IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-3026
(Summary Calendar)

GLENN LUCAS and EVA L. LUCAS,
ET AL.,

Plaintiffs-Appellants,

versus

CHRISTOPHER KELLY LIGHTFOOT,
ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
For the Eastern District of Louisiana

(91-CV-2243 M)

(February 25, 1993)

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:[*]

This appeal is the latest chaptersQand, we insist, the last onesQin litigation fomented by Glenn and Eva Lucas following a March 1, 1986, motor vehicle allision with an apartment building.

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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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

The case has been up and down the state court system in Louisiana as well as the federal district and appeals courts, off and on ever since. Although the litigation may have commenced properly enough, it has long since degenerated into harassment, vindictiveness and pettifoggery by the Lucases, proceeding pro se. In one last demonstration of patience, we objectively address in this opinion the remaining arguments and claims proffered by the Lucases, cautioning them, however, that our tolerance for their dogged perseverance in presenting their now-baseless claims is at an end. Should they not heed this caution but instead make any further efforts whatsoever to prolong what has become totally unmeritorious and frivolous litigation, they shall do so at the risk of exposure to the full panoply of sanctions at our disposal.

I

FACTS AND PROCEEDINGS

After a vehicle struck and damaged an apartment rented by Glenn and Eva Lucas they filed a lawsuit in a Louisiana state court, individually and on behalf of their minor children, alleging that the accident had caused them personal and mental suffering. Named as defendants in the suit were the driver of the vehicle, Vincentine Acker, Acker's insurance carrier, and the owner of the apartment, David Kraus. The Lucases alleged that Kraus failed to take proper steps to make the damaged premises safe, and that he failed to assist them in finding alternate housing while their rental apartment was being repaired.

Kraus filed a motion for summary judgment, arguing that the

action against him should be dismissed for failure to establish an actionable claim. After hearing oral argument on the motion, the state trial judge rendered summary judgment in favor of Kraus. The judgment was affirmed by the state court of appeal and certiorari was denied by the Louisiana Supreme Court.

The Lucases filed the instant § 1983 action naming as defendants Steven Koehler, the attorney who represented Vincentine Acker; Christopher Kelly Lightfoot, the attorney who represented David Kraus; Lightfoot's law firm, Hailey, McNamara, Hall, Larmann & Papale; John H. Brooks, who briefly represented the Lucases; Joseph Clark, who subsequently represented the Lucases; and Clark's law firm, Lewis & Caplan. Also named as defendants were the trial judge, the state court of appeal, the state supreme court, and the State of Louisiana.[1]

Attorney Koehler filed a motion to dismiss the § 1983 action, arguing that the Lucases' claims were barred by prescription. The remaining attorneys filed motions for summary judgment grounded in prescription, and the State of Louisiana filed a Rule 12(b) motion, claiming that the suit against it and its courts was barred by the Eleventh Amendment. The district court granted the motions, and the Lucases appealed. We dismissed the appeal because the claims

[1] The Lucases previously filed a tort action in federal district court which was dismissed as frivolous and for lack of subject matter jurisdiction. After the dismissal, the Lucases amended their complaint in order to state violations of their civil rights. We affirmed the dismissal, concluding that "[f]ederal jurisdiction cannot be invoked to review state-court judgments by simply recasting the action in the form of a civil-rights complaint, which is precisely what Lucas is doing here."

against the state trial judge remained to be adjudicated. He subsequently filed a motion to dismiss, arguing absolute judicial immunity. The district court granted the motion, and this appeal followed.

II

ANALYSIS

A. Prescription

The Lucases argue that the district court erred in determining that their claims were barred by prescription. They urge that their claim is essentially for discrimination and under Louisiana law, the prescriptive period of ten years applies. We review de novo a district court's determination that a claim is time-barred. Hickey v. Irving Independent School Dist., 976 F.2d 980, 982 (5th Cir. 1992).

