

UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 92-5748

(Summary Calendar)

ABEL H. HERNANDEZ,

Plaintiff-Appellant,

versus

DONALD B. RICE, Secretary of
the Air Force,

Defendant-Appellee.

Appeal from the United States District Court
For the Western District of Texas
(SA 02 CA 854)

September 10, 1993

Before GARWOOD, JONES, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

Abel Hernandez, proceeding pro se, appeals the district court's dismissal with prejudice of his discrimination claim regarding an April 17, 1990 appraisal rating. Agreeing with the district court))that Hernandez's claim is barred by the doctrine of *res judicata*))we affirm.¹ We further note that Hernandez's appeal

* Local Rule 47.5.1 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

¹ In the instant case (cause no. SA-92-CA-0854), Hernandez claimed that on April 17, 1990, he was racially "discriminated against by the Secretary of the Air Force Donald B. Rice, in

is patently frivolous, as his brief does not even address the issue of res judicata. We have previously awarded damages in the amount of \$250.00 and double costs to appellee against Hernandez due to a frivolous appeal. See *Hernandez v. Rice*, No. 91-5785 (5th Cir. Sept. 29, 1992). Because there is no indication that Hernandez has learned his lesson, we award appellee its attorneys' fees associated with the defense of this appeal, as well as double costs against Hernandez. See Fed. R. App. P. 38; *Coghlan v. Starkey*, 852 F.2d 806 (5th Cir. 1988). We remand to the district court for the assessment of the attorneys' fee. See *Olympia Co., Inc., v. Celotex Corp.*, 771 F.2d 888, 894 (5th Cir. 1985), cert. denied, 493 U.S. 818, 110 S. Ct. 73, 107 L. Ed. 2d 39 (1989). We further caution Hernandez that the continued filing of frivolous appeals in this Court will lead to the imposition of sanctions.

Judgment AFFIRMED; REMANDED for assessment of attorneys' fees.

receiving an inappropriate promotion [a]ppraisal." Record on Appeal at 24. Hernandez raised this exact claim against the same party in an earlier, separate lawsuit (cause no. SA-91-CA-0694). See Record Excerpts for Rice at 3. The claim in the earlier lawsuit was dismissed on summary judgment. See *id.* at 20-23. "The general principle of res judicata treats a judgment on the merits as an absolute bar to relitigation between the parties and those in privity with them of every matter offered and received to sustain or defeat the claim or demand and to every matter which might have been received for that purpose." *Baylor v. United States Dep't of Housing and Urban Dev.*, 913 F.2d 223, 225 (5th Cir. 1990) (attribution omitted); see also *Fidelity Standard Life Ins. Co. v. First Nat'l Bank & Trust Co.*, 510 F.2d 272, 273 (5th Cir.) ("A case pending appeal is res judicata . . . until reversed on appeal."), cert. denied, 423 U.S. 864, 96 S. Ct. 125, 46 L. Ed. 2d 94 (1975). Because summary judgment of Hernandez's earlier claim, notwithstanding a pending appeal of that judgment, effectively barred relitigation of that same claim between the same parties, we conclude that the district court did not err in dismissing Rice's instant action.