UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 22-1438

UNDER SEAL,

Plaintiff - Appellant,

v.

VIRGINIA BOARD OF MEDICINE,

Defendant - Appellee.

Appeal from the United States District Court for the Eastern District of Virginia, at Alexandria. Liam O'Grady, Senior District Judge. (1:20-cv-01406-LO-JFA)

Submitted: August 21, 2023 Decided: August 31, 2023

Before GREGORY and THACKER, Circuit Judges, and FLOYD, Senior Circuit Judge.

Vacated and remanded by unpublished per curiam.

Under Seal, Appellant Pro Se. James Edward Rutkowski, Assistant Attorney General, OFFICE OF THE ATTORNEY GENERAL OF VIRGINIA, Richmond, Virginia, for Appellee.

PER CURIAM:

Appellant Under Seal appeals the district court's orders dismissing this civil case as barred by res judicata and denying reconsideration. Under federal law, "res judicata applies when [there is]: '(1) a final judgment on the merits in a prior suit; (2) an identity of the cause of action in both the earlier and the later suit; and (3) an identity of the parties or their privies in the two suits.'" *T.H.E. Ins. Co. v. Davis*, 54 F.4th 805, 820 n.7 (4th Cir. 2022) (quoting *SAS Inst. Inc. v. World Programming Ltd.*, 874 F.3d 370, 378 (4th Cir. 2017)). Although res judicata is "an affirmative defense ordinarily lost if not timely raised," the Supreme Court has noted that it may be appropriate for the district court to raise the issue sua sponte when "'a court is on notice that it has previously decided the issue presented.'" *Arizona v. California*, 530 U.S. 392, 410-12 (2000).

The district court determined that its decision in Appellant's prior federal case was a final judgment on the merits for purposes of res judicata. But, in the prior case, the district court dismissed the action pursuant to *Younger v. Harris*, 401 U.S. 37 (1971); *Huffman v. Pursue, Ltd.*, 420 U.S. 592 (1975), and we affirmed that decision. *See Under Seal v. Va. Bd. of Med.*, 829 F. App'x 616 (4th Cir. 2020). As we have explained, "a *Younger* dismissal is plainly *not* a merits-based judgment." *Nivens v. Gilchrist*, 444 F.3d 237, 248 n.9 (4th Cir. 2006). We therefore conclude that the district court erred in ruling that Appellant's current civil action was barred by res judicata based on the prior federal civil case.[1]

[1] We express no view on the merits or viability of the current civil action, including whether Appellant's claims may be precluded by any rulings in the state proceedings.

Accordingly, we vacate the district court's orders and remand to the district court for further proceedings consistent with this opinion. We grant Appellant's pending motion to seal Appellant's unredacted filings on appeal.[2] We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

VACATED AND REMANDED

[2] To the extent that Appellant seeks to seal all or any part of the record in the district court, Appellant's motion should be filed in the district court. *See* 4th Cir. R. 25(c)(2).