IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5622
(Summary Calendar)

EDUARDO M. BENAVIDES,

Plaintiff-Appellant,

versus

UNITED STATES MARSHALS SERVICE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Texas

(SA-91-CA-823)

(March 24, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

Plaintiff-Appellant Eduardo M. Benavides, a federal prisoner, appeals the district court's summary dismissal of his suit under

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[*]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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

5 U.S.C. § 552, Freedom of Information Act (FOIA) against the United States Marshals Service (USMS) as res judicata. He also appeals the court's summary judgment dismissing the FOIA claims that he asserted against two individual deputy marshals and against the Drug Enforcement Agency (DEA). Finding no reversible error, we affirm.

I

FACTS

In 1984, Benavides filed a Bivens suit in the Western District of Texas against two individual deputy U.S. marshals. The suit was based on incidents that occurred during Benavides's 1984 arrest. The district court dismissed Benavides's suit for failure to state a claim.

In 1985, Benavides filed a FOIA request with the USMS. He asked for "any or all information to events that occurred while I was in federal custody and to events that directly envolved [sic] the U.S. Marshalls [sic] in San Antonio." The USMS located a total of 200 pages of material responsive to Benavides's request. The USMS released some of the documents requested by Benavides, but withheld many of the documents pursuant to FOIA exemptions. A Vaughn index was also prepared.[1]

Benavides filed suit in the District of Columbia,[2] challenging

[1] The purpose of a Vaughn index is to justify an agency's withholding of documents by correlating each document with a particular FOIA exemption. See Vaughn v. Rosen, 484 F.2d 820, 828 (D.C. Cir. 1973), cert. denied, 415 U.S. 977 (1974).

[2] A FOIA complaint may be properly filed in the District Court for the District of Columbia. See 5 U.S.C. § 522(a)(4)(B).

the USMS's withholding of documents and the sufficiency of the Vaughn index provided by the USMS. The USMS filed a motion for summary judgment. After reviewing the Vaughn index de novo, the district court granted the USMS's motion for summary judgment, concluding that the unreleased documents were properly withheld under FOIA exemptions cited by the USMS.

In 1989, Benavides made a second FOIA request with the USMS, again seeking documents seized during his 1984 arrest. The USMS responded that it had no records responsive to his request. Benavides also made a FOIA request with the DEA for documents compiled incident to the use of "buy money" by DEA agents incident to drug investigations. The DEA denied the request, asserting that the material requested was exempt from disclosure pursuant to exemptions (b)(2) and (b)(7)(E) of the FOIA. See 5 U.S.C. §§ 522(b)(2) and (b)(7)(E).

Benavides then filed the instant action naming as defendants the USMS, the individual deputy marshals, and the DEA. Benavides alleged that the deputy marshals unlawfully seized his address book and several other personal documents when they arrested him in 1984. Mendoza 1) challenged the USMS's explanation that no records responsive to his request were available; 2) disputed the DEA's assertion that his FOIA requests were precluded by FOIA exemptions; and 3) argued that the defendants were in bad faith and knowingly withholding the records he sought.

The government filed a motion to dismiss Benavides's complaint pursuant to Fed. Rules Civ. P. 12(b)(1), (6), and 56. The

magistrate judge recommended that the government's motion be granted, and the district court adopted the report and recommendation of the magistrate judge, granting the government's motion for summary judgment.

II

ANALYSIS

A. Res Judicata - USMS

Benavides argues that the district court improperly determined that his FOIA suit against the USMS was res judicata. We review de novo whether an action is barred under the doctrine of res judicata. Schmueser v. Burkburnett Bank, 937 F.2d 1025, 1031 (5th Cir. 1991).

The district court determined that Benavides's claims against the USMS were foreclosed by the final judgment in his earlier action filed in the District of Columbia. Res judicata bars a second action only if each of four requirements is met: (1) the parties must be identical; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) there must be a final judgment on the merits; and (4) the same cause of action must be involved in both cases. Russel v. Sunamerica Securities, Inc., 962 F.2d 1169, 1172 (5th Cir. 1992).

In his second FOIA request, Benavides sought the release of the address book and other personal documents that were allegedly seized during his arrest. In the District of Columbia suit he claimed the right to obtain documents that were generated pursuant to his arrest in San Antonio. Thus, Benavides is seeking the same

documents from the USMS in the present lawsuit that he sought in the District of Columbia suit.

Benavides argues that, although the USMS denies the existence of any documents related to his request, a document released pursuant to the District of Columbia suit confirms that an address book was confiscated during his arrest. Insisting that the present suit is more specific because he seeks the address book itself, he alleges that in the District of Columbia suit he was unable to present evidence timely that the address book existed. Thus, he concludes, his second request should not be barred by res judicata.

