NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted October 30, 2024*
Decided October 31, 2024

Before

ILANA DIAMOND ROVNER, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-1693

MICHAEL A. HAYS,
Plaintiff-Appellant,

v.

MARION COUNTY SHERIFF,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:22-cv-00813-JPH-CSW

James Patrick Hanlon,
Judge.

O R D E R

In *Driver v. Marion Cnty. Sheriff*, No. 1:14-cv-2076-RLY-MJD (S.D. Ind. Aug. 8, 2022), a federal judge approved the settlement of a class action against the Marion County Sheriff, whom the class members had accused of detaining them unconstitutionally. *Driver*'s judgment listed three people who opted out of the class.

---

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

Michael Hays argues that he fell within the class definition, but even though he is not listed in *Driver*'s judgment as an opt-out, he removed himself from the *Driver* class. In this separate case, he sued the Marion County Sheriff for relief. The district court granted the Sheriff's motion for summary judgment. It correctly reasoned that Hays did not opt out of the class and that claim preclusion bars his separate attempt at relief. Thus, we affirm.

We recite the facts in the light most favorable to Hays, the nonmoving party. *See Lalowski v. City of Des Plaines*, 789 F.3d 784, 787 (7th Cir. 2015). In *Driver*, class representatives sued the Sheriff for detaining them after authority for the detentions had ended. The judge certified a class of persons who, after June 6, 2014, were detained twelve hours or longer after the authority for detention had expired. Under the settlement agreement, the class representatives created a dataset of 15,083 jail detentions that met the class definition. Each class member in the dataset who filed a timely claim would receive $40 per hour of over-detention. The settlement agreement set up two ways to file a claim. Claimants could either "(i) mail a signed Claim Form to the Claims Administrator … postmarked no later than [120] days after the entry of the Preliminary Approval Order, or (ii) submit a claim through the website created by the Claims Administrator within [120] days after the entry of the Preliminary Approval Order."

Class members dissatisfied with the settlement agreement had two options. They could "opt out" of the settlement and pursue their own case if they "mail[ed] or electronically submit[ted] a written request to [opt out] … no later than [120] days after the entry of the Preliminary Approval Order." Alternatively, they could "object" to the fairness of the proposed settlement by "filing a written objection" and optionally appearing at the final hearing, during which the court would assess objections. If the court approved the settlement, then class members who did not "validly and timely" opt out of the proposed settlement would "release" the Sheriff from their claims.

Hays alleged that during the class period the Sheriff detained him twice, once in February 2015 for four days too long and again in May 2015, for five days too long. After learning of the proposed *Driver* settlement, he submitted a timely claim. The claims administrator denied Hays compensation, explaining that although "Hays' allegations in the claim forms satisfied the class definition," he "was not listed" on the dataset of persons who the class representatives' experts "determined to have been over-detained." Hays attended the final hearing and orally objected to the settlement. After hearing arguments, the court approved the settlement and entered judgment. The

judgment listed three members of the class who had opted out: "Dusten Murray, Summer M. Ullrich, and Lorenzo L. Canada, Jr." Hays was not listed.

Hays took no further action in *Driver*; instead, he filed a separate lawsuit, the subject of this appeal, alleging that he was over-detained in the Marion County Jail. The Sheriff moved for summary judgment and to stay discovery, arguing that claim preclusion barred Hays's separate lawsuit because it arose out of the same set of facts as *Driver*, and Hays was bound by the judgment in *Driver* because he did not opt out. Hays countered, first, that he needed discovery to respond to the motion and, second, that he could not be bound by *Driver* because he orally opted out of the class during the final hearing. The district court granted the Sheriff's motion for summary judgment, agreeing with the Sheriff about claim preclusion and rejecting Hays's argument that discovery could alter the result. It observed that Hays's name did not appear on the opt-out list in *Driver*'s judgment and, in any case, his assertion that he opted out orally at the final hearing was unavailing because an attempt to opt out then was untimely and not in writing.

On appeal, Hays argues that claim preclusion does not foreclose this suit, but we disagree. Claim preclusion bars relitigating claims already decided in federal court when three elements are met: "(1) an identity of the causes of action; (2) an identity of the parties or their privies; and (3) a final judgment on the merits." *Bell v. Taylor*, 827 F.3d 699, 706 (7th Cir. 2016) (citation omitted). Hays focuses on the second element, repeating that he was not a party to *Driver* because he opted out of the class that he acknowledges otherwise included him. But *Driver*'s judgment lists only three people who opted out, and the list does not include Hays. Because Hays was part of *Driver*'s class unless he opted out, he is bound by that class judgment. *See Matsushita Elec. Indus. Co., Ltd. v. Epstein*, 516 U.S. 367, 379 (1996).

If Hays believed that the judgment wrongly excluded his name from the opt-out list or unfairly authorized payouts only to class members in the dataset, he had options that he did not pursue. As a class member, he could have appealed the judgment and argued that the list of opt-outs was incorrect or its payment scheme, limited only to those in the dataset, was unfair. *See Devlin v. Scardelletti*, 536 U.S. 1, 8–10 (2002). If his class status was questioned, he could have moved to intervene for purposes of appealing. *See Marino v. Ortiz*, 484 U.S. 301, 304 (1988). And if the district court denied that motion, he could have appealed that denial as well. *Id.* But he did none of this. Because he had the opportunity to challenge the judgment directly, we may not now

collaterally review it in a new federal case and relitigate who validly opted out. *See Federated Dep't Stores, Inc. v. Moitie*, 452 U.S. 394, 398 (1981).

Hays replies unpersuasively that if the district court had allowed him to take discovery, he could have proved from the Sheriff's records that he timely opted out in writing. He relies on Rule 56(d) of the Federal Rules of Civil Procedure under which a court may give a non-movant an opportunity to take discovery to oppose a motion for summary judgment. We review Rule 56(d) rulings for abuse of discretion. *See Smith v. OSF HealthCare Sys.*, 933 F.3d 859, 865 (7th Cir. 2019). A request to extend discovery under Rule 56(d) must identify the information that discovery might uncover and how it is material. *See F.C. Bloxom Co. v. Tom Lange Co. Int'l, Inc.*, 109 F.4th 925, 936 (7th Cir. 2024). The discovery that Hays seeks (evidence of whether he followed *Driver*'s opt-out procedures) would bear only on a collateral challenge to *Driver*'s judgment that he did not opt out. But we have already explained that, because Hays did not pursue his available options to challenge that judgment directly, a collateral challenge is impermissible. Therefore, the district court reasonably denied the discovery.

AFFIRMED