

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DAVID SHELLENBERGER,	:	CIVIL ACTION NO. 05-2266
	:	
Plaintiff,	:	
	:	
v.	:	
	:	
UNITED PARCEL SERVICE, et al.,	:	
	:	
Defendants.	:	

**MEMORANDUM**

BUCKWALTER, S.J.

January 25, 2006

Presently before the Court are Defendants’ Motion to Dismiss (Docket No. 7) and Plaintiff’s Response (Docket No. 8). As explained below, Defendants’ Motion to Dismiss is granted.

**I. FACTUAL AND PROCEDURAL HISTORY**

**A. Background**

Plaintiff, who pursues this action *pro se*,<sup>1</sup> alleges he was employed by Defendant United Parcel Service (“Defendant UPS”) from January 1999 until September 2003. According to Plaintiff, Defendant John Yaichs, Defendant Dana McCall, Defendant Norm Wynn, Defendant West Southall, Defendant Mike Eskew, Defendant Barbara Gohery and Defendant Karol Martin

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1. Plaintiff pursues this lawsuit *pro se*. Courts have an obligation to read a *pro se* litigant’s pleading liberally. Holley v. Dept. of Veterans Affairs, 165 F.3d 244, 247-48 (3d. Cir. 1999) (citing Haines v. Kerner, 404 U.S. 519, 520-21 (1972)). Courts must apply the applicable law, regardless of whether the *pro se* litigant cited the applicable law or referenced it by name. Id. at 248. While a *pro se* litigant is given some latitude with the respect to his pleadings, a *pro se* plaintiff is not excused from complying with rules of procedural and substantive law. Faretta v. California, 422 U.S. 806, 835, n. 46 (1975). As the Supreme Court wrote in Baldwin County Welcome Center v. Brown, 466 U.S. 147, 152 (1984), “[p]rocedural requirements established by Congress for gaining access to the federal courts are not to be disregarded by courts out of vague sympathy for particular litigants.”

are employees of Defendant UPS. Plaintiff claims his problems at work began in February 2003 when he was transferred to the west end of Defendant UPS' facility at 700 Blair Mill Road, Horsham, Pennsylvania. From February 2003 until his alleged forced resignation around September 2003, Plaintiff allegedly faced hostile work conditions.<sup>2</sup>

In July 2003, Plaintiff encountered problems with his student loans. While employed at Defendant UPS, Plaintiff made use of Defendant UPS' tuition compensation and college loan program. Plaintiff noticed that he owed both interest and principal on his loan amount. Plaintiff believed that Defendant UPS would pay the principal. On August 4, 2003, Plaintiff requested time, pursuant to the Family Medical Leave Act, to spend with his ailing mother. According to Plaintiff, Defendant Wynn granted Plaintiff this request. After Plaintiff returned to work, Defendant Yaichs told Plaintiff that he did not believe that Plaintiff's mother was actually ill. This alleged harassment occurred on August 6, 2003.

On August 8, 2003, Defendant Wynn accused Plaintiff of taking drugs. According to Plaintiff, Defendant Wynn and other employees of Defendant UPS falsely imprisoned Plaintiff and forced him to take a drug test, specifically a urine test. Plaintiff met with representatives of Defendant UPS on August 11, 2003 and was told to stay home until the results of drug test were received. At that meeting, Plaintiff told the representatives of Defendant UPS that he was taking medication for Attention Deficit Disorder.

Plaintiff was notified on August 13, 2003 that the results of the drug test were negative for illegal substances. After receiving news of the drug test, Plaintiff spoke to

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2. In the instant matter, Plaintiff claims that he was constructively discharged from Defendant UPS. As will be discussed, in prior lawsuits, Plaintiff claimed to have been wrongfully terminated by Defendant UPS.

Defendant Southall, who informed Plaintiff that Plaintiff needed to be medically cleared before returning to work. Plaintiff disagreed with Defendant UPS' requirement of medical clearance and notified Defendant UPS of his disagreement.

