UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

ROBERT JONES — PLAINTIFF

v. — CIVIL ACTION NO. 3:99CV-473-S

ERNEST M. SMITH, et al. — DEFENDANTS

MEMORANDUM OPINION

This matter is before the court on motion of the defendants, A.J. Welch, Jr., Ben W. Studdard, J. Mark Brittain, Patrick Jaugstetter, E. Gilmore Maxwell, Arthur Barbee, John P. Webb, T. Bruce McFarland, and Smith, Welch & Brittain, P.C., for summary judgment.[1] For the reasons set forth below, the motion of the defendants will be granted, and the claims set forth in the plaintiff's Complaint will be dismissed.

BACKGROUND

In 1996, Wanda Massey, then the wife of the plaintiff, filed for divorce from the plaintiff in the Superior Court of Henry County, Georgia. Ms. Massey retained the law firm of Smith, Welch, Studdard & Brittain (now Smith, Welch & Brittain) to represent her in the action. Bruce McFarland ("McFarland"), a defendant in this action, was an associate with the firm and handled Ms. Massey's divorce. Since that time, the plaintiff has filed numerous lawsuits in various state and federal courts against McFarland, other attorneys associated with Smith, Welch & Brittain, the law firm itself, and judges who have presided over the suits or their appeals. *See, e.g.,* Defs.' Brief in Supp., Exs. A through F.

[1]The plaintiff's Complaint names Ernest M. Smith as a defendant. However, Mr. Smith passed away in 1992, some four years prior to the events which form the basis of this suit occurred.

While most of the suits filed by the plaintiff have made similar allegations against similar defendants, the complaint filed by the plaintiff in the United States District Court for the Northern District of Georgia on May 22, 1998 ("the 1998 complaint") is especially relevant to this case. *See* Defs.' Brief in Supp., Ex. E. The 1998 complaint made allegations identical to the those made in this matter against all of the defendants named in this action. The allegations common to both suits include claims that: (1) the defendants failed to control the malicious prosecution of the plaintiff; (2) the defendants conspired to have an arrest warrant issued for the plaintiff based on a false affidavit; (3) the defendants conspired with the Henry County Superior Court to have a fraudulent court order signed; (4) the defendants invaded the plaintiff's privacy by contacting his former employer in connection with his divorce action; (5) McFarland gave a false affidavit; (6) the defendants invaded the plaintiff's privacy by obtaining his medical and psychiatric records; and (7) McFarland and the Georgia Attorney General conspired to deprive the plaintiff of his right to represent himself in court. *Compare Jones v. Baker*, Order, No. 1:98-cv-1470-CC, at 5-6 (N.D. Ga. Aug. 31, 1999) *with* Compl. at 4-12.[2]

The 1998 complaint was dismissed by the district court with prejudice on several grounds on August 31, 1999. *See* Order, *supra*, at 11. In its order, the district court addressed the merits of all of the claims made by the plaintiff and granted summary judgement in favor of the defendants with respect to each. *See id.* at 7-11.

At some point, the plaintiff moved from Georgia to Kentucky, and he filed suit in this court on July 20, 1999. The plaintiff's present Complaint is virtually identical to the 1998 complaint. As he did in the 1998 complaint, the plaintiff claims that the defendants violated 42 U.S.C. §1983 by

[2]The plaintiff's Complaint purports to have several exhibits attached to it. However, none of the pages that make up the Complaint are labeled as such. Further, some of the pages of the Complaint are numbered, while others are not. Therefore, for the purposes of this opinion, any cites to the Complaint will be to the number of the page on which the cited material appears as if each page were numbered sequentially starting with the page on which the style of the case appears.

depriving him of his 14th Amendment Due Process rights. *See* Compl. at 4-12. The only difference is that in the present Complaint, the plaintiff has added several pages of "Judicial Notes, " "Counts," and other paragraphs which purport to state claims upon which relief may be granted. *See, e.g.,* Compl. at 13. The defendants have asserted several affirmative defenses in their Answer and have moved for summary judgment on several grounds. Because we agree with the defendants that they are precluded by the doctrine of res judicata, the plaintiff's claims will be dismissed.

