

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14856
Non-Argument Calendar

D.C. Docket No. 3:17-cv-00103-MCR-EMT

JAMES R. WELCOME,

Plaintiff-Appellant,

versus

SECRETARY OF THE NAVY,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Florida

(August 6, 2019)

Before TJOFLAT, WILSON, and JORDAN, Circuit Judges.

PER CURIAM:

James R. Welcome filed a pro se employment discrimination lawsuit against the Secretary of the Navy for alleged violations of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2, and the Americans with Disabilities Act (ADA), 42 U.S.C. § 12112(a). Welcome appeals the district court’s grant of summary judgment in favor of the Navy, arguing that the district court erred in holding that his claims are barred by res judicata. After careful review, we affirm.

I. Factual and Procedural History

A. 2015 Litigation

Welcome’s claims are based on the following: (1) he testified against his supervisor, Bobbie Simpkins, in a separate Equal Employment Opportunity Commission (EEOC) proceeding on behalf of one of his coworkers; (2) one week later, Simpkins informed Welcome that he needed to begin taking leave if he wanted to continue taking walks during his lunch breach; (3) Simpkins accused Welcome of breaking into the building where he worked; (4) Simpkins solicited damaging statements from other employees indicating that Welcome was disliked at work; (5) Simpkins told employees that she would never promote Welcome and intended to place him in a small office so she could harass him “until he blew up”; and (6) after taking one year off on approved sick leave, Simpkins sent Welcome a Proposed Notice of Removal, followed by a notice that he had been removed from his position.

Based on the foregoing, Welcome alleged that Simpkins discriminated against him on the basis of his race (African American), gender (male), and disability (diabetic). He claimed that the discrimination and retaliation occurred in the form of a hostile work environment, harassment, and unequal employment treatment.

The district court dismissed the action and, alternatively, granted the Navy's motion for summary judgment on the merits of Welcome's claims. The court reasoned that dismissing Welcome's suit was appropriate because he had already raised his discrimination claims in a 2013 appeal concerning the Navy's decision to remove him from his position. Specifically, Welcome waived review of his discrimination claims by raising them before the Merit Systems Protection Board (MSPB) in 2013 and then appealing to the Federal Circuit, rather than filing suit in the district court.¹ Alternatively, the district court granted summary judgment for

¹ A civil service employee that has been removed from his position may appeal the removal to the MSPB. 5 U.S.C. §§ 7512, 7512(d). If the employee appeals the removal to the MSPB and asserts that the removal was based totally or partially on race discrimination, he has brought a "mixed case." See 29 C.F.R. § 1614.302(a). If the employee receives an adverse ruling by the MSPB, the employee may seek judicial review from either the Federal Circuit Court of Appeals or a federal district court. See 5 U.S.C. § 7703(a)(1), (b)(1). If the employee chooses to appeal to the Federal Circuit, he abandons his discrimination claims because the Federal Circuit lacks jurisdiction to hear claims of discrimination. See 5 U.S.C. § 7703. Thus, if the employee wants to pursue any type of discrimination claim on appeal, he must file a complaint in a United States District Court because a district court is the only forum that an employee can seek review of both parts of a mixed claim. See *Chappell v. Chao*, 388 F.3d 1373, 1375–76 (11th Cir. 2004). Because Welcome chose to appeal in the Federal Circuit, which lacked jurisdiction over his discrimination claims, he waived his right to appeal in the district court any discrimination claims he raised before the MSPB, or any claims based on the same facts as those raised before the MSPB. See *id.* at 1375–76, 1378.

the Navy because none of the underlying acts Welcome complained of constituted discrimination or retaliation under relevant standards. We affirmed the district court's grant of the Navy's motion to dismiss. *See Welcome v. Mabus*, 692 F. App'x 988, 988–89 (11th Cir. 2017).

B. Current Litigation

In 2017, Welcome filed the present suit against the Navy, again alleging violations of Title VII, 42 U.S.C. § 2000e-2, and the ADA, 42 U.S.C. § 12112(a). He reiterated the factual basis for his claims: (1) he testified against Simpkins in a separate EEOC proceeding; (2) he then received a Notice of Removal from Simpkins and a decision removing him from his position; (3) he was removed from his position “for misconduct and delinquency for excessive approved absences”; and (4) Simpkins accused him of breaking into the building where he worked, solicited statements from employees regarding his return to work, told employees she would place Welcome in a small office and harass him, and told employees Welcome would never be promoted.

Welcome raises two claims in the present suit. First, he claims he was discriminated against based on his race, gender, and disability. Welcome claims that the discrimination and retaliation occurred in the form of harassment and a hostile work environment, including Simpkins' act of announcing to employees the outcome of Welcome's EEOC adjudication. Second, Welcome alleges that he was

discriminated and retaliated against when the Navy removed him from his position due to excessive approved sick leave.

