

v. *Rhodes*, 416 U.S. 232, 236 (1974). A complaint should not be dismissed for failure to state a claim unless it appears “beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief.” *Conley v. Gibson*, 355 U.S. 41, 44-46 (1957); *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988). A complaint that sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Estelle v. Gamble*, 429 U.S. 97, 107-108 (1976).

II. Discussion.

The Defendants first move to dismiss the Plaintiff’s complaint on the grounds that it is barred by the doctrine of *res judicata* based upon a prior action that the Plaintiff pursued to final judgment in the United States District Court for the Eastern District of Pennsylvania. As the Court finds that the complaint is barred by the doctrines of issue preclusion and claim preclusion, there is no need to reach the additional arguments raised by the Defendants.

The doctrine of *res judicata* “is often analyzed . . . to consist of two preclusion concepts: ‘issue preclusion’ and ‘claim preclusion.’” *Migra v. Warren City School Dist. Bd. Of Educ.*, 465 U.S. 75, 104 S.Ct. 892, 894 n. 1, 79 L.Ed.2d 56 (1984). Issue preclusion bars a party from relitigating an issue identical to that litigated in a previous action. *See Edmundson v. Borough of Kennett Square*, 4 F.3d 186, 189 (3d Cir. 1993). Claim preclusion “is broader in effect and prohibits reexamination not only of matters actually decided in the prior case, but also those that the parties might have, but did not, assert in that action.” *Id.*

A. Plaintiff’s Complaints.

Necessary to the determination of the preclusive effect of the matter pursued to final

judgment in the Eastern District is a comparison of the complaint filed in that action with the complaint filed in the present action..

1. Prior action.

In the "Previous Lawsuits" section of his present complaint, the Plaintiff informs the court that he filed a prior action in the Eastern District of Pennsylvania which matter was docketed as number 99-CV-0445. He further advised the Court that he did not have a copy of that complaint. (Doc. 1, p. 2). As noted above, the Defendants responded to the Plaintiff's present complaint by filing a motion to dismiss on the grounds of *res judicata, inter alia*, based upon the Plaintiff's prior complaint. A copy of that complaint and a copy of the Memorandum and Order of Judge Harvey Bartle, III, dated December 21, 1999, dismissing the lawsuit, have been provided to the Court. (Doc. 18, Exhibits B and C).

A review of the complaint reveals that the following parties were named as defendants: Medical Department at Frackville Prison; Michael E. Sims, Physician's Assistant; Dr. O'Conner; Neil Hefferman; Ms. Rita; Linda Narouth; Robert Shannon; and, Joseph Chesney..

In the Statement of claim section, the Plaintiff stated as follows:

When I arrive here at Frackville on 7/5/96, I informed the nurse of my immediate medical problem, my "(Bad Feet)." Since I've been at Frackville, I've been trying to get proper medical treatment. Frackville does not have any foot doctor here, so I must see the in-house - (Physician Assistant). I've informed Frackville hospital, there (sic) employees and the Frackville Administration of the medical treatment that I was getting when I was at Graterford Prison. My response from the hospital, there (sic) employees and Frackville Administration was that; because you are receiving different treatment than what you got while at Graterford does not mean it improper or inadequate. I've been under a Podiatrist care

for approximately 13 years. The street podiatrist at Graterford treated (sic) my feet with a methodical system, I don't know the technical language of his treatment (sic), but I know the plain English of his treatment (sic). The typ (sic) of treatment (sic) I received from Graterford Street Podiatrist, 'Mr John Doe' was 'debridement.'

(Doc. 18, Exhibit B, p. 4). He also raises the issue of the Defendants' requirement that he sleep on the top bunk despite his bad feet. He complained that he did not have bottom bunk status and that he was issued misconducts for failure to obey an order when he was ordered to move to the top bunk and he refused.

In the relief section of the complaint, he requested to "see a street podiatrist once a month or once every two months. Also Frackville Jail need (sic) a foot doctor. I need casting by a Podiatrist so the medical department can order me tailored insoles. I also need to go on a regular basis to the hospital for acid pads." (*Id.*)

2. Present action.

The present action also names Dr. O'Conner, Linda Narouth, Neil Hefferman, Robert Shannon and Joseph Chesney as defendants.

