

NONPRECEDENTIAL DISPOSITION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**

Submitted May 28, 2024*

Decided June 5, 2024

BeforeFRANK H. EASTERBROOK, *Circuit Judge*MICHAEL B. BRENNAN, *Circuit Judge*JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1063

RHODA NELSEN,
*Plaintiff-Appellant,**v.*BARBARA PIERCE,
*Defendant-Appellee.*Appeal from the United States District
Court for the Eastern District of
Wisconsin.No. 23-cv-1685-bhl
Brett H. Ludwig,
*Judge.***ORDER**

Rhoda Nelsen (formerly Stahmann) has repeatedly sued various defendants, alleging that they unlawfully detained and maliciously prosecuted her in violation of her rights under the Fourth and Fourteenth Amendment rights. *See* 42 U.S.C. § 1983.

* Appellant submitted a notice of name change, effective February 20, 2024, in another pending appeal (No. 24-1253), and we update the caption accordingly. The appellee was not served with process and is not participating in this appeal. After examining the appellant's brief and the record, we have concluded that the case is appropriate for summary disposition. *See* FED. R. APP. P. 34(a)(2).

Her lawsuits pertain to her arrest and prosecution in Fond Du Lac County, Wisconsin, for falsely reporting a stimulus check stolen. Relevant here is Nelsen's complaint against Barbara Pierce, a state prosecutor, seeking \$2.5 million in damages. The district court screened the complaint under 28 U.S.C. § 1915(e)(2) and dismissed it, concluding it was barred by the claim preclusion doctrine. Although the previous suit's preclusive effect is somewhat ambiguous, Nelsen has not persuaded us that the court erred; further, we can easily discern from the complaint alone that dismissal here was proper because the prosecutor is absolutely immune from this suit. We therefore affirm.

In October 2021, Nelsen reported to a deputy sheriff that someone had stolen and cashed her federal stimulus check; she wished to file a police report to provide to the IRS in her pursuit of a replacement check. A detective investigated and found video of what appeared to be Nelsen cashing the check at a bank branch in a retail store. Nelsen denied that the video depicted her. The detective thought Nelsen was lying and recommended that she be charged with obstructing a police officer. Nelsen was eventually charged with that offense. A jury acquitted her on September 11, 2023.

In the meantime, Nelsen sued Pierce and others in one of several lawsuits she has filed since being charged. *Stahmann v. Menzel*, No. 23-cv-1192-bhl, 2023 WL 7219884, at *2 (E.D. Wis. Nov. 2, 2023). We will refer to that case as *Menzel*. She alleged that detectives lied and falsified evidence against her and that prosecutors, including Pierce, used that false information to maliciously prosecute her. *Id.* at *3. Because Nelsen applied to proceed *in forma pauperis*, the district court screened her complaint, see 28 U.S.C. § 1915(a)(1), (e)(2), noted that it was "difficult to follow," and dismissed it, explaining that Nelsen "has not alleged any violations of federal or constitutional law over which the Court has subject-matter jurisdiction." *Menzel*, 2023 WL 7219884, at *2–3. To the extent it discerned any claims, the court concluded that they arose under state law only. In its separate judgment, the court stated that the suit was dismissed "with prejudice for failure to state a claim." Judgment, *Menzel*, No. 23-cv-1192-bhl (E.D. Wis. Nov. 2, 2023), ECF No. 9. Nelsen did not appeal.

In December 2023 Nelsen brought the current lawsuit against Pierce alone. Her complaint here, like the one in *Menzel*, is disjointed, but she again alleges that, during her trial, Pierce knowingly used the detective's "false statement and evidence" to try to convict her. This time, however, Nelson asserted that Pierce violated her constitutional rights and cited 42 U.S.C. § 1983. The district court dismissed this complaint at screening, relying on claim preclusion. As the court saw it, Nelsen's complaint arose out

of the same operative facts as *Menzel*, Pierce was a named defendant in that case, and the case had ended with a final judgment on the merits.

