

May 21, 2008

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

Elisabeth A. Shumaker
Clerk of Court

XIANGYUAN SUE ZHU,

Plaintiff - Appellant,

v.

ST. FRANCIS HEALTH CENTER;
KEENEN THOMPSON, M.D.,

Defendants - Appellees.

No. 07-3254

(D. Kansas)

(D.C. No. 05-CV-2139-KHV)

ORDER AND JUDGMENT*

Before **MURPHY, HARTZ, and GORSUCH**, Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Xiangyuan Zhu appeals from an order of the district court denying her motion for recusal and imposing sanctions in the amount of \$281.30. Zhu also

*This order and judgment is not binding precedent except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

seeks to revisit an issue previously resolved by this court: whether the district court erred in dismissing, on the basis of res judicata, the claims set out in Zhu's federal-court complaint. *Zhu v. St. Francis Health Ctr.*, 215 F. App'x 717, 720 (10th Cir. 2007). Exercising jurisdiction pursuant to 28 U.S.C. § 1291, we **affirm**.

The procedural history of this case is set out in this court's prior opinion and need not be repeated here. *Zhu*, 215 F. App'x at 718. Suffice it to say that in Zhu's prior appeal, this court affirmed the dismissal of her federal-court complaint and remanded the matter to the district court for a final determination as to the amount of sanctions to be imposed upon Zhu. *Id.* at 720. On remand, Zhu moved to recuse the district court judge, Judge Vratil, and contested the imposition and amount of sanctions. The district court denied Zhu's motion to recuse, noting that neither her involvement as a presiding judge in previous litigation brought by Zhu, nor her adverse rulings against Zhu in this case, were grounds for recusal.

On appeal, Zhu attempts to relitigate the propriety of the district court's dismissal of the claims set out in her federal complaint. She also asserts the district court erred in refusing to recuse and in awarding sanctions against her. This court previously affirmed the district court's dismissal of Zhu's complaint. *Id.* That decision is the law of the case and binding on this court absent the existence of extraordinary circumstances. *McIlravy v. Kerr-McGee Coal Corp.*,

204 F.3d 1031, 1035 (10th Cir. 2000). Because Zhu has failed to demonstrate she fits within one of the three “exceptionally narrow” exceptions to the law-of-the-case doctrine, she cannot reargue in this appeal issues previously disposed of by this court in *Zhu*, 215 F. App’x at 720. *McIlravy*, 204 F.3d at 1035. Zhu’s contention Judge Vratil should have recused herself is frivolous. At heart, all of Zhu’s contentions of bias flow from previous rulings by Judge Vratil. It is absolutely clear, however, that adverse rulings by a district court judge are not sufficient grounds for recusal. *Green v. Branson*, 108 F.3d 1296, 1305 (10th Cir. 1997). Finally, as to the propriety of the imposition and amount of sanctions, we affirm for substantially those reasons set out in the magistrate judge’s report and recommendation dated June 18, 2007, and the district court’s memorandum and order dated July 19, 2007.

The district court is hereby **AFFIRMED**. Zhu’s motion for leave to file appendix and supplemental appendix is **GRANTED**. Her motion for a refund of filing fees is **DENIED**.

ENTERED FOR THE COURT

Michael R. Murphy
Circuit Judge