

IN THE UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 93-8795  
Conference Calendar

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MOSES MACIAS, JR.,

Plaintiff-Appellant,

versus

JOANN L. ANDERSON, Judge,  
Office of Hearing and Appeals  
ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Western District of Texas  
USDC No. SA-93-CA-520  
- - - - -

(May 19, 1994)

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

PER CURIAM:\*

An in forma pauperis complaint may be dismissed as frivolous if it lacks an arguable basis in law or in fact. Denton v. Hernandez, \_\_\_ U.S. \_\_\_, 112 S.Ct. 1728, 1733, 118 L.Ed.2d 340 (1992); see 28 U.S.C. § 1915(d). This Court reviews such a dismissal for abuse of discretion. See id., 112 S.Ct. at 1734.

Although Moses Macias, Jr., and the district court characterized the suit as one arising under 42 U.S.C. § 1983, the action arises as a Bivens claim. See Bivens v. Six Unknown Named Agents of Federal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

Bureau of Narcotics, 403 U.S. 388, 397, 91 S.Ct. 1999, 29 L.Ed.2d 619 (1971). As with a § 1983 claim, this Court looks to state law to determine the applicable limitations period for a Bivens action. Spina v. Aaron, 821 F.2d 1126, 1128-29 (5th Cir. 1987). The applicable limitations period in Texas is two years. See Gartrell v. Gaylor, 981 F.2d 254, 265-57 (5th Cir. 1993).

Although state law governs the limitations period, federal law governs when the cause of action arises or accrues. Id. 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. The statute of limitations therefore begins to run when the plaintiff is in possession of the "critical facts that he has been hurt and who has inflicted the injury . . . ."

Id. (citations omitted).

Macias argues that he did not reason out the events into causes and effect of what he had observed, i.e., "regress," until June 1993. Macias, however, alleged that he personally observed Zachry bribe Anderson in 1978 by handing her money and instructing her to rule against Macias on his disability claim and that he overheard Anderson tell a coworker in May 1989 that she had received the rest of the money from Zachry that day. Applying the accrual standard to these alleged facts, Macias had reason to know of the injury and the basis of the action on the dates of the alleged bribes.

Therefore, the district court correctly determined that Macias' complaint is time-barred, and it did not abuse its discretion in dismissing with prejudice under § 1915(d). See Graves v. Hampton, 1 F.3d 315, 319 (5th Cir. 1993).

AFFIRMED.