

UNITED STATES COURT OF APPEALS  
FOR THE FIFTH CIRCUIT

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No. 94-41030  
Summary Calendar

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KENNETH GERALD WILLIS, ET AL.,

Plaintiffs,

KENNETH GERALD WILLIS and BARBARA WILLIS,

Plaintiffs-Appellants,

versus

JAMES NELSON, ET AL.,

Defendants-Appellees.

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Appeal from the United States District Court for the  
Western District of Louisiana  
(93-CV-923 c/w 93-CV-929)

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(May 24, 1995)

Before GARWOOD, HIGGINBOTHAM, and DAVIS, Circuit Judges.\*

GARWOOD, Circuit Judge:

*Pro se* plaintiffs-appellants Kenneth and Barbara Willis (the Willises) appeal an order of the district court granting defendant-

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

appellee James Nelson's (Nelson) motion to dismiss and summary judgment for Bastrop, Louisiana, Morehouse Parish Sheriff Frank Carroll (Carroll), Chief Deputy Marion Bankston (Bankston), and deputy sheriffs Huey Singley (Singley), Brian Shoemaker (Shoemaker), and Terry Wyatt (Wyatt) (collectively, the sheriffs). The Willises seek relief pursuant to 42 U.S.C. § 1983 for alleged violations of their civil rights. For the reasons that follow, we affirm.

### **Facts and Proceedings Below**

This case arises from the shooting death of the Willises' son, Kenneth Gerald Willis, II (Jake). Nelson shot Jake in the early morning hours of August 13, 1990. Shoemaker, Wyatt, and Singley were the first sheriffs on the scene. They initially noticed that a panel of the kitchen door of Nelson's home had been broken; they subsequently found Jake lying dead on Nelson's back porch. Singley was the chief investigator on the case; he preserved and examined the physical evidence on the scene and took statements from Nelson and his wife, as well as two neighbors, Michael and Linda Wood. From this investigation, Singley determined that Jake had broken out a panel of Nelson's back door and was attempting to reach in to unlock the door and that, when Jake did not back off at Nelson's order, Nelson shot him through the door.

A grand jury was convened on October 8, 1990, to consider homicide charges against Nelson. The grand jury on that date returned a finding of "no true bill." Because the grand jury refused to indict him, Nelson was not prosecuted in connection with

Jake's death, and the Morehouse Parish Sheriff's Office closed its investigation of the case in October 1990.

On April 20, 1993, the Willises brought the instant action,<sup>1</sup> naming as defendants Nelson, Singley, the Morehouse Parish Sheriff's Department, the "Bastrop Parish Prosecutor's Office," the Louisiana State Police, and the "Bastrop Parish Old Courthouse," claiming that the defendants had failed to properly investigate Jake's death and had not provided the Willises' with all relevant information concerning the investigation. They sought relief under 42 U.S.C. § 1983, alleging that the named defendants had violated Jake's Fourteenth Amendment rights; as to the Willises themselves, the complaint alleged only that the defendants had "showed malice in violating the[ir] Civil Rights." In addition to monetary damages, the Willises requested an order directing the sheriff's department to reopen the investigation of Jake's death, furnish all information it had concerning the case, and make a public statement admitting error in the original investigation.

On August 16, 1993, Nelson filed a motion to dismiss, claiming, *inter alia*, that the action against him was time-barred under the relevant statute of limitations.<sup>2</sup> The magistrate judge

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<sup>1</sup> The action was originally filed in state court. The case was later removed to federal court.

