

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

---

No. 99-21022  
Conference Calendar

---

DALE D. NESFIELD,

Plaintiff-Appellant,

versus

NATIONAL MARITIME UNION; NICHOLAS BACHKO  
CO., INC.; UNITED STATES COAST GUARD,

Defendants-Appellees.

-----  
Appeal from the United States District Court  
for the Southern District of Texas  
USDC No. H-99-CV-2634  
-----

June 16, 2000

Before JOLLY, DAVIS, and DUHÉ, Circuit Judges.

PER CURIAM:\*

Dale Nesfield appeals the district court's dismissal of his civil complaint on the basis of *res judicata*. An action is barred by the doctrine of *res judicata* if (1) the parties are identical in both actions; (2) the prior judgment was rendered by a court of competent jurisdiction; (3) the prior judgment was final on the merits; and (4) the cases involve the same cause of action. Travelers Ins. Co. v. St. Jude Hosp. of Kenner, La., Inc., 37 F.3d 193, 195 (5th Cir. 1994). Nesfield asserts that

---

\* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

this, his second lawsuit, was improperly dismissed because he was raising different claims against the defendants than were raised in his first lawsuit. However, "cause of action" is defined to include all claims that were or could have been brought in a prior action based on the same transaction. See Nilsen v. City of Moss Point, Miss., 701 F.2d 556, 560, 563-64 (5th Cir. 1983)(en banc). As Nesfield has raised no arguably meritorious issues on appeal, the appeal is frivolous and is DISMISSED. See Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983); 5TH CIR. R. 42.2.

Nicholas Bachko, Co., Inc., has filed a motion for sanctions based upon Nesfield's continued frivolous filings in the district court. Such an action is unnecessary at this time. However, Nesfield is cautioned that any additional frivolous appeals filed by him will invite the imposition of sanctions. To avoid sanctions, Nesfield is further cautioned to review his pending appeal, Nesfield v. United States Coast Guard et al., No. 00-20081, and any other pending appeals to ensure that they are not frivolous.

APPEAL DISMISSED; SANCTIONS DENIED; SANCTIONS WARNING ISSUED.