

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with Fed. R. App. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Argued February 28, 2023

Decided March 10, 2023

BeforeFRANK H. EASTERBROOK, *Circuit Judge*DIANE P. WOOD, *Circuit Judge*AMY J. ST. EVE, *Circuit Judge*

No. 22-2864

JOSE ANDRADE,
*Plaintiff-Appellant,**v.*CITY OF HAMMOND, *et al.*,
*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of Indiana,
Hammond Division.

No. 2:19-CV-430-TLS-JPK

Theresa L. Springmann,
*Judge.***ORDER**

Jose Andrade has been waging a battle with the City of Hammond, Indiana, about the proper classification of rental property he owns. The property had been converted into a multi-unit apartment, but the City concluded that the conversion was unlawful and ordered Andrade to restore it to its original status as a single-family home. The state courts upheld the City's decision, but Andrade decided to fight on in federal court. The district court, however, correctly concluded that Andrade's suit was precluded by the earlier state court judgment. We affirm.

I

In 2013 the City of Hammond inspected Andrade's rental property and notified him that it had concluded that the building was originally a single-family dwelling, and its current use as a five-unit apartment building was unlawful. An administrative hearing was scheduled before the Hammond Board of Public Works and Safety to decide if the building was unsafe and uninhabitable. Before the hearing, Andrade subpoenaed city officials to produce, among other items, a copy of the applicable building code; although they did not produce the code (noting that it was available at any law or public library), Andrade took no steps to enforce the subpoena. After receiving evidence and hearing witnesses from Andrade and the City, the Board in 2017 ordered Andrade to restore the building to a single-family dwelling.

Andrade appealed the Board's order to a state trial court. After the parties were allowed to pursue discovery, the court held a hearing where they could offer evidence about any defects in the administrative process. The court did not allow new evidence on the issue of code compliance because, it explained, judicial review of that issue was confined to the administrative record. Andrade made no effort otherwise to amend his complaint. After the hearing, the court ruled that Andrade had failed to prove that the Board's decision was arbitrary or capricious, and so it upheld the order.

Andrade appealed the trial court's decision, but the state appellate court affirmed. The appellate court held that the Board did not exceed its authority when it issued its order, its finding was supported by substantial evidence, and the City's failure to comply with the subpoena did not impede Andrade's ability to review all evidence against him and examine witnesses. *Andrade v. City of Hammond*, 114 N.E.3d 507, 516–18 (Ind. Ct. App. 2018). Andrade petitioned for review to the Indiana and United States Supreme Courts; each petition was denied. *Id.*, *trans. denied*, 124 N.E.3d 39 (Ind. 2019), *cert. denied*, 140 S. Ct. 127 (2019).

While he was pursuing this state-court litigation, Andrade twice sued in federal court. He filed the first suit in 2015, after the inspection but before the administrative hearing; his theory was that the city officials had denied him due process. After the conclusion of the state appeals, the district court in 2020 entered summary judgment in defendants' favor, based on claim preclusion. See *Andrade v. City of Hammond*, No. 2:15-CV-134-TLS, 2020 WL 1139407, at *9 (N.D. Ind. Mar. 6, 2020). Andrade did not appeal. Instead, before the ink was dry on the summary-judgment order, he brought this case, his second federal lawsuit. Once again, he sued the City and others (collectively, the

City), again under 42 U.S.C. § 1983, for due process violations. He added that the defendants, having conspired to eliminate low-income rental housing in Hammond, falsely testified at his Board hearing and refused to comply with his subpoena.

Andrade's second suit also resulted in defeat. The district court initially dismissed it for lack of subject-matter jurisdiction based on the *Rooker-Feldman* doctrine, but in an earlier appeal we ruled that the doctrine did not block Andrade's case and remanded it for further proceedings. *Andrade v. City of Hammond*, 9 F.4th 947, 951 (7th Cir. 2021). We noted, though, that Andrade's claim might fail on preclusion grounds. *Id.* ("Whether the case may ultimately fail for other reasons—such as on preclusion grounds—will be for the district court to determine."); *id.* (Sykes, C.J., concurring) ("[A]lthough preclusion doctrine may bar Andrade from relitigating the due-process claims he raises in this litigation, he is not *jurisdictionally* barred from doing so under *Rooker-Feldman*"). On remand, the City took the hint and moved for summary judgment on the ground of claim preclusion. It argued that Andrade could have litigated his current claim both in the state court action and in the earlier federal case. Andrade responded that he learned new facts after those cases ended, and he therefore could not have raised his claims until now. The court entered summary judgment for the defendants, concluding that the prior state litigation precluded this proceeding.

II

On appeal, Andrade repeats his belief that the defendants have conspired to strip him of his rental property and to rid Hammond of low-income renters by refusing to comply with his subpoena for a building code and lying at his administrative hearing. This conspiracy, he contends, violated his right to due process. The City responds that the prior state and federal litigation both preclude his claims.

The City is correct that the state-court judgment bars this suit. Under 28 U.S.C. § 1738, Indiana law determines the impact of a prior state judgment. See *Robbins v. MED-1 Solutions, LLC*, 13 F.4th 652, 656 (7th Cir. 2021). Section 1738 directs the federal courts to give the state court's judgment the same effect as an Indiana court would do. Under Indiana law, a party seeking to invoke claim preclusion must show four things: (1) a prior judgment (2) on the merits (3) in a case where the current claim was or might have been determined (4) that was between the parties or privies to the present suit. *Ind. State Ethics Comm'n v. Sanchez*, 18 N.E.3d 988, 993 (Ind. 2014). Andrade focuses on the third requirement. He has abandoned his argument in the district court based on newly discovered evidence; he now contends that preclusion is not available because the state

No. 22-2864

Page 4

trial court did not permit him to raise his current claim in the appeal from the Board's decision.

If that were true, it would be a serious point, but it is not. Under Indiana administrative law, on "review or appeal to the courts from an administrative order or decision," an appellant may contest "whether or not the order was made in conformity with proper legal procedure, is based upon substantial evidence, and does not violate any constitutional, statutory, or legal principle." *Util. Ctr., Inc. v. City of Fort Wayne*, 985 N.E.2d 731, 735 (Ind. 2013) (quoting *State ex rel. Pub. Serv. Comm'n v. Boone Cir. Ct.*, 138 N.E.2d 4, 8 (Ind. 1956)). These cases leave no doubt that Andrade was entitled to raise the due-process claim he is now pursuing in the state trial court, and he could have supported it with whatever admissible evidence he had. See *id.* If dissatisfied with the trial court's decisions, with respect to either the merits or the procedural determination that he could not raise new theories, he could have appealed any such ruling to the state's appellate court. But Andrade did not raise this claim in the state trial court, and the state appellate court deemed it waived. See *Andrade*, 114 N.E.3d at 516 n.5. We add that even if Andrade has "new" information now, nothing about his allegations in this suit suggests that this information was not reasonably available to him during the state proceedings. See *Freels v. Koches*, 94 N.E.3d 339, 344 (Ind. App. Ct. 2018). The district court thus rightly ruled that the state judgment precludes Andrade's current suit.

That is enough to dispose of this appeal. We have no need to consider whether Andrade would also face a defense of claim preclusion based on the judgment entered in the first federal-court action. One solid ground supporting the district court's decision is enough. We therefore AFFIRM the judgment of the district court on the basis of claim preclusion stemming from the state-court litigation.