IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 92-5243
Summary Calendar

PRINCE BROWN, JR.,

Plaintiff-Appellant,

VERSUS

JERRY WALRAVEN, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Eastern District of Texas
(92-CV-121)

(November 17, 1993)

Before GARWOOD, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:[*]

Prince Brown appeals the dismissal of his state prisoner's civil rights suit brought pursuant to 42 U.S.C. § 1983. Finding no error, we affirm.

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[*] Local Rule 47.5.1 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 Pursuant to that rule, the court has determined that this opinion should not be published.

I.

Brown filed an action in Texas state court against various defendants, alleging that they violated his constitutional rights by illegally arresting him, trying him, convicting him, and sentencing him to a life sentence. Because it appeared that Brown was attempting to state a claim under § 1983, the defendants removed the action to federal court.

Several of the defendants filed a motion for judgment on the pleadings pursuant to FED. R. CIV. P. 12(c), in part on the basis that Brown's action was barred by limitations. Defendant Judge Bonnie Leggat, who was District Attorney of Harrison County during the period of Brown's allegations, filed a motion to dismiss pursuant to FED. R. CIV. P. 12(b)(6) based upon limitations and prosecutorial immunity.

The district court granted the motion, holding that she had absolute prosecutorial immunity. The court also granted the other defendants' motion for judgment on the pleadings, holding that Brown's action was barred by the two-year Texas statute of limitations.

II.

A.

The district court entered an order dismissing Leggat on November 17, 1992. The court's order granting the motion for judgment on the pleadings was entered on November 24, 1992. The district court did not enter a separate judgment pursuant to FED.

R. CIV. P. 58. Brown filed a motion to alter or amend the judgment on December 3, 1992. He filed two notices of appeal, one on December 4 mentioning the November 17 order, and a second on December 14 mentioning the November 24 order.

The district court entered an order denying Brown's motion to alter or amend the judgment on December 28, 1992. In a letter dated April 2, 1993, the Texas Attorney General's Office notified this court that it would not be filing a brief on behalf of Leggat because the order dismissing her was not mentioned in Brown's notice of appeal or brief and because Brown's time for appealing that order had expired.

Although there was no separate judgment under rule 58, neither party has complained, and so that does not present a jurisdictional problem. See Seiscom Delta, Inc. v. Two Westlake Park (In re Seiscom Delta, Inc.), 857 F.2d 279, 286 (5th Cir. 1988). Brown's motion to alter or amend the judgment was not effective as a motion under FED. R. CIV. P. 59(e) because there is no indication that it was ever served. See Harcon Barge Co. v. D & G Boat Rentals, 784 F.2d 665, 668 (5th Cir.) (en banc), cert. denied, 479 U.S. 930 (1986) (rule 59(e) motion must be served within ten days). Therefore, Brown's notices of appeal filed on December 4 and 14 were not nullified by the post-trial motion. The notices of appeal were filed within thirty days of the orders of dismissal, so this court has jurisdiction.

Leggat is correct, however, that Brown's appellate brief does not mention the order dismissing her based upon absolute immunity.

Brown's brief challenges only the district court's ruling on limitations. Although we liberally construe the briefs of pro se litigants, we do require that arguments must be briefed to be preserved. Price v. Digital Equipment Corp., 846 F.2d 1026, 1028 (5th Cir. 1988). Because Brown does not challenge the order dismissing Leggat, this issue is considered abandoned.

B.

Brown argues that his cause of action is not barred by limitations because limitations were tolled because of fraudulent concealment by the defendants, which has the effect of waiving the limitations defense. He alleges that the defendants refused to provide him with pertinent information and documents concerning the facts in dispute, and he asserts that they presented false facts and fraudulent dates and sought to obstruct his means of acquiring information needed for meaningful prosecution and presentation of his case. He argues that the district court did not give him adequate time to respond to the defendants' motion for judgment on the pleadings and to submit evidence of their fraud and deceit.

Brown alleged in his pleadings in state court that he was arrested on December 9, 1988, for selling drugs in October 1988. The crux of his allegations of constitutional violations surrounding his arrest and prosecution is that the defendants did not have authority or jurisdiction to arrest him in 1988 because the Ark-La-Tex narcotics task force did not have authority to operate in Harrison County, Texas, in 1988. All of the allegations in his

pleadings refer to 1988.

