United States Court of Appeals for the Fifth Circuit

No. 23-60232
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
January 5, 2024
Lyle W. Cayce
Clerk

HARI COHLY,

Plaintiff—Appellant,

versus

MISSISSIPPI INSTITUTIONS OF HIGHER LEARNING; JACKSON STATE UNIVERSITY; WILLIAM B. BYNUM, JR.; LYNDA BROWN-WRIGHT; WILBUR WALTERS, JR.; RAMZI M. KAFOURY; RICHARD A. ALO,

Defendants—Appellees.

Appeal from the United States District Court
for the Southern District of Mississippi
USDC No. 3:22-CV-332

Before JONES, SMITH, and DENNIS, *Circuit Judges*.

PER CURIAM:[*]

After Plaintiff-Appellant Dr. Hari Cohly was fired from his position as an associate professor from Jackson State University (JSU), he sued his employers, Defendant-Appellees JSU and the Mississippi Institutions of

[*] This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

Higher Learning (IHL), as well as several JSU administrators and faculty: Defendant-Appellees Dr. William B. Bynum, Jr., both in his individual capacity and his official capacity as president of JSU; Dr. Lynda Brown-Wright, in her official capacity as provost and vice president of academic affairs of JSU; Dr. Wilbur Walters, Jr., in his individual capacity; Dr. Ramzi M. Kafoury, in his individual capacity; and Dr. Richard A. Alo, in his individual capacity. The district court dismissed Dr. Cohly's complaint for failure to state a claim. We REVERSE in part, AFFIRM in part, and REMAND.

I.

In 2005, Dr. Cohly began employment as an associate professor in JSU's Department of Biology within the College of Science, Engineering, and Technology. He received tenure in 2011. In 2015, Dr. Kafoury, the interim chair of the Department of Biology, reported to Dr. Alo, the dean of the College of Science, Engineering, and Technology, that Dr. Cohly had violated protocols and procedures by conducting unapproved research and utilizing unauthorized student workers to assist that research. On January 16, 2015, Dr. Alo placed Dr. Cohly on administrative leave pending an investigation. On May 8, 2015, Dr. Kafoury informed Dr. Cohly that he would recommend termination of Dr. Cohly's employment, based on reports from an undergraduate student, who had assisted Dr. Cohly with his research, that Dr. Cohly had performed unapproved research involving human urine.

Dr. Cohly alleged that Dr. Kafoury lacked other substantive evidence that Dr. Cohly failed to obtain approval for his research, and that Dr. Kafoury's decision was based on personal animus against Dr. Cohly. This animus allegedly stemmed from Dr. Cohly's opposition to Dr. Kafoury's appointment as interim chair of the department, as well as Dr. Cohly's

greater success in obtaining grants, patents, and outside funding. Dr. Cohly alleged Dr. Kafoury previously illustrated this animus when he had provided Dr. Cohly substandard laboratory facilities, obstructed Dr. Cohly's request for leave to care for his ailing mother, and made demeaning comments about Dr. Cohly's national origin.

Dr. Cohly appealed Dr. Kafoury's recommendation to the University Faculty Personnel Committee, which held a hearing on April 19, 2018. On April 23, 2018, the Committee issued findings siding with Dr. Cohly and recommending he be reinstated. Both Dr. Kafoury's recommendation[1] and that of the Committee were forwarded to JSU president Dr. Bynum, who on August 2, 2018, informed Dr. Cohly that he rejected the Committee's recommendation and would request the IHL Board terminate Dr. Cohly's employment, until which time Dr. Cohly would remain an active employee. Dr. Cohly contested Dr. Bynum's recommendation in a letter to the IHL Board, but on March 29, 2019, the IHL Board informed Dr. Cohly it had rejected his request for review and approved his termination.

On March 28, 2022, Dr. Cohly filed suit against the Defendants in the Circuit Court of Hinds County, Mississippi. He alleged, in relevant part, that the Defendants denied him substantive due process rights under the Fourteenth Amendment, that JSU and IHL breached his contract, and that Dr. Kafoury committed the tort of intentional interference with a contract under Mississippi law.[2] He sought declaratory and injunctive relief against

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[1] Dr. Walters, the new interim dean of the College of Science, Engineering, and Technology, endorsed Dr. Kafoury's recommendation.

[2] Dr. Cohly also brought a claim for denial of procedural due process under the Fourteenth Amendment. Additionally, he brought intentional interference with contract claims against Dr. Bynum, Dr. Alo, and Dr. Walters. Although Dr. Cohly pursued these claims below, he does not do so on appeal, and these claims are therefore forfeited. *See Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021).