<sup>2</sup> The Morehouse Parish Sheriff's Department filed a motion to dismiss on August 6, 1993; the Louisiana State Police filed a separate but similar motion on August 25, 1993. On September 9, 1993, the Willises filed a motion asking the court to dismiss defendants "Morehouse Parish Old Courthouse" (called "Bastrop Parish Old Courthouse" in the original complaint) and the Louisiana State Police. On October 26, 1993, in the same order in which the district court granted Nelson's motion to dismiss,

to whom the case had been referred filed a report on September 13, 1993, recommending that Nelson's motion be granted because "neither the complaint nor the plaintiffs' response to the motion state[s] any facts showing any act or omission of James Nelson after August 13, 1990." Under Louisiana's one-year prescriptive period for delictual actions, therefore, any claim the Willises had against Nelson had prescribed in August 1991. The district court adopted the magistrate judge's report and recommendation and dismissed the cause of action against Nelson with prejudice on October 26, 1993.<sup>3</sup>

On October 13, 1993, the district court granted the Willises leave to file an amended complaint. By the amended complaint, the Willises added as defendants Sheriff Carroll, Chief Deputy Bankston, and deputies Shoemaker and Wyatt, alleging that the sheriffs also failed to properly investigate Jake's death and withheld information from the Willises concerning the investigation. The sheriffs moved for summary judgment on June 10, 1993.<sup>4</sup> The district court determined that the sheriffs were

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the district court also granted the Louisiana State Police's motion to dismiss. By that same order, the district court also ordered that the "Morehouse Parish Sheriff's Department" be dismissed from the suit.

<sup>3</sup> The Willises filed an interlocutory appeal from this judgment, but this Court dismissed the appeal for lack of jurisdiction. *Willis v. Nelson et al.*, No. 93-5480 (5th Cir. Dec. 1, 1993).

<sup>4</sup> By amended complaint, filed February 18, 1994, the Willises added Francis D. Elias (Elias), the Morehouse Parish coroner, as a defendant. When the Willises failed to serve Elias, the district court dismissed their claims against him with prejudice on September 23, 1994. The district court did provide that the claims against Elias could be reinstated if proof of service were shown within thirty days of the court's order. The record shows

entitled to the absolute defense of qualified immunity because the Willises had failed to allege the violation of a clearly established constitutional right. Alternatively, the district court held that, because the summary judgment evidence established that the investigation into Jake's death had closed on October 8, 1990, when the grand jury refused to indict Nelson, the Willises' claims against the sheriffs were clearly time-barred under Louisiana's one-year prescription statute. The Willises timely appealed to this Court.

### **Discussion**

We review a Rule 12(b)(6) dismissal *de novo*. *Fernandez-Montes v. Allied Pilots Association*, 987 F.2d 278, 284 (5th Cir. 1993). We affirm such a dismissal if, accepting all well-pleaded facts as true and viewing them in the light most favorable to the plaintiff, the plaintiff can prove no set of facts under which he would be entitled to relief. *McCartney v. First City Bank*, 970 F.2d 45, 47 (5th Cir. 1992). We review a motion for summary judgment *de novo*, *Exxon Corp. v. Burglin*, 4 F.3d 1294, 1297 (5th Cir. 1993), and will affirm if a review of the record shows that there is no genuine

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that a summons was issued for Elias on December 6, 1993, but no return of service appears in the record, and it does not appear that Elias ever filed any answer or other paper in this case. The Willises do not challenge Elias's dismissal on appeal.

Assistant District Attorney Charles L. Brumfield (Brumfield) was also added as a defendant, although the Willises never specifically requested permission to amend their complaint in this regard. On May 17, 1994, District Attorney Jerry Jones moved to dismiss the Willises' complaint against the "Bastrop Parish Prosecutor's Office" and Brumfield. The district court granted this motion on July 12, 1994. The Willises have not appealed the dismissal of these defendants.

issue of material fact and that therefore the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).

