IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2060
(Summary Calendar)

DAVID VALDEZ,

Plaintiff-Appellant,

versus

JOY TECHNOLOGIES, ET AL.,

Defendants,

JOY TECHNOLOGIES and
BOILERMAKERS LOCAL, 74,
Harris County, Texas,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
(CA-H-92-1258)

(June 30, 1994)

Before JOLLY, WIENER and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

---

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

In this appeal by the Plaintiff-Appellant David Valdez from the district court's dismissal, pursuant to Fed. R. Civ. P. 12(b)(6), of his consolidated claims under 29 U.S.C. §§ 160, 185, 654 and state law against Defendants-Appellants (his employer and his union), Valdez urges that the court erroneously granted Defendants' motions to dismiss for failure to state a claim upon which relief could be granted. For the reasons set forth below, however, we agree with the district court's dismissal and therefore affirm.

I

FACTS AND PROCEEDINGS

Valdez, an employee of Joy Technologies ("Joy") and member of the Boilermakers Local 74 Union ("Union"), was allegedly injured while working on July 27, 1987. As a result of his injury and its attendant circumstances, Valdez, proceeding pro se and in forma pauperis (IFP) in the district court for the Northern District of Texas, filed three separate lawsuits against Joy and the Union. In substance, the lawsuits alleged that (1) he was injured as a result of Joy's violations of the Occupational Safety and Health Act, 29 U.S.C. § 654 (OSHA), (2) Joy had violated the Labor Management Relations Act (LMRA), 29 U.S.C. § 160, by failing to reinstate him after a doctor had given him medical clearance to resume working, and (3) the Union violated 29 U.S.C. § 185 by failing adequately to resolve his charges against Joy. Valdez also asserted common-law causes of action for negligence, breach of contract, and breach of fiduciary duty.

Valdez was ordered by the district court to show why venue was proper in the Northern District of Texas. After considering Valdez's response (in the form of a "Motion for Venue" in all three cases), the district court concluded that Valdez's supplemental pleading had failed to demonstrate that venue was proper in the Northern District and transferred the cases to the Southern District of Texas. (One of the cases was transferred back to the Northern District, but subsequently transferred back to the Southern District yet again.) The district court then ordered the three cases consolidated, and further ordered Valdez to file a consolidated complaint.

Joy, the Union, and a new defendant, Houston Light and Power, were served with the consolidated complaint on September 11, 1992. Joy filed a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(6), after which the district court held a hearing on that motion. Following the hearing, during which Houston Light and Power was dismissed as a defendant pursuant to an oral motion by Valdez, the district court granted motions by Joy and the Union, dismissing the action. Valdez timely filed his notice of appeal and sought the district court's leave to proceed IFP on appeal. The district court denied the motion, concluding that the appeal was frivolous, so Valdez paid the filing fee and filed his appeal.

II

ANALYSIS

As a preliminary matter, it should be noted that Valdez presents myriad challenges to various rulings that occurred

throughout the instant litigation. These challenges consist, however, of nothing more than a listing of issues, with no record citations or factual support. Despite Valdez's pro se status, he, "like all other parties, must abide by the Federal Rules of Appellate Procedure." United States v. Wilkes, 20 F.3d 651, 652 (5th Cir. 1994).

Valdez must "identify `the facts relevant to the issues presented for review, with appropriate references to the record,' or to record excerpts filed in an appendix." Id. (quoting Fed. R. App. P. 28(a)(4)). The local rules, as well, contain a similar provision. Wilkes, 20 F.3d at 652. Valdez does not present any cogent argument or address any issue that is relevant to the grounds relied upon by the district court in dismissing his complaint. These issuesSQneither presented nor argued in compliance with the Federal RulesSQcould be deemed abandoned. See Wilkes, 20 F.3d at 652; Fed. R. App. P. 28(a)(4). In the interests of caution, however, we shall address the district court's dismissal of Valdez's suit based upon his lack of standing or failure timely to file his action, or both. See Wilkes, 20 F.3d at 652-53 (Court addressed issue most relevant to district court's ruling despite appellant's failure to comply with rules of appellate procedure).

Dismissals for failure to state a claim upon which relief may be granted under Fed. R. Civ. P. 12(b)(6) are reviewed de novo on appeal. Giddings v. Chandler, 979 F.2d 1104, 1106 (5th Cir. 1992). Such a dismissal will be upheld on appeal "if it appears that no

relief could be granted under any set of facts that could be proven consistent with the allegations." Id. (internal quotations and citation omitted). In making this determination, we accept only well-pleaded allegations as true. Id.