In a letter dated September 16, 2003, Defendant UPS reminded Plaintiff that he had been out of work, with pay, since August 8, 2003, when he had displayed erratic behavior. Further, Defendant UPS noted that Plaintiff had been told, on numerous occasions, that Defendant UPS requested he obtain medical clearance before returning to work. Also, in the letter, Defendant UPS notified Plaintiff that Plaintiff's continued failure to cooperate would be interpreted as a voluntary resignation. Finally, Defendant UPS included information on its Employee Dispute Resolution Program. According to Plaintiff, he chose not to comply with Defendant UPS' demands because he felt Defendant UPS was never interested in having him return to work and the conditions at work were so unpleasant he felt compelled to resign. Defendant UPS allegedly terminated Plaintiff's unemployment benefits in November 2003.

## **B. Prior Cases**

In December 2003, Plaintiff filed suit against Defendant UPS in Montgomery County District Court.<sup>3</sup> (Def.'s Br. Ex. A.) This case was docketed in Montgomery County District Court as No. CV-440-03. Id. In his complaint in the Montgomery County Case, Plaintiff alleged as follows:

I David Shellenberger took out a loan on 10/11/02 with a written explanation that United Parcel Service would pay the principal for as long as I was employed by them, I would have to pay the interest. As documented in my loan statements I was [to] pay both the interest and [principal], hence misleading loan information. Also recently being

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3. This case will be referred to as the "Montgomery County Case."

fired from United Parcel Service unlawfully, they no longer pay the principal.

Id. Notably, the district justice entered judgment against Plaintiff and in favor of Defendant UPS on March 2, 2003. (Defs.' Br. Ex. B.) The case was *not* dismissed without prejudice. Id. The Notice of Judgment included the following language: “[a]ny party has the right to appeal within 30 days after the entry of judgment by filing a notice of appeal with the Prothonotary/Clerk of Court of Common Pleas, Civil Division. You must include a copy of this Notice of Judgment/Transcript Form with your Notice of Appeal.” Id.

Plaintiff filed another complaint against Defendant UPS in Bucks County District Court on March 4, 2004.<sup>4</sup> (Defs.' Br. Ex. C.) This case was docketed in Bucks County District Court as No. CV-164-04. Id. In the Bucks County Case, Plaintiff raised an allegation of wrongful discharge and accused Defendant UPS of giving him false information as to college loans. Id. Specifically, Plaintiff wrote the following: “[I’]m asking for \$5,000 dollars for the damages of false information applied to college loans. Also in this case is civil rights violations, which resulted in the [d]eath of Michael Arbor and the wrongful termination of David Shellenberger.” Id. Notably, the district justice entered judgment against Plaintiff and in favor of Defendant UPS on May 24, 2004. (Defs.' Br. Ex. D.) Plaintiff’s case was *not* dismissed without prejudice. Id. The Notice of Judgment included the following language: “[a]ny party has the right to appeal within 30 days after the entry of judgment by filing a notice of appeal with the Prothonotary/Clerk of Court of Common Pleas, Civil Division. You must include a copy of this Notice of Judgment/Transcript Form with your Notice of Appeal.” Id.

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4. This case will be referred to as the “Bucks County Case.”

With respect to the Bucks County Case, Plaintiff claims that the district justice told Plaintiff the he, meaning the district justice, was not authorized to handle such matters in his court. According to Plaintiff, the district justice told Plaintiff to take his case to federal court.

Plaintiff filed a complaint in the United States District Court of the Eastern District of Pennsylvania in September 2004. The case was docketed as No. 04-4117. In that case, Plaintiff filed suit against Defendants named in the instant case. On March 7, 2005, this Court granted the defendants' motion to dismiss for failure to properly effect service of process.