The Navy filed a motion for summary judgment, arguing that Welcome's claims were barred by res judicata because they were essentially the same as those he raised in the 2015 litigation. The district court granted the Navy's motion for summary judgment, concluding that Welcome's claims derived from the "same core of operative facts" as in the 2015 action and had already been "properly and fully litigated."

On appeal, Welcome asserts that the district court erred in determining that res judicata barred his claims because he previously raised them in his 2015 suit. He argues that (1) the district court in his 2015 suit lacked competent jurisdiction to hear his claims of discrimination, and (2) his claims were not addressed on the merits.²

II. Discussion

A. Standard of Review

We review a district court's grant of summary judgment and determination of res judicata de novo. *E.E.O.C. v. Pemco Aeroplex, Inc.*, 383 F.3d 1280, 1285

² The Navy argues that Welcome abandoned his challenge to the entry of summary judgment because he failed to cite any law in support of his argument. Despite the deficiencies in his brief, we conclude that he has not abandoned his claim because his brief contains sufficient arguments and authority. See *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) (stating that a litigant abandons his claim by making only passing references to it or failing to support it with arguments and authority).

(11th Cir. 2004). Summary judgment is appropriate when the evidence, viewed in the light most favorable to the non-moving party, presents no genuine dispute as to any material fact and compels judgment as a matter of law. *LeBlanc v. Unifund CCR Partners*, 601 F.3d 1185, 1189 (11th Cir. 2010). Once the moving party satisfies its burden, the burden of persuasion shifts to the non-moving party to establish the existence of a genuine issue of material fact. *Id.*

B. Res Judicata

Res judicata “bars the parties to a prior action from re-litigating a claim that was or could have been raised in the prior action.” *In re Piper Aircraft Corp.*, 244 F.3d 1289, 1296 (11th Cir. 2001). To invoke res judicata, a party must establish: “(1) the prior decision must have been rendered by a court of competent jurisdiction; (2) there must have been a final judgment on the merits; (3) both cases must involve the same parties or their privies; and (4) both cases must involve the same causes of action.” *Id.* “The purpose behind the doctrine of *res judicata* is that the full and fair opportunity to litigate protects [a party’s] adversaries from the expense and vexation [of] attending multiple lawsuits, conserves judicial resources, and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.” *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1238 (11th Cir. 1999) (quotation marks omitted).

The district court correctly determined that Welcome's present suit is barred by res judicata. Neither party disputes that the third and fourth elements are met—that is, the present case involves the same parties and claims as the 2015 case. To the extent that Welcome challenges the first two elements, his arguments are misguided.

Welcome claims that the district court in his 2015 suit was not a court of competent jurisdiction to rule on his claims. But federal district courts have jurisdiction over all cases arising under the Constitution or federal law. 28 U.S.C. § 1331. Because Welcome proceeded under Title VII and the ADA, both federal statutes, the district court in his 2015 suit was a court of competent jurisdiction. *See* 42 U.S.C. § 2000e-2; 42 U.S.C. § 12112(a). Although unclear, Welcome seems to argue that the district court's dismissal of his 2015 suit equates to a finding that the district court did not have jurisdiction over his claims. But we have previously explained that district courts have subject matter jurisdiction over discrimination and termination claims after the MSPB has rendered a final decision. *See Chappell v. Chao*, 388 F.3d 1373, 1378 (11th Cir. 2004). And the fact that Welcome waived his rights to pursue these claims in federal district court does not deprive the district court of subject matter jurisdiction. *See id.* at 1378 n.8. The district court in Welcome's 2015 suit was thus a court of competent jurisdiction.

Welcome also contends that his claims have never been addressed on the merits because they were dismissed in his 2015 suit on “procedural or technical grounds.” We disagree and find that the district court’s resolution of his 2015 suit was a final judgment on the merits. Welcome misunderstands that, in addressing the merits of his discrimination claims, the district court in 2015 was required to determine whether Welcome waived his right to proceed on his discrimination claims. The district court concluded that Welcome waived his right to proceed on his discrimination claims, and any other discrimination claims arising out of the same facts, in the district court. We later affirmed. *See Welcome*, 692 F. App’x at 988–89.

Notwithstanding our affirmance of the district court’s dismissal of the 2015 suit, and our repeated pronouncement that Welcome had waived all discrimination claims he raised, or could have raised, before the MSPB, he again filed suit in the district court, alleging the same claims of discrimination against the same defendant as in his 2015 suit. The filing of an almost identical lawsuit as one previously filed and decided on its merits is the very situation that *res judicata* is designed to prevent. Accordingly, we affirm the district court’s grant of summary judgment in favor of the Navy.

AFFIRMED.