JSU and IHL and damages from all Defendants. On June 15, 2022, the Defendants removed this case to the U.S. District Court for the Southern District of Mississippi on the basis of federal question and supplemental jurisdiction. *See* 28 U.S.C. §§ 1331, 1367, 1441. The Defendants filed a motion to dismiss for failure to state a claim, which the district court granted, finding that all of Dr. Cohly's claims were time-barred or, alternatively, that the substantive due process and intentional interference with contract claims failed on their merits.[3] The district court also alternatively held that the individual Defendants were entitled to qualified immunity on Dr. Cohly's substantive due process claim. Dr. Cohly timely appealed.

II.

We review *de novo* a district court's ruling on a motion to dismiss for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Ferguson v. Bank of N.Y. Mellon Corp.*, 802 F.3d 777, 780 (5th Cir. 2015) (citing *Stokes v. Gann*, 498 F.3d 483, 484 (5th Cir. 2007)). We accept all well-pleaded facts as true, and viewing them in the light most favorable to the plaintiff, we must decide whether he pleaded sufficient facts to state a claim for relief that is plausible on its face. *Id.* (first citing *Stokes*, 498 F.3d at 484; and then citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, (2007)).

A.

The first issue is whether Dr. Cohly's claims are time-barred. "A statute of limitations may support dismissal under Rule 12(b)(6) where it is evident from the plaintiff's pleadings that the action is barred and the pleadings fail to raise some basis for tolling or the like." *Jones v. Alcoa, Inc.*, 339 F.3d 359, 366 (5th Cir. 2003) (citing *Taylor v. Books A Million*, 296 F.3d

[3] The district court did not address the merits of the breach of contract claim.

376, 378–79 (5th Cir. 2002)). As the party asserting an affirmative defense, the Defendants have the burden to show the claims are time-barred. *See United States v. Cent. Gulf Lines, Inc.*, 974 F.2d 621, 629–30 (5th Cir. 1992).

Although 42 U.S.C. § 1983 does not provide a limitations period, we borrow the forum state's general personal injury period, which in Mississippi is three years. *Cuvillier v. Taylor*, 503 F.3d 397, 401 (5th Cir. 2007) (citing MISS. CODE ANN. § 15-1-49). For § 1983, "the statute of limitations begins to run from the moment the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured." *Helton v. Clements*, 832 F.2d 332, 335 (5th Cir. 1987) (citing *Rubin v. O'Koren*, 621 F.2d 114, 116 (5th Cir. 1980)). "A plaintiff's awareness encompasses two elements: (1) The existence of the injury; and (2) causation, that is, the connection between the injury and the defendant's actions." *Piotrowski v. City of Hous.*, 51 F.3d 512, 516 (5th Cir. 1995) (citing *Stewart v. Par. of Jefferson*, 951 F.2d 681, 684 (5th Cir. 1992)). Breach of contract under Mississippi law is also subject to a three-year limitations period, which begins to accrue "at the time of the breach, regardless of the time when the damages from the breach occurred." *Wallace v. Greenville Pub. Sch. Dist.*, 142 So. 3d 1004, 1106–07 (Miss. Ct. App. 2014) (quoting *Johnson v. Crisler*, 125 So. 724, 724–25 (1930)). Finally, an action for intentional interference with a contract is also subject to a three-year limitations period, *Wertz v. Ingalls Shipbuilding Co.*, 790 So. 2d 841, 845 (Miss. Ct. App. 2000), which "begins to run when all the elements of [the] tort, or cause of action, are present," *see Cooley v. Pine Belt Oil Co.*, 334 So. 3d 118, 126 (Miss. 2022) (quoting *Weathers v. Met. Life Ins. Co.*, 14 So. 3d 688, 692 (Miss. 2009)).

Below, the parties proposed two different dates on which the limitation periods for all claims began to accrue. The Defendants argued—and the district court agreed—that the statutes of limitations began to accrue on August 2, 2018, when Dr. Bynum informed Dr. Cohly he would request

the IHL Board approve his termination. Dr. Cohly, on the other hand, argued the statutes of limitations did not begin to accrue until the IHL Board finally approved his termination on March 29, 2019.