Brown filed suit in state court on February 10, 1992. The defendants filed a motion for judgment on the pleadings based upon the Texas two-year statute of limitations.

"A motion brought pursuant to FED. R. CIV. P. 12(c) is designed to dispose of cases where the material facts are not in dispute and a judgment on the merits can be rendered by looking to the substance of the pleadings and any judicially noticed facts." Hebert Abstract Co. v. Touchstone Properties, 914 F.2d 74, 76 (5th Cir. 1990) (per curiam) (citation omitted). Such a motion is useful when all material allegations of facts are admitted in the pleadings and only questions of law remain. Id.

Because no federal statute of limitations exists for § 1983 suits, federal courts apply the forum state's general or residual personal injury limitations period. Rodriguez v. Holmes, 963 F.2d 799, 803 (5th Cir. 1992). In Texas, the applicable period is two years. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a) (Vernon 1986).

Although state law controls the limitations period for § 1983 claims, federal law determines when a cause of action accrues. Brummett v. Camble, 946 F.2d 1178, 1184 (5th Cir. 1991), cert. denied, 112 S. Ct. 2323 (1992). 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. Rodriguez, 963 F.2d at 803 (quotations and citation omitted).

On the face of the pleadings, the district court's holding

that Brown's cause of action was time-barred is correct. Brown alleged an injury in 1988 and did not file suit until 1992. Brown argues on appeal, though, that he was not aware of his cause of action at the time of his arrest because he did not know at that time that the defendants were acting without jurisdiction or authorization. He contends that he did not have knowledge of any wrongful acts by the defendants until the date of his criminal trial, when testimony revealed their tainted authorization.

This argument fails. We previously have rejected an argument that the statute of limitations does not begin to run until the plaintiff learns that the defendant's conduct was wrongful. Longoria v. City of Bay City, Tex., 779 F.2d 1136, 1139 (5th Cir. 1986). Brown knew that he was injured when he was arrested and prosecuted, and the statute of limitations began to run in 1988.

In response to the defendants' motion for judgment on the pleadings, Brown argued that the statute of limitations was tolled by the defendants' fraud and deception. He alleged that the defendants had refused to provide information and documents and sought to obstruct his means of acquiring information. The district court's order granting the defendants' motion did not address Brown's argument that the statute of limitations was tolled.

Federal courts considering the timeliness of prisoners' § 1983 actions apply the states' tolling provisions to statutory limitations periods. Rodriguez, 963 F.2d at 803. Texas law provides that in the proper case,

> invocation of fraudulent concealment estops a defendant from relying on the statute of limitations as an affirmative defense to plaintiff's claim. Where a defendant is under a duty to make disclosure but fraudulently conceals the existence of a cause of action from the party to whom it belongs, the defendant is estopped from relying on the defense of limitations until the party learns of the right of action or should have learned thereof through the exercise of reasonable diligence.

Bordelon v. Peck, 661 S.W.2d 907, 908 (Tex. 1983).

Brown's allegations are an attempt to invoke the doctrine of fraudulent concealment. Texas' fraudulent concealment doctrine applies, however, only if there is a relationship of trust and confidence giving rise to a duty to disclose. Tennimon v. Bell Helicopter Textron, Inc., 823 F.2d 68, 73 n.5 (5th Cir. 1987). Because Brown has not alleged such a duty on the part of the defendants, judgment on the pleadings was proper.

C.

Regarding Brown's claim that the district court did not give him adequate time to respond to the defendants' motion, the defendants filed their motion on October 29, and Brown responded on November 18. Brown does not state why this was insufficient time or why he was unable to submit evidence of the defendants' fraud and deceit in his November 18 response.

D.

Although Brown's suit is technically in the nature of a habeas corpus challenge to his conviction, the dismissal of this suit on the ground of limitations will not implicate the merits of his

constitutional claims. See Freeze v. Griffith, 849 F.2d 172, 174 n.1 (5th Cir. 1988). Although any state habeas applications Brown may have filed would have tolled the statute of limitations, see Rodriguez, 963 F.2d at 804-05, there is no indication in the record that Brown has ever sought habeas relief, and he has never argued that the statute of limitations was tolled in this manner.

AFFIRMED.