

DEC 29 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CYRIL KOLOCOTRONIS,

Plaintiff - Appellant,

v.

BENEFIS HEALTHCARE; et al.,

Defendants - Appellees.

No. 07-35825

D.C. No. CV-07-00074-
DWM/JCL

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Donald W. Molloy, District Judge, Presiding

Submitted December 15, 2009**

Before: GOODWIN, WALLACE, and CLIFTON, Circuit Judges.

Cyril Kolocotronis appeals pro se from the district court's judgment dismissing his action pursuant to 28 U.S.C. § 1915(e) as barred by the doctrine of

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

res judicata.¹ We have jurisdiction under 28 U.S.C. § 1291. We review de novo, *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005), and we affirm.

The district court properly dismissed the action because Kolocotronis raised the same claims against defendants and their privies in a prior federal action that was dismissed as frivolous under section 1915. *See Denton v. Hernandez*, 504 U.S. 25, 34 (1992) (explaining that the dismissal of an in forma pauperis complaint as frivolous under section 1915 may have a res judicata effect on frivolousness determinations for future in forma pauperis proceedings); *see also Mpoyo*, 430 F.3d at 987 (listing elements of res judicata).

AFFIRMED.

¹ The district court certified that Kolocotronis's appeal was not taken in good faith, thus revoking Kolocotronis's in forma pauperis status. *See* 28 U.S.C. § 1915(a). We grant in forma pauperis status.