

**NOT DESIGNATED FOR PUBLICATION**

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

NO. 2012 CA 1100

RAYMOND JOSEPH COCKERHAM, JR.

VERSUS

PARISH OF ASCENSION, ET AL

Judgment rendered MAY 31 2013

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Appealed from the  
23<sup>rd</sup> Judicial District Court  
In and for the Parish of Ascension, Louisiana  
Trial Court No. 94,309  
Honorable Thomas J. Kliebert, Jr., Judge

\*\*\*\*\*

RAYMOND J. COCKERHAM, JR.  
JACKSON, LA

PRO SE  
PLAINTIFF-APPELLANT  
RAYMOND J. COCKERHAM, JR.

FRED SCHROEDER  
JASON P. WIXOM  
NEW ORLEANS, LA

ATTORNEY FOR  
DEFENDANTS-APPELLEES  
JEFFREY WILEY, SHERIFF,  
BOBBY WEBRE, WARDEN

\*\*\*\*\*

**BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.**

*J. Pettigrew, J. Dissents and assigns Reasons*

**McDonald, J.**

Plaintiff challenges the district court judgment sustaining the peremptory exception raising the objection of *res judicata* and dismissing, with prejudice, his claims against defendants. For the reasons that follow, we affirm.

**FACTS AND PROCEDURAL HISTORY**

The plaintiff, Raymond Cockerham, Jr., an inmate incarcerated at Ascension Parish jail at the time, filed what he captioned a "Petition for Judicial Review" in the Twenty-Third Judicial District Court.<sup>1</sup> However, in our view, Cockerham's petition is actually a claim for damages alleging medical malpractice against several defendants, including Jeff Wiley (Sheriff of Ascension Parish) and Warden Bobby Webre. In said petition, Cockerham alleged that he suffered from a condition known as "spina bifida occulta" and that he has "suffered with severe spinal and other severe body pain and mental anguish which has directly or indirectly resulted in [his] extremely limited body mobility" and "a decrease in [his] overall general health." He further asserted that he had received no response to his requests for Administrative Remedy Procedure and that defendants "intentionally, willfully, maliciously, and with full knowledge caused injury, pain and suffering, and mental anguish during the discharge of official duties."

In response to Cockerham's petition, defendants filed a peremptory exception raising the objection of *res judicata*, arguing that Cockerham had previously filed suit in the United States District Court for the Middle District of Louisiana wherein the same parties were named and the same allegations, almost verbatim, were asserted as the basis for his claims. According to the record, Cockerham's federal suit was dismissed on summary judgment and is final as no appeal was taken. A hearing on the *res judicata* exception was set for April 27, 2012.

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<sup>1</sup> It is well-settled in Louisiana law that "[e]very pleading shall be so construed as to do substantial justice." La. Code Civ. P. art. 865. Furthermore, the jurisprudence holds that courts may overlook miscaptioning of a pleading where the other party is not prejudiced. **Higdon v. Higdon**, 385 So.2d 396, 398 (La. App. 1 Cir. 1980). Our courts look beyond the caption, style, and form of pleadings to determine from the substance of the pleadings the nature of the proceeding; thus, a pleading is construed for what it really is, not for what it is erroneously called. **Rochon v. Young**, 2008-1349, p. 3 (La. App. 1 Cir. 2/13/09), 6 So.3d 890, 892, writ denied, 2009-0745 (La. 1/29/10), 25 So.3d 824, cert. dismissed, \_\_\_ U.S. \_\_\_, 130 S.Ct. 3325, 176 L.Ed.2d 1216 (2010).

On April 3, 2012, Cockerham filed a "Motion For Issuance And Service Of Writ Of Habeas Corpus" and a memorandum in opposition to the *res judicata* exception. However, there was no order attached to the motion, and no action was taken with respect to same. Cockerham noted in his memorandum that he was requesting "oral arguments due to his lack of knowledge of law and his inability to adequately express himself in writing." In said memorandum, Cockerham argued that his federal action "was a complaint concerning the violation of his constitutional rights protecting against cruel and unusual punishment by Defendants being deliberately indifferent to [his] serious medical needs while under their care, custody, and control." Cockerham maintained that the instant civil action was "a claim for medical malpractice damages" and, thus, judgment in the federal suit could not have *res judicata* effect as to his current claim.