We agree with Dr. Cohly that the statutes of limitations began to accrue on March 29, 2019, and his claims are therefore timely. Dr. Bynum's letter stated that he was only requesting the IHL Board terminate Dr. Cohly's employment; the IHL Board still had to review the request and make the final decision to approve it. *See* MISS. CODE ANN. § 37-101-15(f) (giving IHL the power to terminate a professor's contract). Dr. Cohly followed the procedures to seek review from the IHL Board, and he was employed by JSU until the IHL Board made its final decision to terminate him. Up until that final decision, Dr. Cohly could not be sure he would be terminated. *See Hitt v. Connell*, 301 F.3d 240, 246 (5th Cir. 2002) (holding the limitations period ran from the date of termination, rather than an earlier "proposed notice of termination"); *Helton*, 832 F.2d at 335 (holding the limitations period ran from "the day he was terminated"); *cf. Rubin*, 621 F.2d at 116 (holding the limitations period ran from the employee's "last day of employment" because until then she "could not be certain that she would suffer any recompensable injury"). Similarly, as to Dr. Cohly's claim that his firing breached his contract, until the IHL Board made its final decision, there was no alleged breach. The same is true for his claim of intentional interference with a contract, the last element of which is an "actual loss." *Wertz*, 790 So. 2d at 846 (citing *Collins v. Collins*, 625 So. 2d 786, 790 (Miss. 1993)).[4]

[4] The cases cited by the Defendants are not to the contrary. *Cf. Wallace*, 142 So. 3d at 1107 (holding a breach of contract claim began to accrue when an employee was informed of the final decision not to renew her contract, not when her present contract eventually ended); *Del. State Coll. v. Ricks*, 449 U.S. 250, 261 (1980) (holding a claim began to accrue when a board made the final decision to deny tenure, not after the subsequent grievance procedure to the same board). These cases stand for the proposition that a claim accrues

Although the district court incorrectly held Dr. Cohly's claims were time-barred, it held in the alternative that his substantive due process and intentional inference with contract claims failed on their merits. We will therefore review those holdings as well. However, because the district court did not address the merits of Dr. Cohly's breach of contract claim, we will remand for further proceedings on that claim. *See PHH Mort. Corp. v. Old Rep. Nat'l Title Ins. Co.*, 80 F.4th 555, 563–64 (5th Cir. 2023).

B.

The next issue is whether Dr. Cohly stated a claim for denial of substantive due process. "Substantive due process 'bars certain arbitrary, wrongful government actions regardless of the fairness of the procedures used to implement them.'" *Lewis v. Univ. of Tex. Med. Branch at Galveston*, 665 F.3d 625, 630 (5th Cir. 2011) (quoting *Marco Outdoor Advert., Inc. v. Reg'l Transit Auth.*, 489 F.3d 669, 673 n.3 (5th Cir. 2007)). "To succeed with a claim based on substantive due process in the public employment context, the plaintiff must show two things: (1) that he had a property interest/right in his employment, and (2) that the public employer's termination of that interest was arbitrary or capricious." *Moulton v. City of Beaumont*, 991 F.2d 227, 230 (5th Cir. 1993) (citing *Honore v. Douglas*, 833 F.2d 565, 568 (5th Cir. 1987)). The parties agree that Dr. Cohly had a property interest in his employment as a tenured professor. *See Whiting v. Univ. of S. Miss.*, 62 So. 3d 907, 917 (Miss. 2011), *overruled on other grounds by Springer v. Ausbern Const. Co.*, 231 So. 3d 980 (Miss. 2017); *cf. Whiting v. Univ. of S. Miss.*, 451

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when a final decision is made, not when subsequent events happen that do not affect that decision. *See Hitt*, 301 F.3d at 246 n.2 (discussing *Ricks*). Here, the IHL Board's decision was the relevant final decision.

F.3d 339, 344 (5th Cir. 2006), *abrogated on other grounds by Sims v. City of Madisonville*, 894 F.3d 632 (5th Cir. 2018).

In order to show his termination was arbitrary or capricious, Dr. Cohly must "demonstrate that the abuse of power by the state official shocks the conscience." *Lewis*, 665 F.3d at 631 (5th Cir. 2011) (quoting *Marco Outdoor Advert.*, 489 F.3d at 673 n. 3). "[A]n employee must show that a public employer's decision 'so lacked a basis in fact' that it could be said to have been made 'without professional judgment.'" *Jones v. La. Bd. of Supervisors of Univ. of La. Sys.*, 809 F.3d 231, 240 (5th Cir. 2015) (quoting *Texas v. Walker*, 142 F.3d 813, 819 (5th Cir. 1998)). "The bar is high because 'a federal court is generally not the appropriate forum in which to review the multitude of personnel decisions that are made daily by public agencies.'" *Id.* (quoting *Honore v. Douglas*, 833 F.2d 565, 569 (5th Cir. 1987)).

