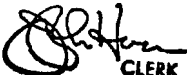


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
FEB 05 2010

CLERK

GREGORY ALLEN LEWANDOWSKI,

CIV. 09-4116

Plaintiff,

vs.

MEMORANDUM OPINION
AND ORDER

SISSETON WAHPETON OYATE
CHILD PROTECTION PROGRAM;
SISSETON WAHPETON SIOUX TRIBE
FUEL, INC.; AUTO OWNER'S
INSURANCE COMPANY, and
EMPLOYERS MUTUAL CASUALTY
COMPANY; and

Defendants.

Plaintiff, Gregory Allen Lewandowski, an inmate at the South Dakota State Penitentiary, filed a *pro se* complaint referencing a wrongful death cause of action and 28 U.S.C. § 1331¹ with regard to the death of his children that resulted from a house fire where his children lived while in foster care. Doc.1. Plaintiff also filed an a Motion to Proceed in Forma Pauperis. Doc. 3. After reviewing the Application and the Prisoner Trust Account Report, the Court is granting the Motion to Proceed in Forma Pauperis.

In a previous action, CIV. 07-4159, Lewandowski presented causes of action regarding the facts surrounding the death of his children in the house fire. In that case this Court granted the Defendants' Motion for Summary Judgment and Motions to Dismiss with regard to Lewandowski's Federal Tort Claims Act and Section 1983 civil rights causes of action, and dismissed without prejudice the causes of action which had been presented in tribal court and were on appeal to the Northern Plains Intertribal Court of Appeals. This Court ruled that it was requiring the exhaustion

¹28 U.S.C. § 1331 provides: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States."

of tribal remedies.

Subsequent to filing his Complaint in this most recent action, Lewandowski has supplemented the Complaint with the decision from the Northern Plains Intertribal Court of Appeals involving his children's estates. In that decision dated July 24, 2009, the Northern Plains Intertribal Court of Appeals remanded for the trial court to consider the opinion in *State ex rel. Suthers v. Cash Advance & Preferred Cash Loans*, 205 P.3d 389 (Colo. Ct. App. 2008), and to determine whether SWST Fuel, Inc. is an arm of the tribe and entitled to sovereign immunity. Lewandowski has not presented any documentation or allegation of further action in the tribal case and it appears that tribal remedies are still not exhausted. Furthermore, Lewandowski has not alleged that facts have changed from the time of the previous decision in which this Court noted that Jason Campbell, not Lewandowski, was the Personal Representative of Lewandowski's children's estates.

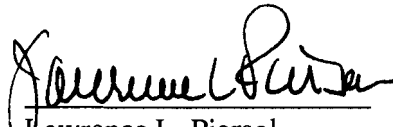
Although Lewandowski's pleadings are vague as to the nature of his cause or causes of action, he appears to be presenting the same case that this Court previously dismissed and this action must also be dismissed pursuant to 28 U.S.C. 1915(e)(2)(B) based on res judicata.

Under the doctrine of res judicata, also known as claim preclusion, a claim is precluded by a prior lawsuit when: "(1) the first suit resulted in a final judgment on the merits; (2) the first suit was based on proper jurisdiction; (3) both suits involve the same parties (or those in privity with them); and (4) both suits are based upon the same claims or causes of action." *Costner v. URS Consultants, Inc.*, 153 F.3d 667, 673 (8th Cir. 1998). Accordingly,

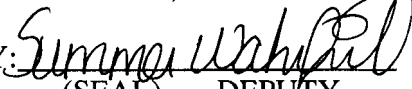
IT IS ORDERED that the motion to proceed in forma pauperis (Doc. 3) is granted but that Federal Tort Claims and Section 1983 causes of action are dismissed with prejudice and claims which were and are being considered by tribal court are dismissed without prejudice.

Dated this 4th day of February, 2010.

BY THE COURT:


Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
(SEAL) DEPUTY