### **C. Present Case**

Plaintiff filed the Complaint in the instant lawsuit in May 2005. In Count I of his Complaint, Plaintiff alleges that Defendants intentionally and negligently inflicted emotional distress on Plaintiff. Further, Plaintiff alleges that Defendants violated his rights under the Family Medical Leave Act. Among the damages Plaintiff requests in Count I is the loss of the benefits from Defendant UPS' college program. In Count II of Plaintiff's Complaint, Plaintiff claims that he was sexually harassed while working for Defendant UPS. Plaintiff also claims that Defendants falsely imprisoned him. In asking for damages resulting from these allegations, Plaintiff claims that Defendants' actions caused him severe mental anguish. With respect to Count III, Plaintiff alleges that Defendants conspired to prevent him from continuing to work for Defendant UPS. Plaintiff also avers that Defendants engaged in "class discrimination" against him (Pl.'s Compl. ¶ 117), and Plaintiff also appears to allege a hostile work environment claim. Finally, in Count IV, Plaintiff's claims that Defendants' actions caused his "constructive discharge" and that Defendants' actions defamed his character. Id.

In this Memorandum, the Court addresses Defendants' Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(2), Rule 12(b)(4), Rule 12(b)(5) and Rule 12(b)(6) of the Federal Rules of Civil Procedure. Defendants offer three reasons for seeking this dismissal. First, Defendants claim that Plaintiff failed to properly effectuate process, both failing to properly serve Defendants and misidentifying a number of Defendants in the caption of the Complaint. Second, Defendants argue that Plaintiff's claims are barred by res judicata or claim preclusion. Third, Defendants assert that Plaintiff has failed to state any valid claims in his Complaint, including arguing that Plaintiff failed to exhaust his administrative remedies.

## **II. STANDARD**

A motion to dismiss pursuant to Rule 12(b)(6) is granted where the plaintiff fails to state a claim upon which relief can be granted. FED. R. CIV. P. 12(b)(6). This motion "may be granted only if, accepting all well-pleaded allegations in the complaint as true, and viewing them in the light most favorable to [the] plaintiff, [the] plaintiff is not entitled to relief." Maio v. Aetna, Inc., 221 F.3d 472, 481 (3d Cir. 2000) (quoting In re Burlington Coat Factory Sec. Litig., 114 F.3d 1410, 1420 (3d Cir. 1997)) (citations omitted). A court must accept all of the plaintiff's allegations as true and attribute all reasonable inferences in his favor. Alston v. Parker, 363 F.3d 229, 233 (3d Cir. 2004). Generally, in ruling on a motion to dismiss, a district court may not consider matters extraneous to the pleadings. Total Control, Inc. v. Danaher Corp., 359 F. Supp. 2d 380, 383 (E.D. Pa. 2005) (citing In re Burlington Coat Factory, 114 F.3d at 1426). However, the Court may, and will, take judicial notice of the records of the prior proceedings involving Plaintiff and Defendants. Id. (citing Oneida Motor Freight, Inc. v. United Jersey Bank, 848 F.2d 414, 416 n. 3 (3d Cir. 1988)) (citation omitted).

### III. DISCUSSION

Defendants' Motion to Dismiss will be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure because Plaintiff's claims are barred by res judicata or claim preclusion.<sup>5</sup> After a brief discussion of claim preclusion, the Court will analyze whether valid final judgements were entered in the Montgomery County Case and Bucks County Case and then apply Pennsylvania claim preclusion law to the instant case.

Claim preclusion is "a doctrine by which a former adjudication bars a later action on all or part of the claim which was the subject of the first action." Total Control, 359 F. Supp. 2d at 384 (quoting Balent v. City of Wilkes-Barre, 669 A.2d 309, 313 (Pa. 1995)). Claim preclusion "applies not only to the claim actually litigated, but also to claims which could have been litigated during the first proceeding if they were part of the same cause of action." Id. (quoting Balent, 669 A.2d at 313). As articulated by the Pennsylvania Supreme Court, the purpose of claim preclusion is "to relieve the parties of the cost and vexation of multiple

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5. Because the Court grants Defendants' Motion to Dismiss pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure based on claim preclusion, the Court will not address Defendants' additional arguments for requesting dismissal of the instant case.

