

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-1156
Conference Calendar

CONNELL SPAIN,

Plaintiff-Appellant,

versus

WALTER BEARD, Manager, Tom
Thumb Page Food Store, ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:92-CV-129-A

- - - - -
August 19, 1993

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

Connell Spain appeals the district court's grant of summary judgment for some defendants and the dismissal of his claims against other defendants as frivolous.

A federal district court may grant summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law."

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

GATX Aircraft Corp. v. M/V COURTNEY LEIGH, 768 F.2d 711, 714 (5th Cir. 1985); Fed. R. Civ. P. 56(c).

A reviewing court will disturb a district court's dismissal of a pauper's complaint as frivolous only on finding an abuse of discretion. A district court may dismiss a pauper's complaint as frivolous "where it lacks an arguable basis either in law or in fact." Denton v. Hernandez, ___ U.S. ___, 112 S.Ct. 1728, 1733-34, 118 L.Ed.2d 340 (1992)(quoting Neitzke v. Williams, 490 U.S. 319, 325, 109 S.Ct. 1827, 104 L.Ed.2d 338 (1989)).

Federal courts apply state personal-injury limitations periods to actions under 42 U.S.C. § 1983. Owens v. Okure, 488 U.S. 235, 251, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). The applicable Texas limitations period is two years. Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Federal law determines when a § 1983 action accrues for the purpose of applying the statute of limitations. Id. "Under federal law, a cause of action accrues the moment the plaintiff knows or has reason to know of the injury," Helton v. Clements, 832 F.2d 332, 334 (5th Cir. 1987), or when "the plaintiff is in possession of the 'critical facts' that he has been hurt and the defendant is involved." Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988)(quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980)).

For purposes of limitations, a plaintiff files his complaint when it is received by the clerk of the district court. Russell v. Bd. of Trustees of Firemen, Policemen and Fire Alarm Operators' Pension Fund, 968 F.2d 489, 493 (5th Cir. 1992), cert.

denied, 113 S.Ct. 1266 (1993); Martin v. Demma, 831 F.2d 69, 71 (5th Cir. 1987). Spain therefore filed his complaint on December 2, 1991, when it was received by the clerk of the district court.

Spain knew of the "critical facts" that he had been injured and that the defendants were involved on November 29, 1989, when he alleges that the defendants physically and psychologically harmed him at the Tom Thumb grocery store.

APPEAL DISMISSED. See 5th Cir. R. 42.2.