[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 21-13311

Non-Argument Calendar

CARLTON EUGENE HOOKER, JR.,

Plaintiff-Appellant,

versus

SECRETARY, DEPARTMENT OF VETERAN AFFAIRS,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:20-cv-02557-KKM-JSS

Before ROSENBAUM, BRANCH, and GRANT, Circuit Judges.

PER CURIAM:

Carlton Hooker, Jr., proceeding *pro se*, appeals the district court's dismissal of his employment action against the Department of Veteran Affairs (VA) as barred by *res judicata*. Hooker argues that the district court erred when it determined that his claims were barred by *res judicata* because his prior case was dismissed for failure to state a claim, which he contends means that there was no final judgment on the merits. The VA moves separately for damages and costs pursuant to Federal Rule of Appellate Procedure 38, arguing that sanctions are appropriate because Hooker is a serial litigator and his appeal is blatantly frivolous. After review, we affirm the district court, and we deny the VA's request for sanctions at this time.

We review *de novo* the district court's determination that a claim is barred by *res judicata*. *See Jang v. United Tech. Corp.*, 206 F.3d 1147, 1149 (11th Cir. 2000). *Res judicata* "bar[s] a subsequent action if: (1) the prior decision was rendered by a court of competent jurisdiction; (2) there was a final judgment on the merits; (3) the parties were identical in both suits; and (4) the prior and present causes of action are the same." *Id.* (quotation omitted). "[I]f a case arises out of the same nucleus of operative facts, or is based upon the same factual predicate, as a former action, . . . the two cases are really the same 'claim' or 'cause of action' for

purposes of *res judicata*." *Griswold v. Cnty. of Hillsborough*, 598 F.3d 1289, 1293 (11th Cir. 2010) (quotation omitted).

In 2020, Hooker filed the underlying complaint against the VA alleging employment retaliation and discrimination related to a position he applied for in 2017. The VA moved to dismiss the claims based on *res judicata*. Court records reveal that Hooker raised the same employment retaliation and discrimination claims against the VA in a prior 2018 case, and those claims were dismissed with prejudice pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim.[1] Contrary to Hooker's argument on appeal, a dismissal with prejudice pursuant to Rule 12(b)(6) is an adjudication on the merits. *Lobo v. Celebrity Cruises, Inc.*, 704 F.3d 882, 893 (11th Cir. 2013). Therefore, the district court correctly determined that Hooker's underlying employment discrimination and retaliation claims were barred by *res judicata*.[2] Accordingly, we affirm the district court's dismissal.[3]

---

[1] As noted by the VA in its motion for sanctions, Hooker has a lengthy history of litigation against the VA dating back to 2011.

[2] To the extent that Hooker sought to raise new facts or additional arguments in his 2020 complaint related to the alleged employment discrimination, *res judicata* still applied. *See Maldonado v. U.S. Att'y Gen.*, 664 F.3d 1369, 1377 (11th Cir. 2011) (explaining that "*[r]es judicata* acts as a bar not only to the precise legal theory presented in the previous litigation, but to all legal theories and claims arising out of the same operative nucleus of fact." (quotation omitted)).

[3] Hooker's motion requesting oral argument is DENIED. Additionally, Hooker argues for the first time in his reply brief that the district court

We now turn to the VA's motion for sanctions. Federal Rule of Appellate Procedure Rule 38 provides that, upon a determination that an appeal is frivolous, an appellate court may, "after a separately filed motion or notice from the court and reasonable opportunity to respond, award just damages and single or double costs to the appellee." "Rule 38 sanctions have been imposed against appellants who raise clearly frivolous claims in the face of established law and clear facts." *Farese v. Scherer*, 342 F.3d 1223, 1222 (11th Cir. 2003) (quotation omitted). However, generally, where, as here, the appellant is *pro se*, we have declined requests to impose sanctions under Rule 38. *See Woods v. I.R.S.*, 3 F.3d 403, 404 (11th Cir. 1993); *Hyslep v. United States*, 765 F.2d 1083, 1084–85 (11th Cir. 1985). Nevertheless, we have made exceptions and imposed sanctions against *pro se* appellants who were attorneys themselves or who were explicitly warned by the district court that their claims were frivolous. *See, e.g.*, *United States v. Morse*, 532 F.3d 1130, 1132–33 (11th Cir. 2008) (imposing sanctions on *pro se* appellant who had been warned in the district court that his tax claims were "utterly without merit"); *Bonfiglio v. Nugent*, 986 F.2d 1391, 1394–94 (11th Cir. 1993) (imposing sanctions on a *pro se* appellant who was also an attorney); *Pollard*

---

erroneously struck his motion for relief from judgment under Federal Rule of Civil Procedure 60. Because he raises this argument for the first time in his reply brief, we do not reach this issue. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008) ("[W]e do not address arguments raised for the first time in a *pro se* litigant's reply brief.").

v. Comm'r, 816 F.2d 603, 604–05 (11th Cir. 1987) (imposing sanctions on *pro se* appellant who brought tax claims that were determined to be frivolous in a previous suit, and for which appellant had been sanctioned).

Although this appeal is frivolous, none of the special circumstances for awarding sanctions against a *pro se* party exist in this case. There is no indication that Hooker is an attorney. Further, even though Hooker is a serial litigant and continues to bring unsuccessful suits against the VA, many of the prior suits highlighted in the VA's motion for sanctions pre-date the 2017 employment discrimination claims he sought to bring in the case below. Regardless, Rule 38 is not meant to sanction a litigant for past vexatious litigation. Rather, the focus of Rule 38 is on whether the present appeal is frivolous. *See* Fed. R. App. P. 38. Because of Hooker's *pro se* status, we exercise the discretion afforded us by Rule 38 and decline to impose sanctions at this time. *See Woods*, 3 F.3d at 404 ("There can be no doubt that this is a frivolous appeal and we would not hesitate to order sanctions if appellant had been represented by counsel. However, since this suit was filed pro se, we conclude that sanctions would be inappropriate."). However, we caution Hooker that any future challenges based on this same set of facts will be deemed frivolous and subject to sanctions.

AFFIRMED. MOTION FOR SANCTIONS DENIED.