On appeal, the Willises complain only that the district court erred in concluding that their claims against Nelson and the sheriffs were time-barred. Because there is no federal statute of limitations for section 1983 actions, we borrow the statute of limitations for personal injury claims of the forum state. *Owens v. Okure*, 109 S.Ct. 573, 582 (1989); *Burrell v. Newsome*, 883 F.2d 416, 418 (5th Cir. 1989). Under Louisiana law, the statute of limitations for delictual actions is one year. La. Civ. Code Ann. art. 3492 (West 1993); *Davis v. Louisiana State University*, 876 F.2d 412, 413 (5th Cir. 1989). Although state law provides the applicable statute of limitations, federal law determines when the statute of limitations accrues. *Burrell*, 883 F.2d at 418. Under federal law, the cause of action accrues "when the plaintiff knows or has reason to know of the injury which is the basis of the action." *Pete v. Metcalfe*, 8 F.3d 214, 217 (5th Cir. 1993) (internal quotation marks and citation omitted).

The Willises claim that their action is timely because they did not have sufficient evidence to support their claims until March 1993. The test, however, is whether the plaintiff had knowledge of the *injury* giving rise to his cause of action. See *id.*; *Burrell*, 883 F.2d at 418. Thus, as to Nelson, the record clearly shows that the Willises were informed of Jake's death and Nelson's involvement in it immediately. The district court found, and the finding is amply supported in the record, that the Willises

have not alleged any act or omission on Nelson's part after August 13, 1990, the day Jake was killed. Moreover, any claimed impropriety in the official investigation of Jake's death would not toll the statute of limitations as to claims against Nelson.<sup>5</sup> The district court did not err in finding the claims against Nelson time-barred.<sup>6</sup>

As to the claims against the sheriffs, the summary judgment evidence shows that the investigation into Jake's death was closed on October 8, 1990, when the grand jury refused to indict Nelson. We need not today decide whether the allegedly improper investigation tolled the statute of limitations, however, because the district court also found that the sheriffs were entitled to qualified immunity. The Willises do not challenge on appeal this aspect of the district court's ruling, and it is therefore deemed abandoned. See *Cinel v. Connick*, 15 F.3d 1338, 1345 (5th Cir.),

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<sup>5</sup> In their motion opposing Nelson's motion to dismiss, the Willises make reference to a conspiracy surrounding Jake's death, in which they claim Nelson was the "hub" and the sheriffs were the "spokes." Vague allegations of conspiracy, however, are insufficient to withstand a motion to dismiss. See *Hale v. Harney*, 786 F.2d 688, 690 (5th Cir. 1986) (to state a cause of action for conspiracy under section 1983, plaintiff must allege specific, material facts tending to show a conspiracy).

Even if we were to consider these allegations, however, we would find the claims time-barred. The record clearly shows that the investigation into Jake's death was officially closed on October 8, 1990. Therefore, even if Nelson was involved in a conspiracy in the investigation of Jake's death, that alleged conspiracy ended when the investigation ended, and the Willises' claims against Nelson would be prescribed in any event.

<sup>6</sup> Although the district court did not address the issue, it is doubtful that Nelson is even amenable to suit under section 1983. Nevertheless, as the claims against him are clearly barred by the applicable statute of limitations, we need not resolve this issue.

*cert. denied*, 115 S.Ct. 189 (1994) (issues not raised on appeal are abandoned). As the district court's judgment rests on an adequate, independent basis, we will not consider the statute of limitations argument.<sup>7</sup> See *Bramblett v. Commissioner of Internal Revenue*, 960 F.2d 526, 530 (5th Cir. 1992) ("This court can affirm a lower court's decision if there are any grounds in the record to support the judgment.").

### **Conclusion**

The judgment of the district court is

AFFIRMED.

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<sup>7</sup> Even if we were to consider this argument, it appears that the district court's ruling on this issue is amply supported by the record. Indeed, in their motion opposing the sheriffs' motion for summary judgment, the Willises attached an affidavit dated August 18, 1990, which indicates that they believed soon after Jake's death that the sheriffs were ignoring evidence the Willises believed demonstrated that Nelson murdered Jake and staged the break in. A more recent affidavit signed by the Willises confirms this.