Res judicata bars all claims that were advanced or could have been advanced in support of the cause of action on the occasion of its former adjudication, not merely those that were actually adjudicated. Matter of Howe, 913 F.2d 1138, 1144 (5th Cir. 1990). Thus, the second suit is barred by res judicata despite Benavides's claim that the USMS is in possession of the address book.

Benavides also argues that, because he was and still is in prison, and is not trained in the law, he did not have a fair and meaningful opportunity to litigate his first FOIA suit.[3] He urges that, as adherence to the doctrine of res judicata in FOIA cases will invite government officials to invoke it as a subterfuge for avoiding their obligations, this court should adopt an exception to

[3] Although Benavides cites no authority for this proposition, he is perhaps alluding to Nilsen v. City of Moss Point, Miss., 701 F.2d 556 (5th Cir. 1983), in which the dissenting opinion stated that "there is no basis for application of the doctrine unless the plaintiff has `a full and fair opportunity to litigate' his claim." Id. at 565.

the doctrine of res judicata to address these issues.

The Supreme Court has stated that it does not recognize a general equitable doctrine, or "simple justice" exception, applicable to the doctrine of res judicata. See Federated Dept. Stores, Inc. v. Moitie, 452 U.S. 394, 399, 101 S.Ct. 2424, 69 L.Ed.2d 103 (1981); see also Matter of Reed, 861 F.2d 1381, 1382 (5th Cir. 1988). We find that the district court correctly determined that Benavides's action against the USMS is barred by res judicata.

B. Claims Against Individual Deputy Marshals

In his complaint, Benavides alleged that the two deputy marshals unlawfully took items belonging to him, including his address book and other personal documents. The district court concluded that, insofar as Benavides's claims against the individual deputy marshals alleged constitutional torts, those claims were res judicata because Benavides had already sued those individuals in the Bivens action. The court also noted that Benavides could not assert a theory of recovery under the FOIA because that Act does not create a cause of action against individual employees of federal agencies. Id., see Petrus v. Bowen, 833 F.2d 581, 582 (5th Cir. 1987), see also 5 U.S.C. § 522(a)(4)(B).

Benavides argues that his suit against the deputy marshals is not barred by res judicata. He tells us that the record is devoid of any factual support for the district court's determination that res judicata was applicable. In his objections to the magistrate

judge's report, Benavides asserted that his first suit against the individuals stemmed from conduct involving his brother, and that the district court concluded that he had no standing to bring a claim for his brother. He stated to that court that, as the records of the first suit were lost by state prison officials, he could not offer them into evidence in support of his argument.

The government did not assert res judicata as a defense in the action against the deputy marshals. Although the district judge who determined that the claim was barred by res judicata was the same judge who dismissed Benavides's first claim, the record does not support a finding that the second suit against the marshals is res judicata. But even so, the dismissal of Benavides's claims against the deputy marshals was proper because suit cannot be brought under the FOIA against an individual. See Petrus, 833 F.2d at 582. Benavides has no other viable cause of action[4] in federal court; therefore, his claims against the individual deputy marshals were properly dismissed.

C. Claims Against the DEA

Benavides argues that the district court erred in determining that his requests for information from the DEA were exempt from release under FOIA regulations. In response to Benavides's FOIA request, the DEA submitted the affidavit of a Freedom of

[4] In his complaint, Benavides sought a declaratory judgment proclaiming that the seizure of his personal documents was in violation of his constitutional rights. See R. 214. A plaintiff is not entitled to declaratory relief absent a showing that alleged constitutional violations are likely to recur in the future. See Pembroke v. Wood County, Texas, 981 F.2d 225, 228 (5th Cir. 1993). Declaratory relief is not available to Benavides.

Information/Litigation Specialist for the DEA. The affidavit stated that the information requested by Benavides was contained in the DEA Agents Manual and was exempt from release pursuant to exemptions (b)(2) and (b)(7)(E) of the FOIA, 5 U.S.C. § 552. The affidavit also stated that the information requested describes in detail the circumstances, purposes, results, and methods employed by DEA in the use of surveillance and undercover techniques.

The district court determined that the DEA could properly withhold the information requested by Benavides pursuant to 5 U.S.C. § 552(b)(7)(E) (exemption 7). The court concluded that the uncontroverted affidavit provided by the DEA established that the release of the requested information could reasonably be expected to risk circumvention of the law.

5 U.S.C. § 552(b)(7)(E) exempts from disclosure

> [R]ecords or information . . . compiled for law enforcement purposes, but only to the extent that the production of such law enforcement records or information would disclose techniques and procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law.

We review the district court's FOIA decision to determine whether the district court had an adequate factual basis for its decision and, if so, whether the decision it reached was clearly erroneous. Villanueva v. Dept. of Justice, 782 F.2d 528, 530 (5th Cir. 1986). But see Halloran v. Veterans Admin., 874 F.2d 315, 320 (5th Cir. 1989) (review is de novo if the district court's decision is based not upon the unique facts of the case, but upon conclusions of law).

