

United States Court of Appeals
for the Fifth Circuit

No. 26-10067

United States Court of Appeals
Fifth Circuit

FILED

September 9, 2026

Lyle W. Cayce
Clerk

CHRISTOPHER K. McNEILL,

Plaintiff—Appellant,

versus

TEAMSTERS LOCAL 577,

Defendant—Appellee.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 2:25-CV-85

Before STEWART, RICHMAN, and HAYNES, *Circuit Judges*.

PER CURIAM:*

Christopher K. McNeill moves for leave to proceed in forma pauperis (IFP) on appeal from the dismissal of his 2025 pro se complaint alleging, inter alia, that Teamsters Local 577 (Teamsters) breached its duty of fair representation under the National Labor Relations Act during an October 5, 2021 meeting held to discuss his request for an exemption to his employer's vaccine mandate. The district court dismissed the suit as precluded by res

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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judicata as it had already dismissed McNeill's 2023 suit against Teamsters raising claims based upon the same meeting. Through his IFP motion, McNeill challenges the district court's determination that the appeal is not taken in good faith. *See Baugh v. Taylor*, 117 F.3d 197, 202 (5th Cir. 1997). Thus, our inquiry "is limited to whether the appeal involves 'legal points arguable on their merits (and therefore not frivolous).'" *Howard v. King*, 707 F.2d 215, 220 (5th Cir. 1983) (citation omitted).

A suit is barred by res judicata if "(1) the parties are identical or in privity; (2) the judgment in the prior action was rendered by a court of competent jurisdiction; (3) the prior action was concluded by a final judgment on the merits; and (4) the same claim or cause of action was involved in both actions." *Sacks v. Tex. S. Univ.*, 83 F.4th 340, 344 (5th Cir. 2023). To the extent we consider McNeill's argument that the 2023 judgment was not on the merits because it did not expressly state it disposed of his claims with prejudice, it lacks merit. *See Mandawala v. Ne. Baptist Hosp.*, 16 F.4th 1144, 1155 (5th Cir. 2021).

As for whether the 2023 and 2025 suits involved the same claims or causes of action, we apply the "transactional test," the "critical issue [under which] is whether the two actions are based on the same nucleus of operative facts." *Sacks*, 83 F.4th at 344-45 (internal quotation marks and citation omitted). Both suits were based upon the same meeting, during which agents for Teamsters and McNeill's employer allegedly hid the bargained agreement for individualized accommodation and instead told McNeill that his only choices were receiving the vaccine, taking unpaid leave, or being terminated. *See id.* Despite being a pro se litigant, McNeill may not relitigate the same facts under different legal theories of recovery. *See Snow Ingredients, Inc. v. SnoWizard, Inc.*, 833 F.3d 512, 522 (5th Cir. 2016).

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McNeill's argument that he is entitled to equitable tolling is inapposite since the district court did not dismiss the 2025 complaint as time barred. Finally, his recourse for challenging the denial of counsel and the construal of his complaint in his 2023 case was to have appealed that judgment, and his failure to do so timely deprives us of jurisdiction to consider those issues. *See Bowles v. Russell*, 551 U.S. 205, 214 (2007).

As McNeill fails to identify a nonfrivolous issue for appeal, *see Howard*, 707 F.2d at 220, we DENY the IFP motion and DISMISS the appeal as frivolous. *See Baugh*, 117 F.3d at 202 n.24; 5TH CIR. R. 42.2.