

United States Court of Appeals  
for the Fifth Circuit

United States Court of Appeals  
Fifth Circuit

**FILED**

October 20, 2023

Lyle W. Cayce  
Clerk

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No. 23-20056  
Summary Calendar

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MICHELE R. GRAY,

*Plaintiff—Appellant,*

*versus*

GC SERVICES,

*Defendant—Appellee.*

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Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. 4:22-CV-2753

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Before KING, HAYNES, and GRAVES, *Circuit Judges.*

PER CURIAM:\*

Michele R. Gray appeals various state and federal law claims of employment-related harassment and discrimination against her former employer, GC Services. The district court dismissed Gray's claims with prejudice, concluding that they are all barred by the doctrine of res judicata. We AFFIRM.

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\* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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I.

Pro se Appellant Michele R. Gray is a 56-year-old disabled single parent who worked as a home-based customer service representative for Defendant-Appellee GC Services. As part of her employment, Gray signed an arbitration agreement requiring her to submit all employment-related disputes with GC Services to arbitration. Gray was employed from June 26, 2019, to January 28, 2020, the date of her resignation and immediate termination.

Gray alleges that during her employment, GC Services continuously harassed her about her age in an attempt to get her to quit, exhibited a pattern of hiring only younger employees, overlooked her for various work assignments, isolated and left her out of work-related trainings, and gave her a multitude of poor performance reviews. Gray also asserts that GC Services threatened to demote and terminate her, and that they failed to provide her with reasonable accommodations for her disabilities. On June 23, 2020, several months after Gray's termination, she was diagnosed with diverticular disease, which Gray maintains was caused by stress incurred as a result of her employment with GC Services.

On August 12, 2022, Gray sued GC Services in federal district court, alleging employment-related discrimination under the Age Discrimination in Employment Act, violations of the Americans with Disabilities Act, negligence, and negligence per se. Notably, however, this current lawsuit is not Gray's first—four other courts have preceded our court in reviewing Gray's claims. In each prior case, Gray alleged identical facts and nearly

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identical legal arguments, save for a few miscellaneous new claims that Gray added each time she refiled.<sup>1</sup>

On September 5, 2022, GC Services filed a motion to dismiss, arguing that the Federal Arbitration Act and res judicata bar Gray's claims, and that, in addition, Gray failed to state a proper claim for relief. The district court thoroughly analyzed all of Gray's prior lawsuits and concluded that multiple other courts had already found Gray's claims to be non-cognizable. Accordingly, the district court dismissed Plaintiff's claims with prejudice as barred by res judicata. Gray appealed.

## II.

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<sup>1</sup> On June 29, 2020, Gray sued GC Services in federal district court in the Northern District of New York. The case was ultimately dismissed with prejudice for failure to state a claim, with final judgment entered in May 2021. In January 2021, Gray filed a second, nearly identical state-court lawsuit in Rensselaer County, New York. The complaint brought the same claims as the New York federal court lawsuit and added additional claims under the Arizona Civil Rights Act, the Nevada Fair Employment Practices Act, and the New York Human Rights Law. On August 18, 2021, the New York state court dismissed the case as barred by res judicata. In February 2021, Gray filed a third lawsuit in Arizona state court, again alleging the same facts and legal arguments discussed in the New York federal and state cases. The Arizona state court initially dismissed her lawsuit with prejudice for failure to state a claim and as barred by res judicata. However, the Arizona Court of Appeals vacated and remanded the case, concluding that pursuant to Arizona law, the state superior court was required to address the issue of arbitration before it could address the merits of Gray's appeal. Finally, on August 2, 2021, Gray filed a fourth lawsuit in Arizona federal court. *See Gray v. GC Serv.*, No. CV-21-01334-PHX-DGC, 2022 WL 112199, at \*2 (D. Ariz. Jan. 12, 2022) (order granting GC Services' motion to dismiss). The Arizona federal district court dismissed Gray's claims with prejudice on January 12, 2022, concluding that although Gray did add some new causes of action, res judicata still barred all her claims because they all arose from "the same transactional nucleus of facts" as her other lawsuits where final judgments had already been entered on the merits. *Id.* at \*3. Gray appealed, and on August 19, 2022, the Ninth Circuit dismissed the appeal as frivolous. *Gray v. GC Serv.*, No. 22-15147, 2022 WL 17493721, at \*1 (9th Cir. Aug. 19, 2022). On February 21, 2023, the United States Supreme Court denied Gray's petition for writ of certiorari. *Gray v. GC Serv.*, 143 S. Ct. 797, 797 (2023).