The Court will utilize the term "claim preclusion" in place of "res judicata" in this Memorandum. According to the Third Circuit:

Res judicata and collateral estoppel are related but independent preclusion concepts. The term res judicata has been given a variety of meanings - from preclusion in its generic sense, to a judgment that bars further litigation on the claim upon which the first suit is based, to an adjudication of an issue contested in the previous action which precludes further litigation of that same matter. (citation omitted). To reduce the confusion that resulted from the interchangeable use of these terms, the courts have refined the nomenclature used in the preclusion doctrine. (citation omitted). The Supreme Court and the Second Restatement of Judgments use the terms claim preclusion and issue preclusion. (citation omitted). Claim preclusion replaces res judicata and encompasses both merger and bar principles in giving dispositive effect in a later action to a prior judgment. Issue preclusion now substitutes for collateral estoppel. This preclusive device is somewhat more limited than claim preclusion because it bars relitigation only of an issue identical to that adjudicated in the prior action. (citation omitted).

Gregory v. Chehi, 843 F.2d 111, 115-16 (3d Cir. 1988) (internal quotations omitted).

lawsuits, conserve judicial resources, prevent inconsistent decisions, and encourage reliance on adjudications.” Balent, 669 A.2d at 315 (citing Allen v. McCurry, 449 U.S. 90, 94 (1980)).

In applying these preclusion principles, the Court is bound by the Full Faith and Credit statute, 28 U.S.C. § 1738. Gregory, 843 F.2d at 116. The Court is required to give a prior state judgment “the same effect as would the adjudicating state.” Id. (citations omitted). One of the basic prerequisites for applying claim preclusion is the presence of a valid final judgment on the merits. Total Control, 359 F. Supp. 2d at 384 n. 5 (citing Balent, 669 A.2d at 313).

In the instant matter, the applicable state judgments are from Pennsylvania. Based on the law in Pennsylvania, a concurrence of four conditions must exist for a claim to be barred under claim preclusion. Id. at 384 (citing In re Iulo, 766 A.2d 335, 337 (Pa. 2001)). The four conditions are the following: “1) identity of issues; 2) identity of causes of action; 3) identity of persons and parties to the action; and 4) identity of the quality or capacity of the parties suing or being sued.” Id. (citation omitted).

#### **A. Finality**

As written above, the presence of a valid final judgment on the merits is one of the basic prerequisites for applying claim preclusion. Total Control, 359 F. Supp. 2d at 384 n. 5 (citing Balent, 669 A.2d at 313). District justices entered judgment against Defendant in both the Montgomery County Case and Bucks County Case. (Defs.’ Br. Ex. B; Defs.’ Br. Ex. D.) With respect to the question of finality, Pennsylvania courts have found that the utilization of claim preclusion “will not be precluded or impaired because the prior judgment was entered in an action before a district justice.” A.C. Elfman & Sons, Inc. v. Clime, 513 A.2d 488, 490 (Pa. Super. 1986) (citing Stahl v. Hilderhoff, 247 A.2d 582, 583 (Pa. 1968)).

According to Plaintiff, in the Bucks County Case, the district justice told Plaintiff that he was not authorized to hear such matters and instructed Plaintiff to take the case to federal court. In an attempt to support his assertions, Plaintiff attached an exhibit, which is an unsworn affidavit of two witnesses who allegedly heard the district justice's statement. (See Pl.'s Br. Ex. H.) Even if the Court were to consider Plaintiff's unsworn affidavit, Plaintiff's argument would be futile because it is contradicted by the Notice of Judgment. (Defs.' Br. Ex. D.) In entering the Notice of Judgment, the district justice did not dismiss without prejudice, which he could have done and would have corresponded with Plaintiff's allegation. Id. Instead, the district justice entered judgment against Plaintiff. Id. If Plaintiff believed the district justice had no jurisdiction, his sole recourse was to appeal the judgment, which the Notice of Judgment informed him he could do. Id. Plaintiff makes no assertion that he appealed the judgment entered by the district justice in the Bucks County Case. Therefore, the Court concludes that a valid final judgement was entered in the Bucks County Case.

