

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01732-BNB

BLONDELL MITCHELL,

Plaintiff,

v.

KDJM-FM JAMMIN 92.5,
SUMNER REDSTONE (Murray Rothstein),
KNOW HIV/AIDS,
KNOW HIV/AIDS BOARD OF DIRECTORS,
THE HENRY J. KAISER FOUNDATION,
THE HENRY J. KAISER FOUNDATION BOARD OF DIRECTORS,
VIACOM INC.,
VIACOM BOARD OF DIRECTORS,
CBS CORPORATION,
CBS CORPORATION BOARD OF DIRECTORS,
CBS RADIO,
CBS RADIO BOARD OF DIRECTORS,
INFINITY BROADCASTING CORPORATION,
INFINITY BROADCASTING CORPORATION BOARD OF DIRECTORS,
JENNIFER PROCTOR,
MARK OTTO
JOSE ESPINOSA,
KEITH ABRAMS, and
MARIA CHAVEZ,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

AUG 10 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Blondell Mitchell, currently resides in Ames, Iowa. Ms. Mitchell, acting *pro se*, initiated this action by submitting a Complaint pursuant to 28 U.S.C. § 1332. In the Complaint, Ms. Mitchell asserts that some time prior to the summer of 2005

Defendants stated in a public forum that she has AIDS/HIV or the virus associated with the disease. Ms. Mitchell seeks money damages.

Previously, in 2005 and 2006, Ms. Mitchell filed eight actions in this Court raising the same claims asserted in this action. Four of the cases were consolidated and dismissed with prejudice for willful failure to comply with a court order, including Case Nos. 06-cv-01427-MSK-BNB, 06-cv-01578-EWN-BNB, 06-cv-01579-EWN-BNB, and 06-cv-01585-WEN-BNB. **See Mitchell v. KDJM-FM, et al.**, No. 06-cv-01427-MSK-BNB (D. Colo. September 25, 2008), **aff'd**, No. 08-1375 (10th Cir. Mar. 27, 2009) (finding the dismissal was well within the district court's discretion to dismiss the action with prejudice under Fed. R. Civ. P. 41(b)). Four of the cases, were dismissed for lack of complete diversity, including Case Nos. 05-cv-01167-EWN-OES, 05-cv-01784-EWN-OES, and 05-cv-01785-EWN-OES, in which Ms. Mitchell voluntarily dismissed the action, and Case No. 05-cv-01180-PSF-BNB, in which the Court dismissed the action for lack of subject matter jurisdiction.


The doctrine of **res judicata** precludes assertion of a claim if: (1) there was a prior lawsuit which ended with a judgment on the merits; (2) the parties are identical or in privity; (3) the suit is based on the same cause of action; and (4) the plaintiff had a full and fair opportunity to litigate the claim in the prior suit. **Plotner v. AT & T Corp.**, 224 F.3d 1161, 1168 (10th Cir. 2000). A dismissal with prejudice equates to an adjudication on the merits. Fed. R. Civ. P. 41(b). Dismissal of a plaintiff's claim, with prejudice, bars a second suit by the same plaintiff on the same claim in the same court. **See Semtek Int'l Inc. v. Lockheed Martin Corp.**, 531 U.S. 497, 505-06 (2001); **see**

also Griffin v. Gash, 317 Fed. App'x 782 (10th Cir. 2009) (where Plaintiff failed to comply with court's order and case was dismissed with prejudice, the subsequent case was barred); Wright & Miller, Federal Practice and Procedure, § 373. In this case, Ms. Mitchell raises the same claims against identical parties or parties in privity that she raised in Case No. 06-cv-01427-MSK-BNB (consolidated). Ms. Mitchell had a full and fair opportunity to litigate the claims in Case No. 06-cv-01427 in this Court. The dismissal of Case No. 06-cv-01427 was on the merits. The Court, therefore, finds that this action is barred. Accordingly, it is

ORDERED that the Complaint and action are dismissed.

DATED at Denver, Colorado, this 9th day of August, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-01732-BNB

Blondell Mitchell
2300 Mortensen Parkway #17
Ames, Iowa 50014

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to
the above-named individuals on 8/10/10

GREGORY C. LANGHAM, CLERK

By 

Deputy Clerk