeywell's excess costs, expenses, and attorneys' fees incurred in defending the instant lawsuit in the amount of \$48,476.00, which includes the costs, expenses, and attorneys' fees Honeywell incurred in:

- a. filing its motion to dismiss Plaintiff's third lawsuit and its motion to enforce the parties' Confidential Settlement Agreement—\$16,447.00;
- b. responding to Plaintiff's "Motion for Injunctive Stay"—\$9,801.50;
- c. responding to Plaintiff's "Motion to [sic] for Summary Judgment and U.A.W. to Loose [sic] Charter," his "Motion to [sic] for Refund Union Dues and Union Officers to Loose [sic] Their Pensions," his "Motion to Prevent Healthcare to Be Stopped on January 1 [sic] 2017 and Union Contracts Are Protected by the Fourteenth Amendment [sic] Restraining Order," and his two memoranda in support of these motions—\$22,227.50; and
- d. filing its Verified Motion for Excess Costs, Expenses, and Attorneys' Fees.

3. Plaintiff, or anyone acting on his behalf, is enjoined from filing any action in any state or federal court—without regard to geographical or jurisdictional boundaries—arising out of the same conduct litigated in Plaintiff's three lawsuits against Honeywell in this Court, including (a) *Migliori v. Honeywell*, No. 3:08-cv-00938 (N.D. Ohio Apr. 11, 2008); (b) *Migliori v. Honeywell*, No. 3:12-cv-00088-JZ (N.D. Ohio Jan. 13, 2012); and (c) *Migliori v. Honeywell*, No. 3:16-cv-01136 (N.D. Ohio May 13, 2016).

4. Plaintiff, or anyone acting on his behalf, is enjoined from filing any new action in any state or federal court without first obtaining leave of a state or federal court by way of the procedure specified herein for obtaining leave.

5. The following procedures for obtaining leave are to be followed to comply with this injunction. In seeking leave to file a new action in any state or federal court, Plaintiff, or

anyone acting on his behalf, must file his proposed action in a state or federal court with a motion captioned, "Motion Pursuant to Court Order Seeking Leave to File." The following documents must be attached to that motion: (a) a copy of this injunction; (b) a sworn affidavit certifying that the claims Plaintiff, or anyone acting on his behalf, wishes to present are new claims never before raised (or could have been raised) in any state or federal court and not enjoined by this injunction; and (c) a list of the full captions of each and every suit filed by Plaintiff, or on his behalf, against each and every defendant to the suit he wishes to file. Any new action that Plaintiff, or anyone acting on his behalf, seeks to file in any state or federal court will not be file marked until a state or federal court judge grants Plaintiff, or anyone acting on his behalf, leave to file that new action. If leave to file is granted, a copy of this order must then be served on each defendant.

6. This injunction shall be in effect for a period of three years from the date of its issuance. The purpose of the injunction is to put an end to the stream of Plaintiff's obstinate, chronic, and legally unfounded filings. If additional measures become necessary to effectuate this purpose, they will be taken through the modification of this injunction or otherwise as warranted.

Dated: _____

JUDGE, United States District Court
Northern District of Ohio
Western Division

Service will be made electronically on
all ECF-registered counsel of record via
email generated by the Court's ECF system.

Copy to: Joseph Migliori
12763 Lagoon Drive
Curtice, Ohio 43412