

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Nos. 23-1948 & 23-2946

PALANI KARUPAIYAN,

*P. P.; R. P.,
Appellant

Appellant in C.A. No. 23-1948

v.

ARNAUD VAISSIE, Individually and in his official capacity as CEO of Isos;
DESSI NIKOLOVA, Individually and in her Official Capacity as Director,
Product Engineering of the International SOS; ACCESS STAFFING LLC;
MIKE WEISTEIN, Individually and in his Official Capacity as Principal, Product
Engineering of Access Staffing LLC; KAPITAL DATA CORP; KUMAR
MANGALA, Individually and in their Official Capacity as Founder and CEO
of the Kapital Data Corp.; KARUPAIYAN CONSULTING INC;
GREGORY HARRIS, Individually and in his Official Capacity as Team
Leader, Mobile Applications of the International SOS; INTERNATIONAL SOS
(*Dismissed pursuant to Court Order dated August 10, 2023)

IN RE: PALANI KARUPAIYAN,

Petitioner in C.A. No. 23-2946

On Appeal and Petition for Writ of Mandamus
from the United States District Court
for the Eastern District of Pennsylvania
(D.C. Civil Action No. 2-22-cv-03083)
District Judge: Honorable Nitza I. Quiñones Alejandro

Submitted Pursuant to Third Circuit LAR 34.1(a)
February 1, 2024
Before: JORDAN, PHIPPS, and NYGAARD, Circuit Judges

(Opinion filed: February 7, 2024)

OPINION*

PER CURIAM

Palani Karupaiyan, by appeal and mandamus petition, challenges the dismissal of his amended complaint. We will affirm in his appeal and deny his mandamus petition.¹

I.

Karupaiyan was temporarily employed as a software engineer by International SOS through contractual arrangements with Access Staffing, LLC, and Kapital Data Corp. The civil action at issue here is his second against these companies and related defendants concerning their termination of his contract and decision not to rehire him, which he attributes to various forms of discrimination. In Karupaiyan's first action, the District Court dismissed his complaint with prejudice pursuant to Fed. R. Civ. P. 42(b)

* This disposition is not an opinion of the full Court and pursuant to I.O.P. 5.7 does not constitute binding precedent.

¹ Karupaiyan's mandamus petition challenges the same dismissal orders that he appeals. The proper way to challenge those orders is by appeal, not mandamus. See Gillette v. Prosper, 858 F.3d 833, 841 (3d Cir. 2017). Thus, our discussion focuses on the appeal. To the extent that Karupaiyan's mandamus petition can be construed to seek any other relief, he has not shown that it is warranted.

for, inter alia, his repeated failure to file a complaint that complied with Fed. R. Civ. P. 8(a). We affirmed. See Karupaiyan v. Int'l SOS, No. 21-1853, 2021 WL 6102077, at *2 (3d Cir. Dec. 22, 2021), cert. denied, 142 S. Ct. 2726 (2022).

Karupaiyan then filed the civil action at issue here, which is substantively identical.² The International SOS defendants and Access Staffing defendants³ filed motions to dismiss his amended complaint under Fed. R. Civ. P. 12(b)(6). They argued, inter alia, that this suit is barred by claim preclusion/res judicata. The District Court agreed and dismissed Karupaiyan's amended complaint with prejudice on that basis as to those defendants. That ruling left pending Karupaiyan's claims against Kapital Data, Kumar Mangala, and Karupaiyan Consulting. The District Court ultimately dismissed Karupaiyan's claims against those defendants for Karupaiyan's failure to serve them with process. Karupaiyan appeals, and we have jurisdiction under 28 U.S.C. § 1291.

II.

We will affirm. Karupaiyan raises two challenges on appeal. First, he challenges the dismissal of his claims against the International SOS and Access Staffing defendants

² Some cosmetic differences aside, it appears that the only difference in Karupaiyan's amended complaint in this case was that he added as defendants Arnaud Vaissie and Karupaiyan Consulting Inc. But Karupaiyan's only allegation regarding Vaissie was that he is the Chief Executive Officer of International SOS. Karupaiyan's allegations regarding Karupaiyan Consulting are addressed in note six, infra.

³ The "International SOS defendants" are International SOS, Arnaud Vaissie, Dessi Nikolova, and Gregory Harris. The "Access Staffing defendants" are Access Staffing and Mike Weinstein.

on claim preclusion grounds. His only argument on that point is that the dismissal of his prior suit was not “on the merits” for purposes of claim preclusion. See Hoffman v. Nordic Nats., Inc., 837 F.3d 272, 279 (3d Cir. 2016) (explaining that federal claim preclusion requires, inter alia, “a final judgment on the merits in a prior suit”) (quotation marks omitted). But the District Court expressly dismissed Karupaiyan’s prior suit with prejudice under Rule 42(b). That ruling operates as a judgment on the merits as to this suit. See Papera v. Pa. Quarried Bluestone Co., 948 F.3d 607, 610-11 (3d Cir. 2020). The other elements of claim preclusion also were satisfied as the District Court explained.

Second, Karupaiyan challenges the dismissal without prejudice against the remaining defendants (Kapital Data, Kumar Mangala, and Karupaiyan Consulting) for lack of service of process. He argues, inter alia, that the court was required to serve process itself because he was proceeding in forma pauperis. See 28 U.S.C. § 1915(d); Fed. R. Civ. P. 4(c)(3). But Karupaiyan’s arguments in this regard do not state any basis for relief on appeal because any error in dismissing his claims against these defendants for lack of service was harmless. See Gen. Motors Corp. v. New A.C. Chevrolet, Inc., 263 F.3d 296, 328-29 & n.18 (3d Cir. 2001) (discussing 28 U.S.C. § 2111 and Fed. R. Civ. P. 61); see also Stanciel v. Gramley, 267 F.3d 575, 579-80 (7th Cir. 2001) (deeming dismissal for lack of service harmless where claims failed for other reasons).

Karupaiyan named Kapital Data and Mangala as defendants in his previous action, and his claims against those defendant are barred by claim preclusion for the same reasons as his claims against the moving defendants. Cf. Couden v. Duffy, 446 F.3d 483,

500 (3d Cir. 2006) (affirming sua sponte entry of summary judgment for non-moving party on grounds that applied equally to a moving party); Stanciel, 267 F.3d at 580 (deeming dismissal for lack of service on some defendants harmless where claims at issue were the “same” or “virtually identical” to claims resolved in favor of other defendants). As for Karupaiyan Consulting, Karupaiyan’s amended complaint did not allege any actionable conduct by that defendant and did not suggest any way in which he could do so by amendment.⁴ Thus, any error in the dismissal of Karupaiyan’s claims against these defendants was harmless.

III.

For these reasons, we will affirm the judgment of the District Court and deny Karupaiyan’s mandamus petition.

⁴ Karupaiyan initially named Karupaiyan Consulting as a plaintiff in his prior action. It is not clear why he named it as a defendant in this one. Karupaiyan alleged that he was employed “through” Karupaiyan Consulting and that it went out of business because the other defendants failed to pay. Karupaiyan also provided an address for Karupaiyan Consulting that he himself has used during this litigation, and it appears that Karupaiyan Consulting is “directed by him and his sister.” Karupaiyan v. CVS Health Corp., No. 19 cv 8814, 2023 WL 5713714, at *24 (S.D.N.Y. Sept. 5, 2023). In any event, none of Karupaiyan’s filings suggests any basis for a claim against this entity relating to any of the matters alleged in the amended complaint.