

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

AUG 9 1989

ROBERT L. HOECKER
Clerk

ANANT KUMAR TRIPATI,)
)
Plaintiff-Appellant,)
)
v.)
)
TOWE, BALL, ENRIGHT & MACKEY; THOMAS E.)
TOWE; WIGGINS & SMITH; DANIEL T. SMITH;)
ROBERT T. MCALLISTER; DILL, DILL &)
MCALLISTER; ARTHUR H. BOSWORTH;)
BOSWORTH & SLIVKA,)
)
Defendants-Appellees.)

No. 87-1445
(D.C. No. 85-0031)
(D. Wyo.)

ORDER AND JUDGMENT*

Before MCKAY, TACHA, and EBEL, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a); 10th Cir. R. 34.1.9. The cause is therefore ordered submitted without oral argument.

This pro se plaintiff appeals from a district court order dismissing his combined civil rights and RICO action as frivolous under 28 U.S.C. § 1915(d).

* This order and judgment has no precedential value and shall not be cited, or used by any court within the Tenth Circuit, except for purposes of establishing the doctrines of the law of the case, res judicata, or collateral estoppel. 10th Cir. R. 36.3.

The district court held that the factual allegations underlying plaintiff's legal claims constituted, in substance, merely an attempt to relitigate criminal charges already successfully prosecuted against plaintiff, and, accordingly, held such claims barred under the principles of collateral estoppel. See, e.g., Glantz v. United States, 837 F.2d 23, 24-25 (1st Cir. 1988)(recognizing use of collateral estoppel in civil action following criminal conviction); McCord v. Bailey, 636 F.2d 606, 610 n.3 (D.C. Cir. 1980), cert. denied, 451 U.S. 983 (1981)(same). Plaintiff has not challenged this ruling with respect to any of the four inquiries upon which collateral estoppel is based. See Klein v. Commissioner, No. 85-1245, ___ F.2d ___, slip op. at 7 (10th Cir. filed July 10, 1989), citing, Montana v. United States, 440 U.S. 147, 153-55 (1979). Rather, plaintiff contends that collateral estoppel is inapplicable here because defendants were not parties to his criminal proceeding. Plaintiff misperceives the nature of collateral estoppel, which may be raised defensively to prevent a plaintiff from relitigating matters determined against him in a prior action, even though the defendants were not parties thereto. McCord, 636 F.2d at 609 n.1; Cardillo v. Zyla, 486 F.2d 473, 475-76 (1st Cir. 1973). Accordingly, the district court's application of collateral estoppel has not been effectively challenged on this appeal. Furthermore, since the same factual allegations underlie all of plaintiff's legal claims, we need not resolve plaintiff's unrelated legal objections to the dismissal of his civil rights claims.

The judgment of the United States District Court for the District of Wyoming is AFFIRMED. Defendants' request for sanctions is DENIED.

The mandate shall issue forthwith.

ENTERED FOR THE COURT
PER CURIAM