UNITED STATES COURT OF APPEALS
for the Fifth Circuit

No. 92-4561
Summary Calendar

ERNEST DALE THOMAS,

Plaintiff-Appellant,

VERSUS

JOHNSON CONTROLS, INC.,

Defendant-Appellee.

Appeal from the United States District Court
for the Eastern District of Texas
(91 CV 123)

(December 23, 1992)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[1]

Thomas has filed three suits against his former employer, Johnson Controls, Inc., for wrongful termination of his employment. The first suit was filed in l985. The federal district court dismissed that suit with prejudice in April 1987. Thomas filed a substantially identical suit against Johnson Controls in Texas

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[1]Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

state court. The Texas district court dismissed that suit with prejudice as barred by **res judicata**. The intermediate Texas Court of Appeals affirmed that decision and the Texas Supreme Court denied writs. The United States Supreme Court denied plaintiff's application for writ of certiorari from the state court judgment. Thomas then returned to federal court and filed the third, instant suit against Johnson Controls, again seeking damages for wrongful discharge. The district court dismissed the suit as barred by **res judicata** and as time-barred. The district court also assessed sanctions against Thomas.

The district court's judgment is plainly correct. Thomas's arguments on appeal are incoherent. Thomas argues that the federal district court was without jurisdiction in **Thomas I** to hold an adjudication on the merits. Thomas offers no coherent reason why the district court had no jurisdiction to entertain **Thomas I**, since the district court clearly had diversity jurisdiction. Also, Thomas does not explain why the district court now has jurisdiction over the identical claim he asserted in **Thomas I.** The district court in **Thomas I** dismissed the suit with prejudice, and that dismissal constituted a final judgment on the merits. **See Astron Indus. Associates, Inc. v. Chrysler Motors**, **Corp.,** 405 F.2d 958, 960 (5th Cir. l968); **see also** Fed. R. Civ. P. 41(b). Such a final judgment bars a later suit on the same cause of action. **Astron**, 405 F.2d at 960.

Thomas, in his effort to collaterally attack the state court judgment in **Thomas II**, next asserts that the federal district

court's application of state **res judicata** principles is erroneous. This is also plainly wrong. The federal district court in this diversity case properly applied state **res judicata** principles in determining whether the state court's judgment in **Thomas II** barred plaintiff's action in **Thomas III**. **See Migra v. Warren City School Dist. Bd. of Educ.**, 465 U.S. 75, 81 (1984).

Finally, the district court correctly imposed sanctions. Two state courts definitively stated that Thomas's claim was barred by the federal court's dismissal with prejudice in **Thomas I**. He had no arguable legal basis to return to federal district court and attempt to collaterally attack both the judgment rendered by the federal district court and the judgment rendered by the state court.

This appeal is even more frivolous. The federal district court, in a simple, concise order, gave reasons explaining why Thomas's action was barred by the earlier judgments. Thomas's persistence in continuing this vexatious litigation and filing a frivolous appeal in which "the arguments of error are wholly without merit," prompts us to grant appellee's motion for additional sanctions. **See Buck v. United States**, 967 F.2d 1060, 1062 (5th Cir. 1992)(per curiam)(quoting **Coghlan v. Starkey**, 852 F.2d 806, 811 (5th Cir. 1988)(per curiam)). Fed. R. App. P. 38 authorizes an award of just damages and single or double costs to the appellee for frivolous appeals. We find that an award of $3000 in lieu of costs and attorney's fees is reasonable, and we award

damages in that amount in favor of Johnson Controls and against Thomas.

APPEAL DISMISSED. See Local Rule 42.2.