

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-2093
Summary Calendar

MINNIE BAILEY,

Plaintiff-Appellant,

versus

TEXAS SOUTHERN UNIVERSITY,
JAMES DOUGLAS, Individually
and as Dean, School of Law,
MC KEN CARRINGTON, Individually
and as Associate Dean, School
of Law,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Texas
CA H 91 3648

July 12, 1993

Before KING, DAVIS and WIENER, Circuit Judges.

PER CURIAM:*

Minnie Bailey filed this § 1983 civil rights action against Texas Southern University and the dean and associate dean of its law school for alleged violation of her Fourteenth Amendment due process rights. TSU moved for summary judgment, which was

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 Pursuant to that Rule, the court has determined that this opinion should not be published.

granted by the district court.¹ Bailey appeals from the district court's judgment. We affirm.

I. Factual and Procedural Background

Minnie Bailey was enrolled in Texas Southern University's Thurgood Marshall School of Law from the fall of 1984 to the spring of 1989. On July 14, 1989, she was notified of her suspension from the law school for failure to maintain a cumulative grade point average of 2.0 or above, as required by the school's regulations. Bailey appealed her suspension to the school's Academic Standing Committee, alleging that TSU had failed to award her the grades she earned in certain courses and had subjected her to unequal treatment throughout her enrollment at the law school. She had a hearing before the school committee in August, 1989 and was granted a subsequent hearing for reconsideration in December, 1989. She contends that she was never informed of the result of the final administrative hearing.

Bailey filed this civil rights action pursuant to 42 U.S.C. § 1983 in December, 1991, alleging that TSU and the dean and associate dean of its law school deprived her of her due process rights. The district court granted summary judgment in favor of the defendants on the grounds that Bailey's action was time-

¹ At an October, 1992 scheduling conference, the district court ordered Bailey's action against Douglas and Carrington stayed. Accordingly, TSU alone moved for summary judgment. Nonetheless, at the summary judgment hearing, the district court found no significant difference between Bailey's claim against TSU and her claim against Douglas and Carrington. Douglas and Carrington were therefore included in its judgment.

barred and that she had presented no genuine issue of material fact. Bailey appeals from the district court's judgment to this court. Because we agree that Bailey's action is time-barred, we affirm on that ground and do not address the merits of her claim.

II. Discussion

Bailey contends that her action is not time-barred because she chose to exhaust the university's administrative avenues of relief before filing her claim. The district court determined that for § 1983 claims, the statute of limitations is not tolled by the pursuit of administrative remedies that are not statutorily required. We review such legal questions de novo. In re Missionary Baptist Foundation of America, 712 F.2d 206, 209 (5th Cir. 1983).

In a § 1983 action, a federal court looks to the forum state law for the appropriate general personal injury limitations period. See Gartrell v. Gaylor, 981 F.2d 254, 256 (5th Cir. 1993); Rubin v. O'Koren, 644 F.2d 1023 (5th Cir. 1981). Texas law provides a limitations period of two years for personal injury claims. TEX. CIV. PRAC. & REM. CODE ANN. § 16.003(a). Bailey does not dispute that she had two years from the date that her cause of action accrued to file her claim. Federal law governs the date that a cause of action accrues for the purposes of § 1983 actions. See Gartrell, 981 F.2d at 257. Under federal law, a cause of action accrues when the plaintiff knows or has reason to know of the injury which is the basis of the action.

See id. at 257; Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980). Bailey alleges an ongoing series of injuries that culminated in her suspension. Construing her case liberally, then, her cause of action accrued in July, 1989, when she was officially notified of her suspension.² Thus, her claim is time-barred unless applicable tolling provisions establish that her pursuit of administrative remedies tolled the statute of limitations.

Forum state law determines appropriate tolling provisions as well as the applicable limitations period in a § 1983 action. See Gartrell, 981 F.2d at 257; Board of Regents v. Tomanio, 446 U.S. 478, 484 (1979). Under Texas law there is no statutory provision that would toll the limitations period while Bailey pursued her administrative remedies. See TEX. CIV. PRAC. & REM. CODE ANN. ---- 16.001, 16.064, 16.063. Although under Texas common law there is a tolling rule that arguably could toll the limitation period if exhaustion of the administrative remedies were required, see Gartrell, 981 F.2d at 257, the record before us gives no indication that Bailey was required to exhaust the avenues of relief offered by the university. Accordingly,

² We disagree with Bailey's contention that her cause of action accrued at the time of her last hearing before the academic standing committee on her appeal of her suspension. She argues that she was denied due process because she was never informed of the result of that hearing. However, the crux of Bailey's -- 1983 action is alleged mistreatment with regard to the suspension itself and the events leading up to it. The injury on which her claim is based is the suspension, not her pursuit of relief from the suspension. Her argument is accordingly without merit.

Bailey's appeals to the academic standing committee did not toll the statute of limitations. Because she did not file her case before July 14, 1991 (two years following her notification of her suspension), her claim is time-barred.

III. Conclusion

For the foregoing reasons, we AFFIRM the judgment of the district court.