As is evident from the following, the initial portion of the statement of the claim sections of each complaint are virtually identical:

When I arrived here at Frackville on 7/5/96, I informed the nurse of my immediate medical problem as it pertains to my "(bad feet)." Since I've been here at Frackville, I've been trying to get this jail to give me medical treatment without them causing me more pain. Frackville does not have a (podiatrist), so I must go see the in-house physician assistant and nurses. I've been under a podiatrist care for approximately 13 years. The street podiatrist that came to Graterford Prison treated (sic) my feet with a methodical system, I

don't know the technical language of his treatment (sic), but I know the plain english (sic) of his treatment(sic). The typ (sic) of treatment received from Graterford street podiatrist Mr. John Doe was 'Debridement.' The first step to debridement is, every day for about a week I wear Salicyclic acid pads on my feet in places they go, this way the salicyclic acid pads make the (thick layers of 'callous like skin 'soft' so when its time for the doctor to dig deep in my skin to debridement these thick layers of skin, it will be easier (sic) for him and less painful to me.

(Doc. 1, p. 4). Recited in the eighteen (18) handwritten pages that are attached to the form complaint and detailed in seventy-one (71) separate paragraphs are the difficulties that Plaintiff states he has experienced with receiving adequate medical care for his feet since his arrival at SCI-Frackville. He references dates throughout 1998 and 1999. He also revisits the issue of his difficulty with securing bottom bunk status and the misconducts that he was issued for having refused to sleep in a top bunk.

Also contained in those paragraphs are the Plaintiff's concessions that he has already litigated the issues raised in this complaint. He states that "[t]his complaint knows the power of the court (res judicata), Restatement of second judgements. But can this complaint show (res Nova), is there a (sic) undecided question of law in this complaint that the parties should settle?" (Doc. 1, p. 13 ¶ 42). He further states that he accepted the Order of Judge Bartle as true and factual as he is more knowledgeable in the law than the Plaintiff. (*Id.* at p. 17, ¶ 60). He states that maybe he did not litigate his first complaint properly. "Plaintiff wanted to appeal but did not know how to legally dispute, disprove, or dispose of facts pertaining to my case. Therefore, Third Circuit dismissed appeal for failure to timely prosecute on the date of April 4, 2000. Since that time April 4, 2000, plaintiff has been trying to the best of his knowledge to investigate his

legal remedies, as evident by this relitigate (sic) complaint from plaintiff first complaint.” (*Id.* at ¶¶ 61, 62).

Plaintiff also states that he “brings a new issue to his complaint against Defendants Doctor O’Conner, Linda Nauroth and Superintendent Joseph W. Chesney” in the form of discrimination in medical services under the “Americans Disabilities Act (ADA)” (*Id.* at ¶¶ 48, 49). He also makes reference to the Rehabilitation Act. (*Id.* at ¶ 51).

In the relief section of the complaint, he seeks treatment by a podiatrist once a month for the rest of his life, bottom bunk, lower tier, first cell status or single cell status. He also states that he lost his job and that he would like his job back with the same pay rate he had in January, 1999.

B. Issue Preclusion.

The doctrine of issue preclusion holds that “once a court has decided an issue of fact or law necessary to its judgment, that decision may preclude relitigation of the issue in a suit on a different cause of action involving a party to the first case.” *Allen v. McCurry*, 449 U.S. 90, 94, 101 S.Ct. 411, 414, 66 L.Ed.2d 308 (1980). “Issue preclusion is based upon the policy that a ‘losing litigant deserves no rematch after a defeat fairly suffered in adversarial proceedings, on an issue identical in substance to the one he subsequently seeks to raise.’ *Astoria Fed. Sav. & Loan Ass’n v. Solimino*, 501 U.S. 104, 107, 111 S.Ct. 2166, 115 L.Ed.2d 96 (1991); see also 18 Charles A. Wright, Arthur R. Miller & Edward H. Cooper, *Federal Practice and Procedure* § 4416 (1981)(‘later courts should honor the first actual decision of a matter that has been actually litigated’). The doctrine of issue preclusion reduces the costs of multiple lawsuits,

facilitates judicial consistency, conserves judicial resources, and 'encourage[s] reliance on adjudication.' *Allen*, 449 U.S. at 94, 101 S.Ct. at 415." *Dici v. Commonwealth of Pennsylvania*, 91 F.3d 542, 547 (3d Cir. 1996). Issue preclusion is appropriately invoked if (1) the issue decided in the prior adjudication was identical with the one presented in the later action, (2) there was a final judgment on the merits, (3) the party against whom the plea is asserted was a party in privity with a party to a prior adjudication, and (4) the party against whom it is asserted has had a full and fair opportunity to litigate the issues in a prior action. *Id.* at 548.