When the matter came up for hearing on April 27, 2012, Cockerham was not present in the courtroom. Initially, the district court judge offered to reset the matter to a later date. However, when defendants' attorney suggested that the matter be submitted on memorandums, the district court judge agreed. The following colloquy occurred:

THE COURT:

Does anybody know if [Cockerham is] still incarcerated?

[ATTORNEY FOR DEFENDANTS:]

Yes. I believe he filed a writ, and you denied it, Your Honor.

.....

THE COURT:

I think there's no order attached [to the writ], so nothing was ever done. I never got it. I guess we've got to reset it.

[ATTORNEY FOR DEFENDANTS:]

Or how about submitting it on the memo?

THE COURT:

Do you want to reset it for June 1st and I'll have him transported?

[ATTORNEY FOR DEFENDANTS:]

That's fine. Does it show where he is?

THE COURT:

It looks like Jackson, Louisiana. Dixon, Dixon Correctional.

.....

THE COURT:

He did submit a memo, so I guess I could. What's the status of the federal?

[ATTORNEY FOR DEFENDANTS:]

The doctor and the sheriff and the warden have been dismissed. The allegations in this state suit are exactly the same. He's basically made no factual allegations against the sheriff and the warden. We do not hire or employ the medical staff. Jeff Diez represents the nurses. Dr. Holmes has separate counsel, and Dr. Holmes and the warden and the sheriff have been dismissed from the federal suit.

THE COURT:

And you're representing just the sheriff?

[ATTORNEY FOR DEFENDANTS:]

The sheriff and ... the warden.

THE COURT:

All right, Ms. Clerk. Show it being submitted on the memos, peremptory exception made absolute or whatever the fancy language is. Submit me a judgment. Just put submitted on memos and the exception granted ....

Judgment was signed by the district court on May 9, 2012, sustaining the *res judicata* exception filed by defendants and dismissing, with prejudice, Cockerham's claims against defendants. This appeal by Cockerham followed, wherein he argued the district court erred in sustaining the *res judicata* exception in favor of defendants.

### LAW AND ANALYSIS

Initially, we address Cockerham's absence from the *res judicata* hearing on April 27, 2012. A prisoner has a right of access to state and federal civil courts. La. Const. art. 1, § 22; **Pollard v. White**, 738 F.2d 1124, 1125 (11th Cir. 1984), cert. denied, 469 U.S. 1111, 105 S.Ct. 791, 83 L.Ed.2d 785 (1985). However, this right does not necessarily include the right to be physically present at the trial of a civil suit. **Pollard**, 738 F.2d at 1125; **Jones v. Phelps**, 374 So.2d 144, 146 (La. App. 1 Cir. 1979); **Taylor**

**v. Broom**, 526 So.2d 1367, 1369 (La. App. 1 Cir. 1988). Generally, prisoners who bring civil actions have no right to be personally present in court at any stage of the action. **Holt v. Pitts**, 619 F.2d 558, 560 (6th Cir. 1980). Lawful incarceration brings about the necessary withdrawal or limitation of many privileges and rights, among which is the right of a prisoner to plead and manage his action in court personally. **Price v. Johnston**, 334 U.S. 266, 285-286, 68 S.Ct. 1049, 1060, 92 L.Ed. 1356 (1948).

It is not unusual for individuals who are incarcerated to be parties to civil litigation, either as plaintiff or defendant, and a writ of *habeas corpus ad testificandum* is the means for such individuals to be present in court. Prisoners who are parties to litigation utilize this mechanism to obtain their presence in court. **Ardoin v. Bourgeois**, 2004-1663, p. 3 (La. App. 3 Cir. 11/2/05), 916 So.2d 329, 332-333; **Falcon v. Falcon**, 2007-491, pp. 3-4 (La. App. 5 Cir. 12/27/07), 975 So.2d 40, 42-43, writ denied, 2008-0295 (La. 3/28/08), 978 So.2d 311. The determination of whether a prisoner-party in a civil action should appear personally in court for the trial of the action rests in the discretion of the court. **Ballard v. Spradley**, 557 F.2d 476, 480-481 (5th Cir. 1977); **Taylor**, 526 So.2d at 1370.