Although the Civil Rights Act provides a remedy for discrimination, the essence of a civil rights suit is personal injury, or tort. See Wilson v. Garcia, 471 U.S. 261, 280, 105 S.Ct. 1938, 85 L.Ed.2d 254 (1985). Each of the Lucases' claims is governed by Louisiana's one-year prescriptive period for tort. See Wilson, 471 U.S. at 280 (the forum state's general personal injury limitation applies to § 1983 suits); Goodman v. Lukens Steel Co., 482 U.S. 656, 661, 107 S.Ct. 2617, 96 L.Ed.2d 572 (1987) (claims under § 1981 are also properly characterized as claims for personal injury); Jones v. Orleans Parish School Bd., 679 F.2d 32, 35 n.4 (5th Cir.), opinion withdrawn in part, 688 F.2d 342 (5th Cir. 1982), cert. denied, 461 U.S. 951 (1983) (a claim under

§ 1985 is subject to Louisiana's one-year statute of limitations.); 42 U.S.C. § 1986; La. Civ. Code art. 3492.

A cause of action under § 1983 accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action. The statute of limitations therefore begins to run when the plaintiff is in possession of the critical facts that he has been damaged and who has inflicted the injury. Gartrell v. Gaylor, _____ F.2d _____ (5th Cir. Jan. 21, 1993, No. 92-2619), slip op. at 1947. The actionable injury in a civil conspiracy flows from the overt acts of the defendants, not from the mere continuation of the conspiracy. Turner v. Upton County, Tex., 967 F.2d 181, 185 (5th Cir. 1992) (citing Kadar Corp. v. Milbury, 549 F.2d 230, 234-35 (1st Cir. 1977)). Characterizing the defendants' separate wrongful acts as having been committed in furtherance of a conspiracy does not interrupt, suspend or otherwise postpone the accrual of claims based on individual wrongful acts. Helton v. Clements, 832 F.2d 332, 335 (5th Cir. 1987) (citations omitted). Thus, a cause of action may accrue before the final overt act in furtherance of a conspiracy has been committed. Kadar, 549 F.2d at 234-35.

The Lucases advance the conclusionary allegations that as a matter of racial discrimination the attorney-defendants conspired to cause the dismissal of their state court lawsuit. They similarly allege that the trial judge facilitated the conspiracy by granting the defendants' motions for summary judgment; that the state court of appeal ruled improperly by affirming the district

court's actions; that the state supreme court tacitly approved of the district court's actions by denying certiorari; and that the State of Louisiana is responsible for the conduct of the state courts. The Lucases continue to insist that they are entitled to relief under 42 U.S.C. §§ 1981, 1983, 1985(2)(3), 1986, and 1988.

Final judgment in the state litigation, which dismissed the Lucases' lawsuit, was rendered on September 15, 1989. The Lucases filed the present § 1983 suit on June 19, 1991.[2] Thus, the district court correctly determined that their claims based on the dismissal of the suit had prescribed. The state court of appeal affirmed the district court's decision on April 11, 1990. Consequently, the Lucases' claim against that court also prescribed.

The Louisiana Supreme Court denied the writ of certiorari on June 22, 1990. Even if we assume that the Lucases' claims against the Louisiana Supreme Court and the State of Louisiana are not barred by prescription,[3] we may uphold the district court's decision if there is some basis in the record supporting it. See Knotts v. United States, 893 F.2d 758, 761 (5th Cir. 1990). Again, the state argued that the suit should be dismissed on the basis of

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[2] The Lucases correctly assert that the district court erroneously stated that their claim was filed on July 22, 1991; however, the district court's error does not affect a determination that the claim was time-barred, except as to the Louisiana Supreme Court.

[3] The amended complaint naming the State as a defendant was not filed until July 21, 1991. It is questionable whether the amended pleading would "relate back" to the date of the original pleading. See Fed. R. Civ. P. 15(c)(3).

Eleventh Amendment immunity. The Louisiana Supreme Court is a creature of the Louisiana Constitution and is thus an arm of the state. See La. Const. Art. 5 § 3 (West 1992); Voisin's Oyster House, Inc. v. Guidry, 799 F.2d 183, 186 (5th Cir. 1986). The district court could have properly granted the motion on the basis of Eleventh Amendment immunity. See Garias v. Bexar Cty. Bd. of Tr., 925 F.2d 866, 875 n.9 (5th Cir.), cert. denied, 112 S.Ct. 193 (1991). Accordingly, the district court's dismissal of the Lucases' claims against the Louisiana Supreme Court and the State of Louisiana was proper and is affirmed.