Dismissal of this action based on principles of issue preclusion is plainly warranted. The filing of this action was preceded by Dorsey's filing of an action under 42 U.S.C. § 1983 in the United States District Court for the Eastern District of Pennsylvania. The averments regarding medical treatment, bottom bunk clearance and the issuance of misconducts for failure to follow orders with regard to bunk status or assignment are virtually identical to those contained in the initial pleading filed by Dorsey in the Eastern District. By Order dated December 21, 1999, Judge Bartle dismissed the action on the grounds that it was legally frivolous. According to the Plaintiff, his appeal was later dismissed for failure to timely prosecute. A final judgment on the merits of the issues was therefore reached. Further, the Plaintiff had every opportunity to litigate the issues in the prior action. It is therefore concluded that the Plaintiff is precluded from relitigating these issues under the doctrine of issue preclusion.

C. Claim preclusion.

The only remaining claims are what the Plaintiff refers to as his new claim; the ADA claim and his reference to the Rehabilitation Act. It is necessary to evaluate these claims under

the principles of claim preclusion as the Plaintiff did not raise them in the prior litigation. “The purpose of claim preclusion is to avoid piecemeal litigation of claims arising from the same events. See *Board of Trustees of Trucking Employees of North Jersey Welfare Fund, Inc. v. Centra*, 983 F.2d 495, 504 (3d Cir. 1992). ‘[A] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.’ *Rivet v. Regions Bank of Louisiana*, 522 U.S. 470, 473, 118 S.Ct. 921, 925, 139 L.Ed.2d 912 (1998) (internal citation omitted). A determination of whether two lawsuits are based on the same cause of action ‘turn[s] on the essential similarity of the underlying events giving rise to the various legal claims. *Board of Trustees*, 983 F.2d at 504, quoting *U.S. v. Athlone Indus., Inc.*, 746 F.2d 977, 983 (3d Cir. 1984).” *Churchill v. Star Enterprises*, 183 F.3d 184, 194 (3d Cir. 1999). “Claim preclusion gives dispositive effect to a prior judgment if ‘a particular issue, although not litigated, could have been raised in the earlier proceeding. Claim preclusion requires: (1) a final judgment on the merits in a prior suit involving; (2) the same parties or their privities; and (3) a subsequent suit based on the same cause of action.” *Id.*, citing *Board of Trustees*, 983 F.2d at 504. Thus, merely because a party did not raise a particular issue in the first judicial proceeding will not enable the party to avoid claim preclusion, if those particular claims could have been raised at the first proceeding. *Churchill*, 183 F.3d at 194.

With regard to the Plaintiff’s claim under the ADA as well as any purported claim under the Rehabilitation Act, these claims are precluded under the doctrine of claim preclusion as the Defendants meet each of the required elements. As set forth above, there has been a final judgment on the merits in a prior suit involving the same parties and the Plaintiff now attempts

to bring a subsequent suit based on the same cause of action. These claims are based upon the same facts that were set forth in the Plaintiff's prior lawsuit in the Eastern District. Clearly, the claims could have been raised in the first proceeding. The Plaintiff is therefore precluded from proceeding on these claims under the doctrine of claim preclusion.

III. Conclusion.

Based on the above, the Defendants' motions to dismiss (Docs. 15 and 39) will be granted. The remaining motions, the Plaintiff's motion for a preliminary injunction (Doc. 19) and his for partial summary judgment (Doc. 25), will be denied as they are rendered moot. An appropriate order will issue.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court

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

JEFFREY DORSEY,	:	CIVIL ACTION NO. 3:CV-02-0016
Plaintiff,	:	
	:	(Judge Munley)
	:	
v.	:	
	:	
DR. O'CONNER, et al.,	:	
Defendants.	:	

.....

ORDER

AND NOW, to wit, this 18th day of March, 2003, it is hereby **ORDERED** that:

1. The Motion to Dismiss filed on behalf of Defendants Narouth, Hefferman, Shannon and Chesney (Doc. 15) is **GRANTED**;
2. The Motion to Dismiss filed on behalf of Defendants O'Conner and Hefferman (Doc. 39) is **GRANTED**;
3. The Plaintiff's motion for a preliminary injunction (Doc. 19) is **DENIED** as **MOOT**;
4. The Plaintiff's motion for partial summary judgment (Doc. 25) is **DENIED** as **MOOT**;
5. The Clerk of Court is directed to **CLOSE** this case.
5. Any appeal taken from this order will be deemed frivolous, without probable cause, and not taken in good faith.

BY THE COURT:

s/ James M. Munley
JUDGE JAMES M. MUNLEY
United States District Court