IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 93-5505
Conference Calendar

OSCAR JOHNSON,

Plaintiff-Appellant,

versus

TYLER POLICE DEPARTMENT ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court
for the Eastern District of Texas
USDC No. T-93-CV-525
- - - - - - - - - -
(May 19, 1994)

Before HIGGINBOTHAM, BARKSDALE, and EMILIO M. GARZA, Circuit Judges.

PER CURIAM:*

On September 9, 1993, Oscar Johnson filed a civil rights complaint under 42 U.S.C. § 1983 against the police department and the city of Tyler, Texas. Johnson alleged that on June 15, 1988, Bobby Stark, an officer with the Tyler Police Department, illegally searched his residence and seized $1,861 in cash from the house and a briefcase containing various articles of jewelry from his automobile. Johnson contends that the search was

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

illegal and that Justice of the Peace Baird improperly ordered the jewelry forfeited.

The district court dismissed the suit as frivolous under 28 U.S.C. § 1915(d) because the statute of limitations had run in the case. 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 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) (internal quotation omitted).

There is no federal statute of limitations for actions brought pursuant to 42 U.S.C. § 1983. Federal courts borrow the forum state's general personal injury limitations. Ali v. Higgs, 892 F.2d 438, 439 (5th Cir. 1990); Owens v. Okure, 488 U.S. 235, 249-50, 109 S.Ct. 573, 102 L.Ed.2d 594 (1989). In Texas, the applicable period is two years. Tex. Civ. Prac. & Rem. Code 16.003(a) (West 1986); see also Burrell v. Newsome, 883 F.2d 416, 418 (5th Cir. 1989). Texas law governs the limitations period and the tolling exceptions, but federal law governs when a cause of action arises. Burrell, 883 F.2d at 418. Under federal law, a cause of action arises "`when the plaintiff knows or has reason to know of the injury which is the basis of the action.'" Id. (quoting Lavellee v. Listi, 611 F.2d 1129, 1131 (5th Cir. 1980) (further citations omitted)). A plaintiff need not know that his constitutional rights were violated to have a cause of action accrue, he must simply be in possession of the "critical facts"

that he had been injured and that the defendant was involved. See Freeze v. Griffith, 849 F.2d 172, 175 (5th Cir. 1988).

Johnson argues that the statute of limitations should not apply because the deprivation of his property is a continuing act. Johnson knew that his property had been seized on June 15, 1988. Additionally, Johnson argues that he did not know that Justice of the Peace Baird would allegedly abuse his position to enter a forfeiture order against him. Although it may be true that Johnson did not know of the alleged actions of Justice of the Peace Baird on June 15, 1988, the record shows that the forfeiture order was entered on October 12, 1988, and his appeal of that order was dismissed on November 10, 1989. Johnson was certainly aware of the critical facts of his case by the time the appeal of the forfeiture order had been dismissed. This action occurred well over two years prior to the filing of the instant suit. The district court did not abuse its discretion in finding that Johnson was in possession of the critical facts regarding his alleged injury more than two years before the current suit was filed.

AFFIRMED.