

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-4063
Conference Calendar

REV. ABRAHAM E. DAVIS,

Plaintiff-Appellant,

versus

THE CITY OF ALEXANDRIA ET AL.,

Defendants-Appellees.

- - - - -
Appeal from the United States District Court
for the Western District of Louisiana
USDC No. 91-CV-1989
- - - - -
(February 24, 1994)

Before JOLLY, JONES, and DUHÉ, Circuit Judges.

PER CURIAM:*

The petition for rehearing is GRANTED. We withdraw our opinion of August 19, 1993, and substitute the following.

The district court dismissed as time-barred a lawsuit filed by Rev. Abraham E. Davis which challenged the City's demolition on May 24, 1990, of a structure that Davis owned as a violation of the due process clause of the Fourteenth Amendment and of 42 U.S.C. § 1983. Davis filed his lawsuit on September 11, 1991.

If there is no genuine issue for the trier of fact based on

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

the record as a whole, summary judgment is proper. Sims v. Monumental General Ins. Co., 960 F.2d 478, 479 (5th Cir. 1992). This Court reviews de novo a district court's determination that a lawsuit is time-barred. Hickey v. Irving Independent School Dist., 976 F.2d 980, 982 (5th Cir. 1992).

"In Wilson v. Garcia, 471 U.S. 261 (1985), [the Supreme Court] held that courts entertaining claims brought under 42 U.S.C. § 1983 should borrow the state statute of limitations for personal injury actions." Owens v. Okure, 488 U.S. 235, 236, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). The limitations period in Louisiana for a § 1983 suit is one year. Elzy v. Roberson, 868 F.2d 793, 794 (5th Cir. 1989).

Section 1983 actions accrue "when the injured party knows or has reason to know of the injury which forms the basis for the action." Peter Henderson Oil Co. v. Port Arthur, 806 F.2d 1273, 1275 (5th Cir. 1987) (accrual tied to date city council passed ordinance). In the instant case, the cause of action accrued when the city council ordered destruction of Davis's property and at the latest when the property was actually destroyed. See id. at 1274-75.

Davis had actual knowledge of his cause of action when the City ordered the destruction of his property on February 7, 1990, and the building's actual destruction on May 24, 1990. There was an elapse of well over one year between the time the building was destroyed and the filing of Davis's complaint. Since Davis did not file his claim until September 11, 1991, his claim is prescribed, and the court did not err in granting summary

judgment for the defendants because there is no genuine issue of material fact and the defendants are entitled to judgment as a matter of law. See Fed. R. Civ. P. 56(c).

AFFIRMED.