

UNITED STATES COURT OF APPEALS  
for the Fifth Circuit

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No. 94-20361  
Summary Calendar

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MARVINELL BROWN,

Plaintiff-Appellant,

VERSUS

HOUSTON INDEPENDENT SCHOOL DISTRICT, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Southern District of Texas  
(CA-H-93-2380)

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(January 13, 1995)

Before DUHÉ, WIENER, and STEWART, Circuit Judges.

PER CURIAM:<sup>1</sup>

Marvinell Brown appeals the district court's dismissal of her lawsuit in which she asserts seven constitutional, statutory, and state law causes of action against the Houston Independent School District (HISD), and a host of individuals in both their individual and representative capacities. The district court dismissed Brown's lawsuit because of res judicata and limitations. We affirm.

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<sup>1</sup> 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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

## FACTS

The HISD placed Brown, a schoolteacher, on indefinite medical leave as of January 19, 1989. In response, Brown sued the HISD alleging due process violations, race discrimination, breach of contract, and tort claims. The district court granted summary judgment to the HISD. Brown v. Houston Indep. Sch. Dist., 763 F. Supp. 905, 909 (S.D. Tex. 1991), aff'd, 957 F.2d 866 (5th Cir.), cert. denied, 113 S. Ct. 198 (1992).

Brown then filed this lawsuit in 1993, asserting constitutional claims based on the Due Process Clause and the First Amendment, statutory claims based on the Americans with Disabilities Act of 1990 and Title VII of the Civil Rights Act of 1964, and state law claims for intentional infliction of emotional distress, breach of contract, and tortious interference with business relations. All her claims stem from her placement on medical leave status. The individuals she includes in this new lawsuit are employees of the HISD. The district court granted the HISD's motion to dismiss on grounds of res judicata and limitations. Brown appeals.

## DISCUSSION

Because the HISD's motion contained exhibits, we treat the district court's dismissal as a summary judgment under Federal Rule of Civil Procedure 56. Our review under Rule 56 is de novo. Weyant v. Acceptance Ins. Co., 917 F.2d 209, 212 (5th Cir. 1990).

Res judicata prevents two parties from relitigating a cause of action already adjudicated. Res judicata bars a subsequent cause

of action when (1) both suits involved identical parties, (2) the prior suit adjudicated on the merits by a court of competent jurisdiction, and (3) the same cause of action was involved in both cases. Miller v. United States Postal Serv., 825 F.2d 62, 63-64 (5th Cir. 1987). Both parties agree that the prior suit was adjudicated on the merits.

Brown asserts that the individual defendants in this suit make the parties different, and that her new legal theories make the cause of action different. We disagree. Res judicata applies to parties in privity with the parties named in the previous suit. See Nevada v. United States, 463 U.S. 110, 129-30 (1983). The individual HISD employees are in privity with the HISD; therefore, we consider the same parties to be involved in both suits. As to the causes of action, whether Brown advances different legal theories this time around is of no moment. The question is whether she could have advanced these legal theories in her prior lawsuit. See Miller, 825 F.2d at 64. All her legal theories arise from her placement on medical leave. Brown could have consolidated all her legal theories in her prior lawsuit. We conclude that the district court properly dismissed Brown's suit because of res judicata. We need not decide whether Brown's causes of action were barred by limitations.

#### CONCLUSION

For the foregoing reasons, the district court's judgment is AFFIRMED.