In addition, as noted above, the district justice in the Montgomery County Case entered judgment against Defendant. (Defs.' Br. Ex. B.) Plaintiff does not claim that the district justice had no jurisdiction in that case. The Court believes a valid final judgement was entered in the Montgomery County Case as well.

**B. Concurrence of Four Conditions**

1. Identity of Issues

The Court first will consider whether there is a concurrence in the identity of the issues raised in the instant case, Montgomery County Case and Bucks County Case. When the same occurrences underlie the cases in question, this factor is met. Gregory, 843 F.2d at 116-17.

In Plaintiff's Montgomery County Case, Plaintiff brought suit based on damages resulting from "being fired from United Parcel Service unlawfully." (Defs.' Br. Ex. A.) Plaintiff's Bucks County Case also was based on his "wrongful termination" from Defendant UPS. (Defs.' Br. Ex. C.) Like the Montgomery County Case and Bucks County Case, the instant case centers on the series of occurrences leading up to Plaintiff's alleged forced resignation from Defendant UPS. As there is a concurrence in the issues between the Montgomery County Case, Bucks County Case and the instant matter, this condition is present.

## 2. Identity of Causes of Action

With respect to the second condition, the Court must analyze the "similarity of the underlying events giving rise to various legal claims." Total Control, 359 F. Supp. 2d at 384 (citations omitted). "[A] claim extinguished by res judicata 'includes all rights of the plaintiff to remedies against the defendant with respect to all or any part of the transaction, or series of connected transactions, out of which the action arose.'" Gregory, 843 F.2d at 117 (quoting Restatement (Second) of Judgments § 24(1) (1982)). In the Montgomery County Case and Bucks County Case, Plaintiff brought claims based on his alleged unlawful termination from Defendant UPS and the injuries he suffered because of the alleged unlawful termination. In the instant matter, Plaintiff brings claims, including negligent infliction of emotional distress, intentional infliction of emotional distress, loss of benefits from the Defendant UPS' college program, sexual harassment, class discrimination, violation of FMLA rights, hostile work environment, constructive discharge and defamation of character. These claims all arose based on Plaintiff's employment at Defendant UPS and formed the basis of his wrongful termination-related claims in the Montgomery County Case and Bucks County Case. Plaintiff's claims in the

instant matter could have been, and should have been, brought in the earlier lawsuits. Therefore, this condition is met.

3. Identity of Persons and Parties to the Action

In considering the third prerequisite, the Court must analyze if there is a concurrence among the identity of the parties. Gregory, 843 F.2d at 119. Claim preclusion applies not only to the actual parties in the underlying proceeding but also to their privies. Balent, 669 A.2d at 313. In the instant matter, only Defendant UPS was named in the Montgomery County Case and Bucks County Case. However, because the other Defendants are in privity with Defendant UPS because of the employer-employee relationship, this prerequisite is met.

4. Identity of the Quality or Capacity of the Parties Suing or Being Sued

Finally, in considering the fourth prerequisite, the Court must determine whether the parties involved in the actions remain in the same capacity. Gregory, 843 F.2d at 119. The parties involved in the Montgomery County Case and Bucks County Case, Plaintiff and Defendant UPS, are in the same capacities in this lawsuit as they were in the two state lawsuits. Thus, this prerequisite is met.

#### **IV. CONCLUSION**

Because the judgments in the Montgomery County Case and Bucks County case are final on the merits and the four conditions of claim preclusion under Pennsylvania law are present, Plaintiff's claims in the instant matter are barred by claim preclusion. Therefore, Defendants' Motion to Dismiss is granted. An order follows.