On appeal, Nelsen takes issue with the district court's conclusion that claim preclusion bars her lawsuit. She does not develop her argument other than to emphasize that the district court wrongly focused on "a different complaint" that was not against "the wrongdoer in this case" and that she brings constitutional claims in this suit. But under the federal common law of claim preclusion, a prior judgment bars subsequent litigation of claims that arise from the same transaction and *could have* been brought in the first action. *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981). The new legal theories do not matter. Complaints needn't plead law; even though Nelsen articulates her legal theories more clearly this time around, her "claim"—her grievance against the defendant—is the same. *See Johnson v. City of Shelby*, 574 U.S. 10, 11 (2014) ("[N]o heightened pleading rule requires plaintiffs seeking damages for violations of constitutional rights to invoke § 1983 expressly ..."). And Pierce was a party in the prior case, regardless of whether Nelsen developed allegations against her.

We question the applicability of claim preclusion on another ground, though: There must be "a prior final judgment on the merits." *Daza v. Indiana*, 2 F.4th 681, 683 (7th Cir. 2021). A dismissal for failure to state a claim is a judgment on the merits, but a dismissal for lack of jurisdiction is not. *Bell v. Hood*, 327 U.S. 678, 682 (1945); *Campbell v. Keagle Inc.*, 27 F.4th 584, 586–87 (7th Cir. 2022). Consequently, a dismissal for failure to state a claim is with prejudice, while dismissal for lack of subject-matter jurisdiction is without prejudice to the merits (even if it is a final decision for appeal purposes). *Semtek Int'l, Inc. v. Lockheed Martin Corp.*, 531 U.S. 497, 505–06 (2001); *Lewert v. P.F. Chang's China Bistro, Inc.*, 819 F.3d 963, 969 (7th Cir. 2016). Here, there is ambiguity about whether *Menzel* was dismissed for failure to state a claim or lack of jurisdiction. The court's written rationale repeatedly refers to the absence of any "federal" claim and thus a lack of jurisdiction. True, that order ends by saying that the case was dismissed "with prejudice," which is consistent with a merits dismissal, but that is incongruous with the court's statements that the absence of federal claims deprived it of jurisdiction. *See* 2023 WL 7219884, at *3–4. It appears from the complaint here that Nelsen interpreted the order to require her to explain the federal nature of her claims.

But despite the ambiguity in the rationale for the dismissal of *Menzel*, the Rule 58 judgment controls. *Reed v. Columbia St. Mary's Hosp.*, 782 F.3d 331, 336 (7th Cir. 2015) ("[L]itigants may and should rely on the specific wording of a Rule 58 judgment to determine whether a judgment is final and appealable.") In that document, the court

No. 24-1063

Page 4

stated that it dismissed the case “with prejudice for failure to state a claim,” *i.e.*, on the merits. *See Semtek*, 531 U.S. at 505–06. Thus, we cannot say that the district court erred by citing the judgment in *Menzel* as preclusive. The district court explained why the other requirements for claim preclusion were satisfied, and Nelsen does not meaningfully challenge those determinations. Her claims are therefore barred.

To the extent there is any doubt about claim preclusion, the dismissal was proper also because Pierce is absolutely immune from this suit. Under 28 U.S.C. § 1915(e)(2)(B)(iii), a court must dismiss a case filed in forma pauperis “at any time” it determines that the plaintiff “seeks monetary relief against a defendant who is immune from such relief.” Prosecutors like Pierce, when sued in their individual capacity, are immune from civil suits under § 1983 for their conduct “in initiating a prosecution and in presenting the State’s case.” *Imbler v. Pachtman*, 424 U.S. 409, 431 (1976); *see Foreman v. Wadsworth*, 844 F.3d 620, 624 (7th Cir. 2016). Such conduct includes the knowing use of false testimony at trial, the basis of Nelsen’s claim here. *See Imbler*, 424 U.S. at 431 & n.34; *Archer v. Chisholm*, 870 F.3d 603, 612 (7th Cir. 2017) (explaining that prosecutorial immunity extends even to “malicious prosecution unsupported by probable cause”).

Finally, we note that Nelsen has filed six lawsuits and four appeals regarding her prosecution for obstructing police. All have been, at least in part, frivolous—like her effort in this case to obtain damages from a defendant with absolute immunity—and all have come out against Nelsen. Yet her losing has not sufficiently deterred her duplicative filings. Therefore, Nelsen has 14 days to show cause why we should not impose sanctions, including a fine.

AFFIRMED