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“We review *de novo* the district court’s grant of a motion to dismiss for failure to state a claim.” *Jeanty v. Big Bubba’s Bail Bonds*, 72 F.4th 116, 118–19 (5th Cir. 2023). Because motions to dismiss evaluate the adequacy of the allegations in a complaint rather than the merits of the case, we “accept[] all well-pleaded facts as true and view[] those facts in the light most favorable to the plaintiff.” *Cummings v. Premier Rehab Keller, P.L.L.C.*, 948 F.3d 673, 675 (5th Cir. 2020) (quoting *Hines v. Alldredge*, 783 F.3d 197, 200–01 (5th Cir. 2015)); see FED. R. CIV. P. 12(b)(6).

### III.

As noted above, this lawsuit is Gray’s fifth bite at the apple. “Under res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.” *Allen v. McCurry*, 449 U.S. 90, 94 (1980). “[R]es judicata encompasses two separate but linked preclusive doctrines: (1) true res judicata or claim preclusion and (2) collateral estoppel or issue preclusion.” *Hous. Pro. Towing Ass’n v. City of Houston*, 812 F.3d 443, 447 (5th Cir. 2016) (quoting *Comer v. Murphy Oil USA, Inc.*, 718 F.3d 460, 466–67 (5th Cir. 2013)). True res judicata, the doctrine applicable here, “precludes relitigation of . . . issues actually litigated in the [first] action, whether or not [subsequent] suit[s] [are] based on the same cause of action.” *Moch v. E. Baton Rouge Par. Sch. Bd.*, 548 F.2d 594, 596 (5th Cir. 1977).

Res judicata bars claims when: “(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions.” *Comer*, 718 F.3d at 467 (quoting *Test Masters Educ. Servs., Inc. v. Singh*, 428 F.3d 559, 571 (5th Cir. 2005)). Additionally, this court has adopted the “transactional test” to determine whether two cases

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involve the same claim. *See Hous. Pro. Towing*, 812 F.3d at 447. “The transactional test focuses on whether the two cases are based on the same nucleus of operative facts.” *Id.* (internal citations and quotations omitted). “The nucleus of operative facts, rather than the type of relief requested, substantive theories advanced, or types of rights asserted, defines the claim.” *United States v. Davenport*, 484 F.3d 321, 326 (5th Cir. 2007).

We agree with the district court that Gray’s four prior lawsuits preclude her from litigating her current case. Addressing the first two prongs of res judicata, the parties in all of Gray’s prior actions were identical to the parties here, and Gray does not challenge the jurisdiction of any of the four prior courts. As to the third prong, at least three of those courts—the U.S. District Court for the Northern District of New York, the U.S. District Court for the District of Arizona, and the Rensselaer County Supreme Court—have dismissed her claims with prejudice for failure to state a claim, all acting as final judgments on the merits for the purposes of res judicata. *See Oreck Direct, LLC v. Dyson, Inc.*, 560 F.3d 398, 401 (5th Cir. 2009). Finally, prong four is likewise satisfied. Under the transactional test, all of Gray’s prior lawsuits involve the “same claim.” As the district court properly and succinctly explained, “Plaintiff’s claims revolve around the same set of interactions between herself and her employer in all four lawsuits . . . . While some details and legal theories diverge across the cases, the basic facts forming the causes of action remain the same.” Thus, with all four prongs of res judicata met, Gray’s claims are barred.

#### IV.

We find no reversible error in the district court’s decision to dismiss Gray’s claims with prejudice as barred by res judicata. AFFIRMED.