

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DWANE INGALLS,)	
)	
Plaintiff,)	
vs.)	NO. 1:07-cv-00104-DFH-TAB
)	
THE AES CORPORATION,)	
)	
Defendant.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

DWANE INGALLS,)	
)	
Plaintiff,)	
)	
v.)	CASE NO. 1:07-cv-0104-DFH-TAB
)	
THE AES CORPORATION,)	
a Delaware corporation,)	
)	
Defendant.)	

ENTRY ON DEFENDANT'S MOTION TO DISMISS
ON RES JUDICATA GROUNDS

Plaintiff Dwane Ingalls was terminated from employment with defendant The AES Corporation in 2004. Since then, he has pursued litigation against the company in both state and federal courts. The background is set forth in this court's opinion staying this case based on *Colorado River* abstention principles, *Ingalls v. AES Corp.*, 2007 WL 2362967 (S.D. Ind. Aug. 16, 2007), and the Seventh Circuit's unpublished decision affirming that stay, 2008 WL 896196 (7th Cir. Apr. 8, 2008).

In the meantime, the state court entered final judgment against Ingalls on all of his claims asserted in that case, and the time to appeal expired. Defendant AES has now moved to dismiss this federal case on grounds of res judicata. The doctrine of res judicata, also known as claim preclusion, is an often technical legal

doctrine that serves a vital and simple purpose: to bring closure to disputes that have already been decided. Under 28 U.S.C. § 1738, this court gives the Indiana state court judgment the same effect that the Indiana state courts would give it.

Under Indiana law, a state court judgment precludes all claims that were litigated or could have been litigated in the prior case when four requirements are met: (1) the prior judgment was rendered by a court of competent jurisdiction; (2) the prior judgment was rendered on the merits; (3) “the matter now in issue was, or could have been, determined in the prior action”; and (4) the prior judgment was rendered in a suit between the parties to the new lawsuit or parties in privity with them. *Small v. Centocor, Inc.*, 731 N.E.2d 22, 26 (Ind. App. 2000); accord, *Perry v. Gulf Stream Coach, Inc.*, 871 N.E.2d 1038, 1048 (Ind. App. 2007); *Dawson v. Estate of Ott*, 796 N.E.2d 1190, 1195 (Ind. App. 2003).

The parties agree that the first and fourth elements are satisfied here. Ingalls challenges the second element, arguing that the state court judgment was not on the merits because his attorney failed to respond to the motion for summary judgment and because the state court did not allow him certain discovery that he believes he was entitled to conduct. Neither of these arguments avoids the second requirement of res judicata, a judgment rendered on the merits. First, res judicata would have little value if a party could avoid its bar by arguing merely that he was unhappy with his lawyer’s performance. Second, the scope of discovery and other twists and turns in litigation does not affect the conclusion

that the judgment was in fact on the merits of Ingalls' claims. See *Perry*, 871 N.E.2d at 1048, quoting *Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398-99 (1981) (res judicata applies even if the original decision was wrong or was based on legal principles that have been overruled). The second element of a res judicata defense is present here.

The final dispute is over the third element, whether the claims that Ingalls asserts in this action were or could have been asserted in his state case. Ingalls has detailed the various differences between the elements of the causes of action he pursued in state court and those he pursues here. He argues that there are differences in the evidence needed to prove the claims in the two actions. The problem with these arguments is that they overlook the critical branch of the third element: if the claims he asserts in federal court *could have been* asserted in the state court action, then his claims here are barred. "It has been many times held by this court that the doctrine of res adjudicata embraces not only what was actually determined, but every matter which the parties could have had litigated in the cause. The judgment in the former case is conclusive and bars a subsequent action if an opportunity was presented to litigate the entire subject matter in the first action." *Hammond Pure Ice & Coal Co. v. Heitman*, 47 N.E.2d 309, 311 (Ind. 1943); accord, e.g., *Perry*, 871 N.E.2d at 1048; *Dawson*, 796 N.E.2d at 1195; *Small*, 731 N.E.2d at 26. Without that branch of the third element, a party in Ingalls' position could do what he has done here – prolong litigation by

repeatedly developing new and subtly different variations on the theories he has already asserted and lost.

Ingalls relies on several Indiana cases to argue that there must be exact identity of evidence between two cases or claims to apply the doctrine of res judicata or claim preclusion. See, e.g., *Indianapolis Downs LLC v. Herr*, 834 N.E.2d 699, 703 (Ind. App. 2005); *Biggs v. Marsh*, 446 N.E.2d 977, 982 (Ind. App. 1983); *Peterson v. Culver Educational Foundation*, 402 N.E.2d 448, 461-62 (Ind. App. 1980). None of those cases suggests that *complete* identity of evidence is a fifth requirement for application of res judicata. Such a requirement would effectively erase the doctrine. In fact, the more recent cases have taught more specifically that some identity or overlap of evidence between two cases or claims is simply one indicator that might be “helpful” in determining whether res judicata applies, and that complete identity of evidence certainly is not required. See, e.g., *Indianapolis Downs*, 834 N.E.2d at 703-04 (holding that different plaintiffs could bring separate claims; later claim not barred by res judicata); *Richter v. Asbestos Insulating & Roofing*, 790 N.E.2d 1000, 1003-04 (Ind. App. 2003) (earlier dismissal of husband’s claim for personal injuries barred later claim by his widow for wrongful death and loss of consortium), citing *Small*, 731 N.E.2d at 27 (prior dismissal of patient’s medical malpractice claim barred later claim for fraud and deceit during hospitalization); accord, *Paniaguas v. Aldon Cos.*, 2007 WL 2228597, at *8-9 (N.D. Ind. July 31, 2007) (explaining “identity of evidence” test). In Ingalls’ two cases against AES, there would be so much overlap between the evidence that

this symptom of res judicata is also present. There is no need for complete identity of evidence.

AES has shown, and Ingalls has been unable to refute the showing, that all claims asserted in this federal case could have been asserted in the state case in which final judgment was entered against Ingalls on all of his claims. Accordingly, Ingalls' claims in this case are barred by the doctrine of res judicata. Defendant's motion to dismiss is hereby granted, and the court will enter final judgment in favor of defendant.

So ordered.

Date: March 26, 2009

DAVID F. HAMILTON, CHIEF JUDGE
United States District Court
Southern District of Indiana

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