

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1152
Conference Calendar

JAMES DUKE CREEL,

Plaintiff-Appellant,

versus

WACKENHUT CORPORATION,
Bridgeport Prerelease Facility,

Defendant-Appellee.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4: 92-CV-114-E
- - - - -
(August 26, 1993)

Before POLITZ, Chief Judge, WIENER, and DeMOSS, Circuit Judges.

PER CURIAM:*

James Duke Creel is contesting the dismissal of his 42 U.S.C. § 1983 suit on the basis of res judicata.

The doctrine of res judicata is applicable if 1) the prior judgment was rendered by a court of competent jurisdiction; 2) there was a final judgment on the merits; 3) the parties, or those in privity with them, are identical in both suits; and 4) the same cause of action is involved in both suits. Nagle v. Lee, 807 F.2d 435, 439 (5th Cir. 1987). If these elements are

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

established, the decree in the first case serves as an absolute bar to a subsequent action with respect to every theory of recovery presented and also as to every ground of recovery that might have been presented. Id.

Creel contends that his previous lawsuits were not adjudicated on the merits because the cases were dismissed on the basis of his failure to file a status report in accord with the district court's order.

Unless the district court indicates otherwise, an involuntary dismissal of a complaint based on a plaintiff's failure to prosecute his claim or to comply with a court order operates as an adjudication on the merits. Nagle, 807 F.2d at 442; Fed. R. Civ. P. 41(b). Such a dismissal may serve as a predicate for res judicata purposes. Nagle, 807 at 443.

Creel does not allege that the district court dismissed the previously filed suits without prejudice. Because there has been an adjudication on the merits in Creel's cases that involved the same parties and the same cause of action, the district court did not err in granting the motion to dismiss on the basis of res judicata.

This Court cannot address the propriety of the original dismissal of the suits because Creel forfeited the review by failing to file a timely notice of appeal in those cases. Nagle, 807 F.2d at 443.

AFFIRMED.