Dr. Cohly argues that his termination was arbitrary and capricious because 1) Dr. Kafoury's investigation, which formed the basis for his termination, considered only information from an undergraduate who assisted Dr. Cohly with his research, and 2) the University Faculty Personnel Committee had sided with Dr. Cohly. However, these allegations fall short of shocking the conscience. Dr. Cohly's side of the story was heard by the Committee, Dr. Bynum, and the IHL Board and rejected in favor of a student's account. Dr. Cohly's conclusory allegations do not plausibly show this finding so lacks a basis in fact as to have been made without professional judgment. *See Walker*, 142 F.2d at 819.[5] The district court correctly dismissed Dr. Cohly's substantive due process claim.

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[5] For these reasons, the district court also correctly held that the individual Defendants were entitled to qualified immunity. In order to rebut a claim of qualified immunity, a plaintiff must show 1) a violation of a constitutional right, and 2) that the right was clearly established at the time of the conduct. *Lytle v. Bexar Cnty.*, 560 F.3d 404, 410

C.

The final issue is whether Dr. Cohly plausibly alleged that Dr. Kafoury intentionally interfered with his contract. The tort of intentional interference with a contract has four elements: "1) intentional and willful acts; 2) done to cause damages to the plaintiffs in their lawful business; 3) done with the purpose of causing damage and loss, without right or justifiable cause on the part of the defendant; and 4) actual loss occurs." *Wertz*, 790 So. 2d at 846 (citing *Collins*, 625 So. 2d at 790).

At issue here is the third element, which the district court found lacking. "[O]ne occupying a position of responsibility on behalf of another is privileged, within the scope of that responsibility and absent bad faith, to interfere with his principal's contractual relationship with a third person." *Morrison v. Miss. Enter. for Tech., Inc.*, 798 So. 2d 567, 574 (Miss. Ct. App. 2001) (quoting *Shaw v. Burchfield*, 481 So. 2d 247, 255 (Miss. 1985)). Bad faith may "arise[] as an inference from other evidence," but the conclusion "must be that the actor was malicious or recklessly disregarding the rights of the person injured." *Id.* at 575. On the other hand, "conduct related to a legitimate, employment-related objective constitutes justifiable acts." *Prog. Cas. Ins. Co. v. All Care, Inc.*, 914 So. 2d 214, 219 (Miss. Ct. App. 2005) (quoting *Hopewell Enters., Inc. v. Trustmark*, 680 So. 2d 812, 818–19 (Miss. 1996)). "Accordingly, tortious interference requires 'intermeddling . . .

(5th Cir. 2009) (citing *Saucier v. Katz*, 533 U.S. 194, 201 (2001)). At the motion to dismiss stage, a plaintiff "must plead specific facts that both allow the court to draw the reasonable inference that the defendant is liable for the harm he has alleged and that defeat a qualified immunity defense with equal specificity." *Arnold v. Williams*, 979 F.3d 262, 267 (5th Cir. 2020) (quoting *Backe v. LeBlanc*, 691 F.3d 645, 648 (5th Cir. 2012)). If there is no constitutional violation, as is the case here, we may end our inquiry. *See Lytle*, 560 F.3d at 410 (citing *Saucier*, 533 U.S. at 201).

without sufficient reason.'" *Id.* (alteration in original) (quoting *Morrison v*, 798 So. 2d at 575).

Dr. Cohly argues Dr. Kafoury procured his termination solely because of personal animus. However, the allegations show that Dr. Kafoury, as interim chair of the Department of Biology, recommended Dr. Cohly's termination based on reports from an undergraduate who worked with Dr. Cohly that he was performing unapproved research. Dr. Kafoury had a legitimate employment-related reason for his conduct, and Dr. Cohly has not alleged sufficient facts to plausibly show this reason was false or that Dr. Kafoury otherwise acted in bad faith. *Cf. Prog. Cas. Ins.*, 914 So. 2d at 220 (finding intentional interference with a contract when a person made allegations about another "that did not serve any purpose connected to his role as an insurance adjuster"). The district court correctly dismissed Dr. Cohly's claim for intentional interference with his contract.

III.

We REVERSE the district court's judgment as to Dr. Cohly's breach of contract claim, AFFIRM the remainder of the district court's judgment, and REMAND for further proceedings consistent with this opinion.