The district court dismissed Valdez's causes of action because he had no standing to sue and because his suits were barred by the applicable statutes of limitations. Valdez's first allegation concerns the alleged negligence of Joy. He contends that Joy violated the OSHA safety regulations established in 29 U.S.C. § 654. The district court noted, however, that this statute does not authorize a private right of action. Albeit in a different context than that presented by the instant case (whether the Secretary of Labor's ruling regarding an OSHA violation is reviewable by the Occupational Health and Safety Review Commission), the Supreme Court, in Cuyahoga Valley Railway Co. v. United Transp. Union, 474 U.S. 3, 6, 106 S.Ct. 286, 88 L.Ed.2d (1985), stated that it is "clear that enforcement of the [Occupational Health and Safety] Act is the sole responsibility of the Secretary [of Labor]." See George v. Aztec Rental Center, Inc., 763 F.2d 184, 186-87 (5th Cir. 1985) (no private right of action for retaliatory discharge under OSHA); see also Champlin Petroleum Co. v. OSHA Review Comm'n, 593 F.2d 637, 640 (5th Cir. 1979) (detailing Secretary's burden in establishing violation of "general duty clause" of § 654). We conclude that the district court properly granted the motion to dismiss this claim.

Valdez's state-law negligence claim arising out of his injury

at work was dismissed as untimely under the applicable statute of limitations. In Texas, actions for negligence are governed by a two-year statute of limitations period, Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (West 1986); F.D.I.C. v. Dawson, 4 F.3d 1303, 1307 (5th Cir. 1993), petition for cert. filed, 62 U.S.L.W. 3659 (U.S. Mar. 21, 1994) (No. 93-1486). A lawsuit accrues "when facts come into existence that entitle the plaintiff to bring suit." Shelton v. Exxon Corp., 921 F.2d 595, 602 (5th Cir. 1991).

Valdez's amended consolidated complaint alleged the following: he was injured by Joy's alleged negligence on July 27, 1987; Joy refused him medical treatment on July 29, 1987; his doctor released him to work on October 9, 1987; Joy refused to reinstate him on November 10, 1987. Valdez filed a complaint with his union against Joy on April 12, 1988, and he attended a meeting on June 8, 1988, at which his union failed adequately to resolve his charges against Joy. The preceding allegations demonstrate Valdez's awareness of the facts underlying his negligence action. He did not, however, bring suit against Joy for negligence until August 8, 1991, at the earliest, and Joy was not served with any complaint until September 11, 1992.[1] Even under the earlier date, Valdez's negligence action was not timely filed. This action was properly dismissed as time-barred.

Valdez's remaining claims against Joy argue that Joy's failure to reinstate him violated the LMRA, and constitute a breach of

[1] Although this issue need not be addressed, Joy contends that it is the date of service, and not the date of filing, which controls the statute of limitations issue.

contract and a breach of fiduciary duty. His claim against the Union is that the Union failed in its duty under the LMRA to represent him fairly under the terms of the collective bargaining agreement. When, as here, an employee brings a "hybrid" action against a union and an employer, and the dispute centers around a collective bargaining agreement, the action is controlled by federal law under the LMRA. Nelson v. Local 854, 993 F.2d 496, 498 (5th Cir. 1993). In such cases, the state-law causes of action are preempted by this federal law and become subject to its six-month statute of limitations. Id. at 498-99; see also Barrow v. New Orleans S.S. Ass'n, 10 F.3d 292, 299-300 (5th Cir. 1994).

The six-month period begins to run when the plaintiff discovers or should have discovered the facts giving rise to the complaint. Id. at 300. The events giving rise to Valdez's causes of action all occurred between July 1987 and June 8, 1988. Again, the June 8, 1988, meeting, called to resolve Valdez's complaints against Joy and producing his complaint against the Union, establishes his awareness of the facts giving rise to his causes of action. In his consolidated complaint, Valdez contends that he did not discover, nor should he have discovered, the facts set forth in his consolidated complaint "until at least March - May of 1991." Again, however, the specific facts as pleaded by Valdez show that he could not prove this: at the latest, Valdez knew of the facts giving rise to his complaint as of the June 1988 meeting with the representatives of Joy and the Union. There are no facts which can be proved consistent with this assertion by Valdez. See Giddings,

979 F.2d at 1106. Therefore, as the six-month period expired on December 8, 1988, and Valdez did not pursue any judicial remedy until August 8, 1991, at the earliest, both his federal and state-law causes of action relating to the collective bargaining agreement are barred by this six-month limitations period.

AFFIRMED.