Based on the facts and circumstances herein, we find no abuse of the district court's discretion in deciding to go forward with the *res judicata* hearing without Cockerham's presence in the courtroom. Prior to the hearing, Cockerham submitted a memorandum in opposition to the exception setting forth his argument regarding the *res judicata* issue. Thus, it was clearly within the district court's discretion to allow the matter to be "submitted on memos" and proceed to judgment. However, our analysis does not end here.

We turn now to a consideration of whether the district court erred in sustaining the *res judicata* exception in favor of defendants. *Res judicata* bars relitigation of a subject matter arising from the same transaction or occurrence of a previous suit. **Avenue Plaza, L.L.C. v. Falgoust**, 96-0173, p. 4 (La. 7/2/96), 676 So.2d 1077, 1079; La. R.S. 13:4231. It promotes judicial efficiency and final resolution of disputes.

**Terrebonne Fuel & Lube, Inc. v. Placid Refining, Co.**, 95-0654, 95-0671, p. 12 (La. 1/16/96), 666 So.2d 624, 631.

The chief inquiry is whether the second action asserts a cause of action that arises out of the same transaction or occurrence that was the subject matter of the first action. **Avenue Plaza, L.L.C.**, 96-0173 at 6, 676 So.2d at 1080. However, the Louisiana Supreme Court has also emphasized that all of the following elements must be satisfied in order for *res judicata* to preclude a second action: (1) the first judgment is valid and final; (2) the parties are the same; (3) the cause or causes of action asserted in the second suit existed at the time of final judgment in the first litigation; and (4) the cause or causes of action asserted in the second suit arose out of the same transaction or occurrence that was the subject matter of the first litigation. **Burguières v. Pollingue**, 2002-1385, p. 8 (La. 2/25/03), 843 So.2d 1049, 1053.

The burden of proving the facts essential to sustaining the objection is on the party pleading the objection. **Union Planters Bank v. Commercial Capital Holding Corp.**, 2004-0871, p. 3 (La. App. 1 Cir. 3/24/05), 907 So.2d 129, 130. If any doubt exists as to its application, the exception raising the objection of *res judicata* must be overruled and the second lawsuit maintained. **Denkmann Associates v. IP Timberlands Operating Co., Ltd.**, 96-2209, p. 8-9 (La. App. 1 Cir. 2/20/98), 710 So.2d 1091, 1096, writ denied, 98-1398 (La. 7/2/98), 724 So.2d 738. The concept should be rejected when doubt exists as to whether a plaintiff's substantive rights actually have been previously addressed and finally resolved. **Patin v. Patin**, 2000-0969, p. 5 (La. App. 1 Cir. 6/22/01), 808 So.2d 673, 676.

When, as here, an objection of *res judicata* is raised before the case is submitted and evidence is received on the objection, the standard of review on appeal is traditionally manifest error. However, the *res judicata* effect of a prior judgment is a question of law that is reviewed *de novo*. **Pierrotti v. Johnson**, 2011-1317, p. 9 (La. App. 1 Cir. 3/19/12), 91 So.3d 1056, 1063.

In **Tye v. Co-Mar Offshore Operators, Inc.**, 95-0094 (La. App. 1 Cir. 10/6/95), 669 So.2d 438, writ denied, 96-1051 (La. 6/7/96), 674 So.2d 975, this court addressed how the federal theory of "claim preclusion" is applied when a state court is looking to a federal court judgment to determine its preclusive effects:

When a state court is required to determine the preclusive effects of a judgment rendered by a federal court exercising federal question jurisdiction, it is the federal law of res judicata that must be applied. **Reeder v. Succession of Palmer**, 623 So.2d 1268, 1271 (La. 1993), cert. denied, 510 U.S. 1165, 114 S.Ct. 1191, 127 L.Ed.2d 541 (1994). The federal theory of "claim preclusion" will bar a subsequent action on res judicata principles where parties have previously litigated the same claim to a valid final judgment. *Id.*; **Kaspar Wire Works v. Leco Engineering & Mach.**, 575 F.2d 530 (5th Cir. 1978). The key question is whether the claim in the second action is "the same as," or "identical to," one on which the parties have previously proceeded to judgment. The supreme court in **Reeder** further stated:

[I]f a set of facts gives rise to a claim based on both state and federal law, and the plaintiff brings the action in a federal court which had "pendent" jurisdiction to hear the state cause of action, but the plaintiff fails or refuses to assert his state law claim, res judicata prevents him from subsequently asserting the state claim in a state court action, unless the federal court clearly would not have had jurisdiction to entertain the omitted state claim, or, having jurisdiction, clearly would have declined to exercise it as a matter of discretion.

