

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-30383
Conference Calendar

THOMAS A. MOORE, M.D.,

Plaintiff-Appellant,

versus

BRENDA FELGER ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. CA-92-367-B
- - - - -

(March 22, 1995)

Before GARWOOD, BARKSDALE, and STEWART, Circuit Judges.

PER CURIAM:*

Thomas A. Moore asserts that the defendants "violated his rights under the Fourth Amendment by illegally entering [and searching] his home with a tainted WRIT OF ENTRY which relied on an AFFIDAVIT BY A REVENUE OFFICER which was based on heresay [sic], innuendo, unsupported conclusions, and malicious intent."

"The 'law of the case' doctrine generally precludes the reexamination of issues decided on appeal, either by the district court on remand or by the appellate court itself on a subsequent appeal." Chevron U.S.A., Inc. v. Traillour Oil Co., 987 F.2d

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1138, 1150 (5th Cir. 1993) (citation omitted). "If an issue was decided on appeal--either expressly or by necessary implication--the determination will be binding on remand and on any subsequent appeal." Id. A determination of a legal issue by an appellate court must be followed in all subsequent proceedings in the same case in the district court or in a later appeal unless "(1) the evidence on a subsequent trial was substantially different, (2) controlling authority has since made a contrary decision of the law applicable to such issues, or (3) the decision was clearly erroneous and would work manifest injustice." Morrow v. Dillard, 580 F.2d 1284, 1290 (5th Cir. 1978) (internal quotation and citation omitted).

In the first appeal, this court determined that "Moore raised no factual issues which cast doubt on the constitutionality of the IRS agents' actions"; the agents' entry into Moore's residence was pursuant to a valid Writ of Entry; and the seizure of items therefrom was pursuant to a valid warrant. Moore, 19 F.3d at 1060. Because this court explicitly decided that the IRS agents conducted a valid entry, search, and seizure and Moore does not demonstrate any ground on which reconsideration might be warranted, Moore is precluded under the doctrine of the law of the case from relitigating his alleged Fourth Amendment violation.

Moore has not presented any issue of arguable merit; his appeal is thus frivolous and is DISMISSED. Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5th Cir. R. 42.2.