[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-10851
Non-Argument Calendar

D.C. Docket No. 2:13-cv-14379-DLG

ANTHONY THARPE,

Plaintiff-Appellant,

versus

NATIONSTAR MORTGAGE LLC,

Defendant-Appellee.

Appeal from the United States District Court
for the Southern District of Florida

(December 4, 2017)

Before ED CARNES, Chief Judge, TJOFLAT, and WILLIAM PRYOR, Circuit Judges.

PER CURIAM:

Anthony Tharpe, proceeding pro se, appeals the district court's grant of summary judgment to Nationstar Mortgage, LLC on his Fair Debt Collection Practices Act claim. Tharpe filed this federal action in September 2013, claiming that Nationstar violated the FDCPA through a series of communications about an allegedly fraudulent mortgage bearing his name. He contends that the district court erred in ruling that a Florida state court decision bars his federal claim based on res judicata and that the district court abused its discretion in denying his motion for reconsideration.

Tharpe filed a complaint in Florida state court in February 2015 alleging that Nationstar and two of its attorneys violated the FDCPA through a series of communications about the same allegedly fraudulent mortgage. The state court ruled that Tharpe's complaint failed to state an FDCPA claim because Nationstar's prosecution of an allegedly fraudulent foreclosure was not a debt collection activity under the statute. Tharpe appealed that ruling to Florida's Fourth District Court of Appeal, which affirmed the lower court in a per curiam decision issued in June 2016. The mandate issued that same month.

After the Florida appellate court affirmed the lower court's ruling, Nationstar filed a motion for summary judgment in this federal action, arguing that res judicata barred Tharpe's federal FDCPA claim. The district court ruled that Nationstar satisfied the five requirements for res judicata under Florida law and

granted summary judgment in favor of Nationstar. Tharpe filed a motion for reconsideration, which the district court denied. This is Tharpe's appeal.

We review de novo the district court's res judicata ruling. Kizzire v. Baptist Health Sys., Inc., 441 F.3d 1306, 1308 (11th Cir. 2006). "When we are asked to give res judicata effect to a state court judgment, we must apply the res judicata principles of the law of the state whose decision is set up as a bar to further litigation." Id. (quotation marks and brackets omitted). Under Florida law, res judicata "applies when four identities are present: (1) identity of the thing sued for; (2) identity of the cause of action; (3) identity of persons and parties to the action; and (4) identity of the quality of the persons for or against whom the claim is made." Topps v. State, 865 So. 2d 1253, 1255 (Fla. 2004). There must also be a ruling "on the merits for an issue to have truly been decided and thus preclude the consideration of an issue on the basis of res judicata." Id. (quotation marks omitted).

All of those requirements are satisfied in this case. To begin with, there is "identity of the thing sued for" because Tharpe seeks identical relief in both actions: damages under the FDCPA, punitive damages, and an order directing the clerk of court and all relevant governmental agencies or municipalities to remove the allegedly fraudulent mortgage from the public record. See AMEC Civil, LLC v. State, Dep't of Transp., 41 So. 3d 235, 242 (Fla. 1st DCA 2010) (concluding

that the "[i]dentity of the thing sued for" existed where the plaintiff sought damages in both actions) (quotation marks omitted). The causes of action are also identical because his federal and state actions both allege an FDCPA violation based on the same foreclosure and Nationstar's communications concerning the same allegedly fraudulent mortgage. See Pumo v. Pumo, 405 So. 2d 224, 226 (Fla. 3rd DCA 1981) (stating that the second requirement is satisfied where the "facts essential to the maintenance" of the actions are similar).[1]

The third and fourth requirements are also easily satisfied. The identity of the parties exists because Tharpe sued Nationstar in the state action and federal action. See Prall v. Prall, 50 So. 867, 870 (Fla. 1909) (stating that res judicata applies where the second suit is "between the same parties as the first [suit]"). And the fourth identity is easily satisfied because Tharpe had the same "incentive to adequately litigate" his state court claim as his federal claim. Stockton v. Lansiquot, 838 F.2d 1545, 1546–47 (11th Cir. 1988) (stating that the fourth

[1] Tharpe argues that the causes of action are not the same because only the action that was filed first can serve as the basis for res judicata, which would mean that the district court erred in giving res judicata effect to the state court action, which was filed two years after his federal action. But that argument ignores how he filed his operative amended complaint in the federal action in April 2015, two months after he filed his state court action. Furthermore, he cites no authority for that argument and several other arguments he makes, which means that those arguments are deemed abandoned. See Sapuppo v. Allstate Floridian Ins. Co., 739 F.3d 678, 681 (11th Cir. 2014) ("[A]n appellant's brief must include an argument containing appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies, and . . . simply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue and precludes our considering the issue on appeal.") (quotation marks omitted); see also Timson v. Sampson, 518 F.3d 870, 874 (11th Cir. 2008) (noting that abandonment rules apply to pro se briefs).

requirement was satisfied where "the same plaintiff sued the same defendant[] for relief on substantially the same claim, arising from the same circumstances, and raised the same underlying issues in the federal proceeding as he had previously raised in the state proceeding").

Finally, the Florida decision dismissing Tharpe's state court complaint was a ruling on the merits. Smith v. St. Vil, 714 So. 2d 603, 605 (Fla. 4th DCA 1998) ("An order finally dismissing a complaint for failure to state a cause of action is an adjudication on the merits."). Tharpe's argument that no merits decision exists because he has a further right to appeal is meritless. Capital Assurance Co. v. Margolis, 726 So. 2d 376, 376 (Fla. 3rd DCA 1999) ("Mere pendency of an appeal does not diminish the effect of [a] dismissal.").[2]

The district court properly concluded that res judicata bars Tharpe's federal FDCPA claim. Furthermore, the district court did not abuse its discretion in denying Tharpe's motion for reconsideration, which simply rehashed arguments he made in opposition to Nationstar's summary judgment motion. See Richardson v. Johnson, 598 F.3d 734, 740 (11th Cir. 2010) ("A motion for reconsideration cannot

[2] Tharpe makes several arguments that the district court's res judicata ruling was erroneous based on our earlier holding that the district court erred in dismissing his complaint for failure to state a plausible claim for relief. Tharpe v. Nationstar Mortg. LLC, 632 F. App'x 586, 587 (11th Cir. 2016) (unpublished). For instance, he argues that our decision precluded the Florida court from dismissing his state court complaint on the ground that a foreclosure action is not a debt collection under the FDCPA, but our decision did not address that issue. See id. at 588. He also argues that the district court disobeyed our mandate by granting summary judgment on the basis of res judicata, but we never addressed res judicata in our decision.

be used to relitigate old matters, raise argument or present evidence that could have been raised prior to the entry of judgment.") (quotation marks omitted).

AFFIRMED.