**Reeder**, 623 So.2d at 1272-1273.

**Tye**, 95-0094 at 3, 669 So.2d at 439-440.

For a federal court judgment to bar a subsequent suit under federal *res judicata* principles, it must meet four tests: (1) both cases must involve the same parties; (2) the prior judgment must have been rendered by a court of competent jurisdiction; (3) the prior judgment must have been a final judgment on the merits; and (4) the cause of action at issue must have been the same in both cases. *Terrebonne Fuel & Lube, Inc. v. Placid Ref. Co.*, 95-0654, 95-0671(La. 1/16/96); 666 So.2d 624, 633.

All four of these elements are satisfied in this case. In both cases, Sheriff Wiley and Warden Webre were sued. Ascension Parish comprises part of the Twenty-Third Judicial District Court for the State of Louisiana and lies within the jurisdiction of the United States District Court for the Middle District of Louisiana. Therefore, jurisdiction was proper in both the state and federal courts. The judgment of the federal court was a final

judgment on the merits as to both Sheriff Wiley and Warden Webre. Finally, the causes of action in both suits are identical. Cockerham alleges that he did not receive adequate medical care during his incarceration at the Ascension Parish jail. The federal complaint and the state petition are almost verbatim copies of each other. The only difference is that the petition has numerous numbered paragraphs and the federal complaint is a narrative. On December 14, 2011, the Middle District Court granted the motion for summary judgment in favor of Sheriff Wiley and Warden Webre, finding that they had no personal involvement in rendering medical treatment to Cockerham because that duty was the responsibility of the Medical Administrator of the Ascension Parish jail. The Court also determined that Cockerham was not entitled to an investigation of the administrative complaints or to a favorable response to them.

In his state action, Cockerham alleges the identical causes of action against the sheriff and warden. Since the motion for summary judgment was granted and the claims were dismissed in federal court, the same claims in state court are subject to claim preclusion under the theory of *res judicata*. The state district court was correct in sustaining the peremptory exception of *res judicata*.

### **CONCLUSION**

For the above and foregoing reasons, the judgment of the district court of May 9, 2012, is affirmed. Appeal costs are assessed against the plaintiff-appellant, Raymond Cockerham, Jr.

**AFFIRMED**



RAYMOND COCKERHAM, JR.

NUMBER 2012 CA 1100

VERSUS

COURT OF APPEAL


ASCENSION PARISH, JEFFREY WILEY,  
SHERIFF, BOBBY WEBER, WARDEN,  
DR. STEPHEN HOLMES MD, MICHELLE  
UNKNOWN LAST NAME, RHONDA  
UNKNOWN LAST NAME, ASCENSION  
PARISH

FIRST CIRCUIT

STATE OF LOUISIANA

BEFORE: KUHN, PETTIGREW, AND McDONALD, JJ.

PETTIGREW, J., DISSENTS, AND ASSIGNS REASONS.



Following a review of the record herein, I conclude that the law of *res judicata* was not properly applied in this case. The instant suit, a claim for medical malpractice, was filed by Cockerham in state district court. Cockerham's previously filed suit in the United States District Court for the Middle District of Louisiana was a civil rights claim filed under 42 U.S.C. §1983. Although the same parties were involved in both cases, and some of the facts alleged by Cockerham in the instant suit were also set forth by Cockerham in his previously filed federal suit, the claim in the instant suit, i.e., the medical malpractice claim, is not what was adjudicated before the federal court, nor could it have been. See La. Const. Art. 5, §16. The district court erred in applying the principles of *res judicata* to bar Cockerham's medical malpractice claims against defendants. Accordingly, I would reverse the district court's judgment that sustained defendants' *res judicata* exception and dismissed Cockerham's claims and remand for further proceedings.