The Lucases also posit that it was impossible for them to determine that their civil rights had been violated because they are not trained in the law. This assertion is disingenuous. After their first federal complaint was dismissed for lack of subject matter jurisdiction and as frivolous, the Lucases amended their complaint on September 14, 1990, for the purpose of stating violations of their civil rights. This demonstrates beyond serious question that the Lucases knew of the alleged violations of their civil rights before the one year prescriptive period had run.

The Lucases next contend that, even assuming that the prescriptive period of one year applies, their claim was nonetheless timely filed, given that they had to exhaust state court remedies. They argue that their motion to join the trial judge and the State of Louisiana interrupted the applicable prescriptive period.

Although Congress has carved out specific, limited exhaustion

requirements for adult prisoners, exhaustion of state administrative remedies is generally not a prerequisite to the bringing of an action pursuant to § 1983 by others not so situated. Gartrell, slip op. at 1948 (citations omitted). Further, there is no tolling provision applicable to the Lucases' case. See Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992) (when applying the forum state's statute of limitations, the federal court should also give effect to any applicable tolling provisions). This argument is without merit.

B. Inappropriate or Premature Motions for Summary Judgment?

The Lucases next insist that the district court should not have granted the attorney-defendants' motions for summary judgment because those motions were inappropriate and premature. They urge that the motions were inappropriate because the defendants filed earlier motions attacking the claim as res judicata under Fed.R.Civ.P. 12, which motions were denied. Thus, they allege, the defendants are now precluded from raising the defense of prescription because they should have raised the defense in the earlier Rule 12 motion.

The filing of a Rule 12 motion does not preclude a defendant from asserting a separate defense in his answer. See Fed.R.Civ.P. 12(b). Each of the attorney-defendants asserted the defense of prescription in a timely manner. Defendants Lightfoot, Hailey and McNamara asserted the defense in their answer, as did defendants Clark, Brooks, and Lewis & Caplan. Defendant Koehler asserted the defense in a Rule 12 motion. The motions were not inappropriate.

The Lucases also argue that the motions are premature because a minimum of 30 days must elapse following the commencement of an action before a motion for summary judgment can be filed. This argument is specious. The rule to which the Lucases cite applies to the claimant in an action, not the defendant. See Fed.R.Civ.P. 56(a). A defending party may move for summary judgment at any time after a complaint is filed. See Fed.R.Civ.P. 56(b).

C. Loss of Judicial Immunity?

The Lucases also argue that the trial judge "lost" his judicial immunity because he had no jurisdiction over the subject matter. Even assuming that the judge could not assert the judicial immunity defense, the action against him is time-barred as previously discussed. Thus, this issue is moot.

D. Prejudice

Finally, the Lucases argue that our conduct and that of the federal district court was prejudicial toward them. In its opinion denying the defendants' motion for dismissal based on res judicata, the district court stated that the Lucases' claims may be non-meritorious. The Lucases argue that the district court's statement encouraged the defendants to file their motions for summary judgment. They also argue that the district court should not have consolidated the hearing on the state's motion for dismissal with the attorney-defendants' motions for summary judgment. They state that doing so amounted to "judicial sabotage" rather than judicial economy. They also claim that we erred in dismissing their

previous appeal without addressing its merits.

These arguments are facially frivolous. A district court has broad discretion in controlling its own docket. Edwards v. Cass County, Tex, 919 F.2d 273, 275 (5th Cir. 1990). The Lucases have not established, nor does the record show, that the district court abused its discretion by consolidating the defendants' motions.

We dismissed the Lucases' previous appeal for lack of jurisdiction because the claims against the state trial judge remained to be adjudicated; therefore, we need not have addressed the merits of the appeal. Our action in so doing was not "prejudicial" to the Lucases' case.

The Lucases also list as issues, but do not argue, that Koehler and the trial judge failed to file answers to their complaint and that the case should be remanded back to district court. Only issues that are briefed are properly before this court. Price v. Digtal Equip. Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). As these issues are not properly before us, we need not and therefore do not address them.

III

CONCLUSION

For the foregoing reasons, the rulings of the district court here under review are affirmed. We end this opinion as we began it, cautioning the Lucases to accept the fact that the litigation which dates to the accident of March 1, 1986, is dead. They must take no further steps to resurrect it. In this regard, no further filings by the Lucases, even petitions for panel rehearing or

suggestions for rehearing en banc, shall be accepted by the clerk of this court without the express written consent of a judge of this court.

SO ORDERED.