

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-5696
Conference Calendar

BASIL ZIMZORES,

Plaintiff-Appellant,

versus

DEPARTMENT OF VETERANS AFFAIRS
and THE UNITED STATES OF AMERICA,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Texas
USDC No. SA-91-CV-1192
- - - - -

March 17, 1993

Before KING, HIGGINBOTHAM, and DAVIS, Circuit Judges.

PER CURIAM:*

Basil Zimzores contends that his complaint was not barred by res judicata because he asserted a new claim which alleged that the previous judgment was not obtained in a constitutional manner and that the judgment was obtained by the Government's fraudulent conduct. Zimzores's argument lacks arguable merit and is thus frivolous. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

This Court reviews de novo the issue whether an action was barred under principles of res judicata. See Schmueser v. Burkburnett Bank, 937 F.2d 1025, 1031 (5th Cir. 1991). A procedural bar based on res judicata requires the following elements: "1) the prior judgment was rendered by a court of competent jurisdiction, 2) the parties to both suits were identical, 3) the prior judgment was a final judgment on the merits, and 4) the prior judgment was based on the same cause of action." Foret v. Southern Farm Bureau Life Ins. Co., 918 F.2d 534, 538 (5th Cir. 1990) (citation omitted).

Because Zimzores grounds his arguments on vague citations to the record and general principles of law without further articulation other than conclusional allegations of fraud and unfairness, this Court need not consider them. See Fed. R. App. P. 28(a)(3); Brinkman v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987). Nor does Zimzores adequately explain why he did not raise his allegations of fraud at trial or at an earlier time.

Zimzores fails to show how this claim differs from his original claim. The district court held that to the extent that Zimzores was attempting to relitigate the same issues, he was barred by res judicata, and to the extent that Zimzores raised, alternatively, a claim of fraud, that claim was barred by Fed. R. Civ. P. 60(b)(3), which requires such claims to be brought within one year from the date the judgment was entered.

Because Zimzores asserted a claim that stems essentially from the "same nucleus of operative facts, or is based upon the same predicate," the district court did not err when it held that Zimzores' claim was barred under principles of res judicata. See Russell v. SunAmerica Securities, Inc., 962 F.2d 1169, 1173 (5th Cir. 1992) (internal quotations and citations omitted).

Because the matter was res judicata, this Court need not address the issue of fraud. However, to the extent that Zimzores grounds his argument on allegations of fraud in the previous trial, his argument lacks merit for failure to comply with Rule 60(b)(3). Zimzores filed his claim six years after the first non-jury trial on the merits, which exceeds the designated "one year" ceiling on the requirement that "[t]he motion shall be made within a reasonable time." See Fed. R. Civ. P. 60(b). The district court's dismissal of Zimzores' motion, even if construed under Rule 60(b)(3), was thus not an abuse of discretion.

Because Zimzores presents no issue of arguable merit, his appeal is DISMISSED as frivolous. See 5th Cir. R. 42.2