

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 94-60689

Summary Calendar

WILLIE H. JONES,

Plaintiff-Appellant,

versus

ITT FINANCIAL SERVICES
d/b/a Aetna Finance Company,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Mississippi
(92 CV 496)

March 28, 1995

Before JONES, BARKSDALE, and BENAVIDES, Circuit Judges.

PER CURIAM:*

Willie H. Jones appeals from the district court's entry of summary judgment, arguing that the court erred in holding that his suit was barred by res judicata. Finding the court properly applied the doctrine of federal res judicata, we affirm.

I. FACTS AND PROCEDURAL HISTORY

Jones filed suit against ITT Financial Services, d/b/a/ Aetna

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Finance Company (ITT), pursuant to 42 U.S.C. §§ 1981 & 1982, alleging that he had been denied the rights enjoyed by white citizens to utilize state law to protect their property and inheritance rights. Jones alleged the following facts. His father owned a residence at the time of his death in 1989 and bequeathed the property to his three sons. The father's will was probated in May 1989, and a notice to creditors was published. ITT did not file a claim in the proceeding and the estate was closed.

Jones, who is incarcerated, alleged that an ITT representative subsequently contacted his wife and advised that his father, in return for a loan, had executed a land deed of trust on the family residence in favor of ITT in May 1986. ITT advised Mrs. Jones that it would foreclose on the property if the debt was not paid.

Jones then filed suit in the Chancery Court in Mississippi seeking to enjoin the foreclosure proceeding. The state court granted ITT's motion to dismiss the claim, which motion Jones alleged was not provided to him. Jones alleged that although he had filed a "Writ Ad Testificandum," he was not present at the hearing on the motion, during which ITT presented evidence. Jones alleged that he filed a petition for rehearing, which was denied. He sought to appeal the ruling but the appeal was dismissed as untimely. The Supreme Court denied his writ of certiorari.

Additionally, in a previous federal proceeding, Jones had sued ITT, the state court Chancellor who presided over his case, and state court clerks. In that proceeding, the magistrate judge opined that Jones was improperly using a § 1983 complaint to attack

the state court's dismissal of his claim against ITT. The magistrate judge also concluded that Jones had failed to show a "class-based animus" necessary to support a claim under § 1985 or to allege facts showing the existence of a conspiracy. The district court adopted the recommendation, and this Court dismissed Jones' appeal as frivolous.

In the court below, Jones filed a motion for summary judgment, arguing, among other things, that his father's property was protected by a homestead exemption. ITT filed a motion to dismiss for failure to state a claim or, alternatively, a motion for summary judgment, arguing that Jones had made the same complaint in his prior state and federal actions and, thus, res judicata barred the claim. The magistrate judge issued a report recommending that ITT's motion for summary judgment be granted based on the preclusive effect of the state court's denial of his claim. The magistrate judge alternatively stated that Jones' complaint was barred by res judicata because he had raised the same cause of action in his prior federal suit. The district court adopted the recommendation and dismissed the suit with prejudice.

II. WHETHER THE COMPLAINT IS BARRED BY RES JUDICATA.

Jones argues that his suit was not barred by res judicata because he raised issues concerning the illegality of the foreclosure and sale of his property which he did not raise in his prior suits. Jones argues that he could not have raised such claims in the state court suit because the foreclosure and sale occurred during the pendency of the suit. Jones also argues that

he could not seek compensatory damages prior to the sale of his property, which occurred during the pendency of the state court suit, that Aetna Finance Company was not named as a defendant in the prior action, and that his §§ 1981 & 1982 claims were not addressed in his prior federal suit.

When a summary judgment is appealed, this Court evaluates a district court's decision to grant summary judgment by reviewing the record under the same standards that the district court applied to determine whether summary judgment was appropriate. Herrera v. Millsap, 862 F.2d 1157, 1159 (5th Cir. 1989). Therefore, the summary judgment will be affirmed only when this Court is "convinced, after an independent review of the record, that 'there is no genuine issue as to any material fact' and that the movant is entitled to judgment as a matter of law.'" Id. (quoting Brooks, Tarlton, Gilbert, Douglas & Kressler v. United States Fire Ins. Co., 832 F.2d 1358, 1364 (5th Cir. 1987) and Fed.R.Civ.P. 56(c)). Fact questions must be considered with deference to the nonmovant. Herrera v. Millsap, 862 F.2d at 1159. Questions of law are reviewed de novo. Id.

Federal law determines the res judicata effect of a prior federal court judgment. Russell v. SunAmerica Securities, Inc., 962 F.2d 1169, 1172 (5th Cir. 1992). In order for res judicata to apply, the following four requirements must be met. First, the parties in the instant action must be the same as or in privity with the parties in the prior action in question. United States v. Shanbaum, 10 F.3d 305, 310 (5th Cir. 1994). Second, the court that

rendered the prior judgment must have been a court of competent jurisdiction. Id. Third, the prior action must have terminated with a final judgment on the merits. Id. Fourth, the same claim or cause of action must be involved in both suits. Id.

Jones' claims are barred by res judicata as a result of the dismissal of his prior federal suit. The previous suit against ITT was dismissed under Rule 12(b)(6) for failure to state a claim, which is a judgment on the merits. Langston v. Insurance Co. of North America, 827 F.2d 1044, 1047 (5th Cir. 1987). The prior federal judgment was rendered by a court of competent jurisdiction, ITT was a defendant in both suits, and Jones admits that he asserted the same causes of action in both suits. Jones' argument that Aetna Finance Company was not a defendant in the earlier proceeding is meritless because Jones did not sue Aetna as a separate entity herein, but merely identified it as the business name ITT used. Finally, it should be noted that the federal suit was filed in August 1990, and, thus, Jones had the opportunity to present all of his claims regarding the illegal seizure and sale of the property.

The district court properly granted the defendant's motion for summary judgment and dismissed the present suit based on the federal doctrine of res judicata. Therefore, we need not address whether under Mississippi res judicata principles, Jones' prior state court action bars the present suit.

CONCLUSION

For the reasons set forth above, the judgment is **AFFIRMED**.