UNITED STATES COURT OF APPEALS
FIFTH CIRCUIT

No. 93-3772

(Summary Calendar)

JOHN HENRY BROSSETTE,

Plaintiff-Appellant,

versus

CITY OF BATON ROUGE, ET AL.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Louisiana
(CA 90-840-B-M1)

(June 27, 1994)

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

PER CURIAM:[*]

Plaintiff John Henry Brossette appeals from the district court's decision granting of summary judgment to the defendants on his claim brought under 42 U.S.C. § 1983 (1988). We affirm.

I

Brossette owns a social club in Baton Rouge. On June 1, 1989, the Alcoholic Beverage Control Board of the City of Baton Rouge ("the Board") determined that Brossette had operated his club in a

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

way that was reasonably anticipated to adversely affect public health safety or morals, *see* Baton Rouge, La., Ordinance 8787, § 6.A.1, and suspended his liquor license for a period of six months. The Board formally notified Brossette of the suspension on June 2, 1989, and the suspension began that day. Brossette sought judicial review of the Board's decision in the Louisiana courts. For unknown reasons, more than one year passed without any action on Brossette's petition for judicial review. In August 1990, Brossette filed this cause of action pursuant to § 1983 in federal district court, alleging that the suspension of his license violated his civil rights. Shortly thereafter, the state district court set a preliminary hearing regarding Brossette's petition for judicial review. The defendants in this action then sought and obtained a stay of proceedings pending final disposition of Brossette's state petition. Eventually, the Louisiana Supreme Court reversed the suspension of Brossette's license, and the district court reinstated this case on the docket. The district court subsequently granted summary judgment for the defendants, holding Brossette's § 1983 claim to be prescribed.[1]

On appeal, Brossette maintains that the accrual date of his § 1983 claim presents a fact question that precludes summary judgment. We review de novo the district court's grant of a summary judgment motion. *Matagorda County v. Law*, 19 F.3d 215, 217 (5th Cir. 1994). Summary judgment is appropriate if the record

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[1] The district court alternatively found the defendants entitled to immunity. We do not reach this issue as we find the action to be prescribed. *See infra*.

discloses "that there is no genuine issue of material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party seeking summary judgment bears the initial burden of identifying those portions of the pleadings and discovery on file, together with any affidavits, that it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 325, 106 S. Ct. 2548, 2554, 91 L. Ed. 2d 265 (1986). Once the moving party carries its burden, the burden shifts to the non-movant to show that summary judgment should not be granted. Id. at 324-25, 106 S. Ct. at 2553-54. While we must "review the facts drawing all inferences most favorable to the party opposing the motion," *Reid v. State Farm Mut. Auto. Ins. Co.*, 784 F.2d 577, 578 (5th Cir. 1986), the opponent may not rest upon mere allegations or denials in its pleadings, but must set forth specific facts showing the existence of a genuine issue for trial. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256-57, 106 S. Ct. 2505, 2514, 91 L. Ed. 2d 202 (1986).

II

Congress has not provided a specific statute of limitations for § 1983 actions. When Congress fails to legislate a limitations period for a federal cause of action, a limitation period provided by the law of the forum state usually is adopted as federal law. *Wilson v. Garcia*, 471 U.S. 261, 266, 105 S. Ct. 1938, 1942, 85 L. Ed. 2d 254 (1985). Therefore, Louisiana's one-year limitations period for "offenses and quasi-offenses" applies here. *See McGregor v. Louisiana State Univ. Bd. of Supervisors*, 3 F.3d 850,

863 (5th Cir. 1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 1103, 127 L. Ed. 2d 415 (1994). Although state law governs the limitations period for § 1983 claims, accrual of the cause of action is a matter of federal law. *Wilson*, 471 U.S. at 268-69, 105 S. Ct. at 1943. Accordingly, the limitations period begins to run when a plaintiff knows or has reason to know of the injury))or, in this case, the alleged discriminatory decision))that serves as the basis of his claim. *McGregor*, 3 F.3d at 863. Here, the limitations period began to run when Brossette received notice of the Board's order suspending his liquor license. *See id.*; *Morse v. University of Vt.*, 973 F.2d 122, 125 (2d Cir. 1992) (noting that the timeliness of a discrimination claim is measured from the date the claimant receives notice of the allegedly discriminatory decision). Because Brossette filed his § 1983 action more than one year after the board notified him of the license suspension, his claim is prescribed. On appeal, Brossette attempts to avoid summary judgment by arguing that a genuine issue of material fact exists regarding the accrual date of his cause of action.

A

Brossette first contends that the limitations period did not begin to run until Dec. 2, 1989, the day the six-month suspension of his license concluded. In insisting that we view the suspension as "a one-time event[] encompassing a six month block of time," Brossette misconstrues the law. The accrual date of a federal cause of action is judged not from the date the injury ceases, but from the earliest date a plaintiff was or should have been aware of

his injury and its connection with the defendant. *See Perez v. Laredo Junior College*, 706 F.2d 731, 733 (5th Cir. 1983) (limitations period ran from date college made discriminatory decision to deny plaintiff compensation even though damages resulting from that act continued), *cert. denied*, 464 U.S. 1042m 104 S. Ct. 708, 79 L. Ed. 2d 172 (1984). For example, in *Delaware State College v. Ricks*, 449 U.S. 250, 101 S. Ct. 498, 66 L. Ed. 2d 431 (1980), a college professor sued his employer, alleging that the college denied his tenure application for discriminatory reasons. The Supreme Court held that the plaintiff's cause of action accrued when the college first notified him of its decision to deny tenure, not when his appeal of that decision was rejected or when he actually lost his teaching position. *Id*. at 258-59, 101 S. Ct. at 504. In *Chardon v. Fernandez*, 454 U.S. 6, 8, 102 S. Ct. 28, 29, 70 L. Ed. 2d 6 (1981), the Supreme Court held that a § 1983 claim accrued when nontenured administrators employed by the Puerto Rico Department of Education were notified of their impending terminations, not when they were actually terminated. Here, the Board notified Brossette of its decision to suspend his liquor license on June 2, 1989. Therefore, Brossette's § 1983 claim accrued on that date.

B

Brossette alternatively contends that the suspension was a continuing tort whereby each day of the six-month suspension

constituted a separate violation of his civil rights.[2] Brossette, however, confuses for a continuous violation what actually is "a single violation followed by continuous consequences." *See McGregor*, 3 F.3d at 867. A plaintiff may not use the continuing violation theory to resurrect claims concluded in the past, even though the effects of the injury persist. *Id*. Because the alleged violation occurred in June 1989, lingering effects of that harm do not operate to bring Brossette's claim within the continuing violation doctrine. *Id*.; *see also Davis v. Louisiana State Univ.*, 876 F.2d 412, 413 (5th Cir. 1989) (holding that the prescription not period was not affected by the continuing effects of a university student's expulsion).

III

For the foregoing reasons, we AFFIRM the district court's decision holding that Brossette's cause of action is prescribed.

[2] Under this theory, Brossette concedes that actions seeking damages for all violations that occurred before Aug. 31, 1989, are prescribed.