IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-1901
Conference Calendar

RODNEY L. TURNER,

Plaintiff-Appellant,

versus

ROBERT E. ROMMEL and
STEPHEN K. HATCHEL,

Defendants-Appellees.

- - - - - - - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. CA3-91-1634-G
- - - - - - - - - - -
October 27, 1993

Before POLITZ, Chief Judge, and SMITH and WIENER, Circuit Judges.

PER CURIAM:*

Rodney L. Turner, proceeding pro se and in forma pauperis in the instant civil rights action, appeals from the district court's grant of the defendants' motion for summary judgment. The district court's judgment is AFFIRMED.

Turner contends that the district court improperly concluded that he had not filed the action within the applicable two-year limitations period as established by Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (West 1986). See also Burrell v. Newsome, 883

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* Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

F.2d 416, 418 (5th Cir. 1989). Although Turner's suit was based on events which allegedly occurred in July of 1986, he did not file his lawsuit until June, 1991. He argues on appeal that the district court erred by not tolling the statute of limitations under Texas's "discovery rule" doctrine.

A federal court applying a state statute of limitations should give effect to that state's tolling provisions as well. Burrell, 883 F.2d at 418. The discovery rule states that the statute of limitations runs from the date the injury was or should have been discovered -- not from the date of the defendants' wrongful act or omission -- and may apply to actions based upon tort or fraud. Johnson v. Abbey, 737 S.W.2d 68, 69 (Tex. Ct. App. 1987). Texas courts have limited the doctrine to "matters properly characterized as inherently undiscoverable." Id.

The injury in the instant case was not inherently undiscoverable. Turner was arrested and the ring confiscated on July 7, 1986. The charges against him were dropped and he was released seven months later, but the ring was not returned to him upon his release. Turner's own admission that he wrote the Dallas Police Department shortly after his release requesting that the ring be returned to him evidences his awareness of the injury at that time. Turner's contention that the injury was made undiscoverable by the fraudulent actions of defendant Rommel is likewise without merit and is refuted by the evidence in the record.

Moreover, regardless of the truth of Turner's assertions regarding Rommel's fraudulent concealment of the ring's whereabouts, Turner was aware, at the time he was released from prison and the charges against him were dropped, that the ring was not in his possession. He did not need to wait nearly four years in order to discover that he no longer had possession of the ring, and that his lack of possession was a result of the defendants' actions.

In his brief on appeal Turner also alleges a separate action of fraud, but as his complaint contains no such theory of recovery, he has not satisfied the dictates of Fed. R. Civ. P. 9(b), which mandates that claims of fraud must be pleaded with particularity. Arguments presented solely in the brief are insufficient. See In Re Moody, 849 F.2d 902, 906 (5th Cir.), cert. denied, 488 U.S. 967 (1988).

The judgment is AFFIRMED.