The agency seeking to prevent the disclosure of a document subject to a request under FOIA has the burden of showing that the document falls within the FOIA exemption. Calhoun v. Lyng, 864 F.2d 34, 35 (5th Cir. 1988). In FOIA cases, summary judgment on the basis of an agency affidavit is warranted if the affidavit describes the documents and the justifications for nondisclosure with reasonably specific detail, demonstrates that the information withheld logically falls within the claimed exemption, and is not controverted[5] by either contrary evidence in the record or evidence of agency bad faith. Military Audit Project v. Casey, 656 F.2d 724, 738 (D.C. Cir. 1981).

Benavides argues that the affidavit submitted by the DEA was insufficient as a matter of law because "it gives no explanation of the purported nexus or factual basis of how book-keeping [sic] records or DEA's manual guideline and procedures could aid suspects in the circumvention of the law[.]" He relies on Albuquerque Pub. Co. v. U.S. Dept. of Justice, 726 F.Supp. 851 (D.C.C. 1989), in which the court concluded that, in order to make a reasoned determination that an exemption was properly claimed, the court must first know more about the techniques at issue. Id. at 857.

Exemption 7 provides that exemption is appropriate if the information "could reasonably be expected to risk circumvention of the law." 5 U.S.C. § 522(b)(7)(E). An agency is not required to

[5] Benavides argues that the DEA's affidavit was controverted by the sworn factual allegations in his motion in opposition and in his request for an in camera hearing. Nothing in these pleadings can be reasonably construed as a sworn factual allegation.

establish with certainty how the release of the information would interfere with enforcement proceedings. See Spannaus v. U.S. Dept. of Justice, 813 F.2d 1285, 1288 (4th Cir. 1987). Rather, the affidavit need only state with "reasonably specific detail" that the information is exempt. See Casey, 656 F.2d at 738. Benavides specifically requested information related to the DEA's procedures for the use of "buy money." The DEA affidavit stated that the release of the information requested would compromise the integrity of the undercover techniques and assist drug violators in evading detection and apprehension. We agree that the techniques at issue were stated with reasonably specific detail to support the motion for summary judgment.

Benavides also insists that exemption 7 is not applicable because the information requested was not investigative in nature. He states that the information requested was compiled by the DEA to monitor its own employees' use of "buy money" and prevent the misappropriation of government funds. Benavides's re-characterization of his request is belied by his own opposition to the defendants' motion to dismiss. In that opposition, Benavides stated that he sought "any and all records compiled by DEA in the use of buy money by DEA agents, incident to any criminal drug charges or investigation." (emphasis added). We are satisfied that the documents requested by Benavides were unquestionably investigative in nature.

Benavides also argues that the information he requested is so commonly known that the release of the information would not

enhance circumvention of the law; that the legislative history of exemption 7(E) makes clear that it is to be applied only to techniques and procedures generally unknown to the public. Hale v. U.S. Dept. of Justice, 973 F.2d 894, 902 (10th Cir. 1992), petition for cert. filed, U.S. Jan. 28, 1993) (No. 92-7433). But techniques and procedures may be exempt even when they are known to the public to some extent if disclosure of the circumstances of their use could lessen their effectiveness. Id. at 902-03. Thus, even though the public may have limited knowledge of the DEA's "buy money" techniques, disclosure here would be inappropriate because it would lessen the effectiveness of those techniques.

Benavides posits that the district court erred in concluding that the documents were exempt under exemption 7 without considering the public policy factors explained in 5 U.S.C. § 552(b)(2) (exemption 2). He argues that the public has an interest in disclosure and that the district court should have considered the public interest in making its determination. We disagree. In this case the issue whether there is a public interest in the information is irrelevant because the court concluded that the information was exempt under exemption 7, rather than exemption 2.

D. Issues Not Briefed

Benavides lists as issues, but does not argue, that the district court erred when it 1) denied his motion for appointment of counsel, and 2) refused to allow him to conduct discovery after the USMS denied being in possession of the address book. Only

issues that are briefed are properly before this court. Price v. Digital Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). As these issues are not properly before this court, we need not address them.

E. Caution

Benavides has been in the courts of this circuit and the D.C. circuit for almost a decade litigating essentially identical claims. In the foregoing opinion we have explained in almost excruciating factual and legal detail the reasons why he cannot recover. In so doing, we have resisted the justifiable temptation to label his latest legal efforts frivolous. Henceforth, however, further attempts to litigate any issues or matters arising from or connected with any or all incidents or issues involved in his previous and current federal lawsuits shall be deemed frivolous and shall be met with appropriate sanctions. We trust that this admonishment shall be sufficient to dissuade Benavides from attempting to prolong or extend his prosecution of these claims, which we now declare to be at an end.

III

CONCLUSION

For the foregoing reasons the summary judgments of the district court dismissing all claims of Benavides against the U.S. Marshals Service, the two individual deputy marshals, and the DEA are

AFFIRMED.