

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 92-7662
Summary Calendar

JAMES A. KELLY,

Plaintiff-Appellant,

versus

VICTOR STELLO, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court for
the Southern District of Texas
CA G91 464

April 19, 1993

Before REAVLEY, DAVIS and DEMOSS, Circuit Judges.

PER CURIAM:*

On December 16, 1991, James A. F. Kelly, a former employee of the United States Nuclear Regulatory Commission (NRC), filed this lawsuit against six present or former employees of NRC, alleging violations of his First and Fifth Amendment rights, defamation, and intentional infliction of emotional distress. He alleged retaliation for his testimony before a congressional committee in

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

1987 concerning drug and alcohol abuse at nuclear plants. The district court dismissed Kelly's Bivens federal and Texas state-law claims on the ground that the claims were barred by the applicable statutes of limitations.

The parties agree on the applicable periods of limitations: two years for Kelly's federal claims, see Lavellee v. Listi, 611 F.2d 1129, 1130 (5th Cir. 1980) (state statute of limitations governs the timeliness of § 1983 claims); two years for the intentional infliction of emotional distress claim; and one year for the defamation claims. The parties, however, dispute the date Kelly's claims accrued. The determination of when a federal cause of action accrues is a matter of federal, not state, law. Id. But state law determines when a state cause of action accrues. See Meyers v. Moody, 693 F.2d 1196, 1206 (5th Cir. 1982), cert. denied, 464 U.S. 920, 104 S.Ct. 287 (1983).

We agree with the district court's conclusion that Kelly's federal claim is time barred. See Longoria v. Bay City, 779 F.2d 1136, 1139 (5th Cir. 1986) (limitations period for a § 1983 action begins to run when the plaintiff either is or should be aware of both the injury and its connection with the alleged acts of the defendant). Kelly's complaint sets out his knowledge prior to December 16, 1989 (two years before commencement of this action) of critical facts that he had been injured and that the defendants were involved. It is of no consequence that Kelly later learned of more details of the extent of wrong or injury, or that he later learned of the nature of the legal claims he might pursue.

We further hold that Kelly's state-law claims are barred by the applicable Texas statutes of limitations. These claims are barred regardless of whether we apply the time-of-the-injury rule or the discovery rule in determining the date of accrual. See Robinson v. Weaver, 550 S.W.2d 18, 19 (Tex. 1977) (As a general rule, personal injury causes of action accrue "when the wrongful act effects an injury."); Salazar v. Amigos Del Valle, Inc., 754 S.W.2d 410, 412 (Tex. App. -- Corpus Christi 1988, no writ) ("A cause of action for slander accrues when the injury occurs and the words are spoken"); Kelley v. Rinkle, 532 S.W.2d 947, 949 (Tex. 1976) (holding that the discovery rule is applicable in some defamation cases); see also Timberlake v. A.H. Robins Co., 727 F.2d 1363, 1365 (5th Cir. 1984) (applying Texas law) (rejecting argument that the "statutory period should be tolled until the plaintiff learns that the defendant's conduct may have been wrongful").

Finally, the allegations of the complaint would not warrant the application of the equitable tolling doctrine or the equitable estoppel doctrine, for the reason that actions of the defendants did not induce Kelly to forego claims against them. See Conaway v. Control Data Corp., 955 F.2d 358, 362 (5th Cir.), cert. denied, ___ U.S. ___, 113 S.Ct. 186 (1992).

AFFIRMED.