STANDARD OF REVIEW

A motion for summary judgment will be granted only when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). According to the Supreme Court, the standard is "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52, 106 S.Ct. 2505, 91 L.Ed.2d 202(1986). Faced with a motion for summary judgment, the nonmovant must come forth with requisite proof to support its legal claim, particularly where the opposing party has had an opportunity to conduct discovery. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

In the Sixth Circuit, "[t]he mere possibility of a factual dispute is not enough." *Mitchell v. Toledo Hosp.*, 964 F.2d 577, 582 (6th Cir. 1992) (quoting *Gregg v. Allen-Bradley Co.*, 801 F.2d 859, 863 (6th Cir. 1986)). "[T]his standard requires a court to make a preliminary assessment of the evidence, in order to decide whether the plaintiff's evidence concerns a material issue and is more than de minimis." *Hartsel v. Keys*, 87 F.3d 795, 799 (6th Cir. 1996).

DISCUSSION

A. Res Judicata

Aside from several pages of incoherent statements, definitions of legal terms, and frivolous allegations which are addressed below, the plaintiff's Complaint contains claims which have previously been adjudicated on their merits by the United States District Court for the Northern District of Georgia. In their Answer, the defendants argue that the plaintiff's claims are barred by the doctrine of res judicata. *See* Answer at 2. As discussed further below, we agree.

In *Gargallo v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 918 F.2d 658 (6th Cir. 1990), the court defined the term "res judicata":

> Res judicata, or claim preclusion as it is more helpfully termed, is the doctrine, simply stated, by which a final judgment on the merits in an action precludes a party from bringing a subsequent lawsuit on the same claim or cause of action or raising a new defense to defeat a prior judgment. It precludes not only relitigating a claim or cause of action previously adjudicated, it also precludes litigating a claim or defense that should have been raised, but was not, in a claim or cause of action previously adjudicated.

Id. at 660-61 (citation omitted).

In order for a prior judgment to act as a bar to subsequent litigation between parties, there must have been a final adjudication on the merits of the cause of action by a court of competent jurisdiction. *See* 18 Charles Alan Wright et al., Federal Practice and Procedure §4406 (1981). Also, the doctrine of res judicata acts as a bar only when the second action advances the same claims that were raised, or could have been raised, in the first cause of action. *See id.* at §4407. In other words, "there must be an identity of the causes of action that is, an identity of the facts creating the right of action and of the evidence necessary to sustain each action." *Westwood Chemical Co., Inc. v. Kulick*, 656 F.2d 1224, 1226 (6th Cir. 1981) (citing *Herendeen v. Champion International Corp.*, 525 F.2d 130, 133-34 (2d Cir. 1975); *State Mutual Life Assurance Co. of America v. Deer Creek Park*, 612 F.2d 259, 269 n.9 (6th Cir. 1979)).

With regard to the plaintiff's cause of action, the dismissal by the Georgia federal court constitutes a final adjudication on the merits of the plaintiff's claims. *See* Fed. R. Civ. P. 41(b); *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1964) (holding that a dismissal with prejudice constitutes

an adjudication on the merits); *Mayer v. Distel Tool and Mach. Co.*, 556 F.2d 798 (6th Cir. 1977). This adjudication on the merits precludes the plaintiff "from bringing a subsequent lawsuit on the same claim or cause of action . . .." *Gargallo*, *supra*, at 660-61.

The requisite similarity between the claims raised by the plaintiff in the 1998 complaint and those brought by the plaintiff in this case also exists. As discussed above, many of the claims that are set forth in the plaintiff's Complaint are identical to those addressed by the Northern District of Georgia in its order dated August 31, 1999. *See* Order, 1:98-cv-1470-CC, Aug. 31, 1999, at 12. Also, the individuals named as defendants in that suit are the same individuals as are named as defendants in this matter. Finally, both of the plaintiff's complaints arise out of the same factual circumstances. Therefore, it is clear that there exists the requisite "identity of the causes of action." *Kulick*, *supra*, at 1226. Given that the dismissal of the plaintiff's prior complaint now precludes the plaintiff from relitigating his claims in this court, these claims will be dismissed.

B. Miscellaneous Paragraphs

The rest of the plaintiff's complaint consists of several pages of incoherent statements, definitions of legal terms, and frivolous allegations. *See, e.g.,* Compl. at 6-7, 13-15. These allegations, to the extent they attempt to state legal claims against the defendants, will be dismissed under the authority of *Apple v. Glenn*, 183 F.3d 477 (6th Cir. 1999).

