

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 10-2499

IN RE: HERBERT MCMILLIAN,
Appellant

Appeal from the United States District Court
for the District of Delaware
(D.C. Misc. Action No.10-mc-00066)
District Judge: Honorable Sue L. Robinson

Submitted for Possible Summary Action Pursuant to
Third Circuit LAR 27.4 and I.O.P. 10.6

October 15, 2010

Before: RENDELL, FUENTES and SMITH, Circuit Judges

(Opinion filed: October 26, 2010)

OPINION OF THE COURT

PER CURIAM

Appellant, Herbert McMillian, appeals pro se from the order entered by the United States District Court for the District of Delaware denying him leave to amend his complaint pursuant to a standing pre-filing injunction order.

The parties are familiar with the background of the bankruptcy case; hence we need not repeat it at length here. In 2009, McMillian filed a bankruptcy appeal, alleging,

among other things, employment discrimination and requesting a motion for a grand jury, which the District Court denied as frivolous. We affirmed. C.A. No. 09-2598 (Feb. 2, 2009).

On April 1, 2010, McMillian filed a motion for leave to amend his bankruptcy appeal “complaint” “as to Liability, as to damages, RE: all unpaid labor law claims, ‘disability’ benefits suit”¹ In addition he sought a stay of the appellate mandate in No. 09-2598 pending his petition for a writ of certiorari to the U.S. Supreme Court, and requested that the District Court and the United States Attorney for Delaware convene a grand jury to investigate bankruptcy fraud. The District Court denied as frivolous McMillian’s motion because it related to claims based on his 1979 termination from employment and denial of benefits, which were fully litigated in prior cases. McMillian filed this timely appeal.

We have jurisdiction over the denial of McMillian’s motion for leave to file an amended complaint pursuant to 28 U.S.C. § 1291. Upon de novo review of the record, we conclude that there is no substantial question on appeal and that summary action is warranted. See LAR 27.4 and I.O.P. 10.6. We find no error in the District Court’s denial of McMillian’s motion, which re-alleges claims concerning his termination of employment and denial of benefits. As the District Court properly noted, these claims

¹ Pursuant to the District Court’s pre-filing injunction entered June 24, 2009, McMillian was required to seek prior authorization from the District Court for “any complaint, lawsuit, motion, or petition for mandamus related to his claim for damages based on his 1979 termination from employment and denial of benefits.” (Memorandum Order(4/22/10)).

have been fully litigated.

Accordingly, we will affirm the District Court's order. See LAR 27.4 and I.O.P.

10.6.