In *Apple*, an individual proceeding pro se brought suit against Senator John Glenn, Chief Justice William Rehnquist, and other top government officials alleging violations of 42 U.S.C. §1983. *Id.* at 478-79. Specifically, the plaintiff claimed that his civil rights were violated because the defendants had not answered his letters and had not taken the action requested in those letters. *Id.* The Sixth Circuit upheld the district court's dismissal of the plaintiff's complaint stating:

> Nevertheless, a district court may, at any time, sua sponte dismiss a complaint for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure when the allegations of a complaint are totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion.

Apple, *supra*, at 479 (citations omitted).

In addition to the claims brought by the plaintiff which have previously been adjudicated by the federal district court in Georgia, the plaintiff's present Complaint alleges: (1) that McFarland "did virtually kidnap" Ms. Massey, forcing her to live in "a cult like state of adultery, sodomy, fornication, and other perversions"; (2) that McFarland assisted in dispossessing the plaintiff of $100,000 in property; (3) that McFarland is infected with several sexually transmitted diseases; (4) that the defendants "conspired or in fact were active participants in" the bombing of the "Kansas City Federal Building"; (5) that McFarland "made massive contributions" to the alienation of the affections of the plaintiff's wife; (6) and that McFarland "willfully interfered with consortium." *See, e.g.,* Compl. at 3, 6, 17.

The plaintiff also spends several pages attempting to define legal terms such as "conjugal rights," invasion of privacy," "conspiracy," and "perjury." *See* Compl. at 3, 8, 13, and 19, respectively. Finally, the last several pages of the plaintiff's complaint are photocopies of pleadings from other cases in which the parties were involved, copies of orders entered by other courts, and statements presumably written by the plaintiff concerning the allegations made within the Complaint. *See* Compl. at 14-30.

The plaintiff has made similar allegations in prior suits filed against these defendants. *See, e.g.,* Defs.' Brief in Supp., Exs. C, D. In an order dismissing these frivolous allegations, the United States District Court for the Northern District of Georgia stated that "it is now absolutely clear from the record that some of plaintiff's allegations are completely without basis and maliciously made for the express purpose of damaging defendant's reputation." Order, 1:97-cv-3123-CAM, July 22, 1999, at 11 n.4.

These statements, to the extent they attempt to state a legal claim, are the type of allegations referred to by the *Apple* court as "totally implausible, attenuated, unsubstantial, frivolous, devoid of merit, or no longer open to discussion." *Apple* at 660-61. Perhaps angered by the defendants'

role in his divorce, the plaintiff has endeavored to harass them with litigation that is both time consuming and costly. Whatever the reason, we refuse to play a role in the plaintiff's continued abuse of the judicial system.

CONCLUSION

For the reasons set forth above, we find that the plaintiff has failed to establish the existence of a genuine issue of material fact in this matter. Therefore, the defendants' Motion for Summary Judgment will be granted. Further, we will sua sponte dismiss the remainder of the plaintiff's Complaint for lack of subject matter jurisdiction pursuant to Fed. R. Civ. P. 12(b)(1). Finally, the defendants' Motion for a Protective Order will be denied as moot. All claims contained in the plaintiff's Complaint will be dismissed by separate order that will be entered in accordance with this opinion.

This _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record

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ORDER

Motion having been made by the defendants, A.J. Welch, Jr., Ben W. Studdard, J. Mark Brittain, Patrick Jaugstetter, E. Gilmore Maxwell, Arthur Barbee, John P. Webb, T. Bruce McFarland, and Smith, Welch & Brittain, P.C., and the court being otherwise sufficiently advised, **IT IS HEREBY ORDERED AND ADJUDGED** that:

1. The defendants' Motion for Summary Judgment is **GRANTED**, and the claims brought by the plaintiff pursuant to 42 U.S.C. §1983 are **DISMISSED**;

2. The claims of the plaintiff, to the extent they were not addressed by the defendants' Motion for Summary Judgment, are **DISMISSED** pursuant to Fed. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction; and

3. The defendants' Motion for a Protective Order will be **DENIED** as moot.

This _____ day of _____, 2000.

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CHARLES R. SIMPSON III, CHIEF JUDGE
UNITED STATES DISTRICT COURT

cc: Counsel of Record