

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 92-3005
Summary Calendar

ROBERT KARP, M.D.,

Plaintiff-Appellant,

VERSUS

TULANE UNIVERSITY, ET AL.,

Defendants-Appellees.

Appeals from the United States District Court
For the Eastern District of Louisiana
(91 CV 120)

(November 18, 1992)

Before HIGGINBOTHAM, SMITH, and DeMOSS, Circuit Judges.

PER CURIAM:*

BACKGROUND

Robert Karp was a student at Tulane Medical School for nearly four years before he was dismissed for academic deficiencies. Karp unsuccessfully pursued several administrative appellate remedies in an attempt to get reinstated. Invoking diversity and federal

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 Pursuant to that Rule, the Court has determined that this opinion should not be published.

question jurisdiction, he filed the instant action in 1991. The district court granted the defendants' motion to dismiss or in the alternative for summary judgment, from which Karp timely appealed.

Based on the underlying theory that he has been the victim of a widespread conspiracy among the medical and administrative leadership of the Tulane Medical School, Karp's complaint launches an attack alleging breach of contract, fraud, nuisance, violation of his federal student records rights, negligence, libel, intentional infliction of emotional distress, negligent infliction of emotional distress, and civil RICO violations. The district court dismissed all nine causes of action asserted by Karp in his complaint for either failing to state a claim under Fed. R. Civ. P. 12(b)(6), or as a matter of law under summary judgment.

OPINION

Karp argues on appeal that the district court improperly dismissed his civil RICO claim for failure to state a claim. The district court found that Karp had failed to identify which section of 18 U.S.C. § 1962 the defendants had violated. Karp's complaint does indeed fail to allege many of the elements needed to sustain a civil RICO action, see Alcorn County, Miss. v. U.S. Interstate Supplies, 731 F.2d 1160, 1167-68 (5th Cir. 1984) (detailing specifics required to state a civil RICO claim), but in two separate supplemental memoranda, which should be considered part of his pleadings due to his status as a pro se litigant, Karp makes the allegations necessary to support his RICO action.

Karp's RICO claim still fails, however, as the statute of limitations for filing such an action has expired. The Supreme Court established a four-year prescriptive period for filing civil RICO actions. Agency Holding Corp. v. Malley-Duff & Associates, 483 U.S. 143, 157, 107 S. Ct. 2759, 97 L. Ed.2d 121 (1987). Karp's civil RICO suit accrued in 1979-1980, when he alleges that the actions of the defendants first caused him injury. Al George, Inc. v. Envirotech Corp., 939 F.2d 1271, 1273 n.3 (5th Cir. 1991). He did not file the instant action alleging RICO violations until 1991. While the district court did dismiss Karp's RICO claims on grounds other than the affirmative defense of statute of limitations, the defendants did assert such a defense, and this Court may affirm the dismissal of this claim on independent grounds. Degan v. Ford Motor Co., 869 F.2d 889, 892 (5th Cir. 1989).

The district court's dismissal of Karp's nuisance, negligence, libel, negligent and intentional infliction of emotional distress, and student records claims should also be affirmed, as Karp neither argues nor briefs these issues on appeal. These issues are therefore deemed abandoned. Nisso-Iwai Co. v. Occidental Crude Sales, Inc., 729 F.2d 1530, 1539 n.4 (5th Cir. 1984); see also Brinkmann v. Dallas County Deputy Sheriff Abner, 813 F.2d 744, 748 (5th Cir. 1987) (inadequate briefing on appeal amounts to abandonment, even for a pro se litigant). Alternatively, these claims -- with the exception of the student records claim for which Karp has failed to provide any statutory authority -- have all been

brought well outside of Louisiana's one-year prescriptive period for delictual actions. La. Civ. Code art. 3492. Under this analysis, the only remaining causes of action are Karp's claims of fraud and breach of contract, which arose out of events allegedly occurring in 1987-1992. These actions have not prescribed, as Louisiana has a ten-year prescriptive period for breach of contract claims. La. Civ. Code art. 3544.

Karp also argues on appeal that the district court improperly ruled on the defendants' motion to dismiss and/or for summary judgment without considering his motion for a continuance to conduct further discovery under Fed. R. Civ. P. 56(f). Rule 56(f) allows a nonmoving party more time to conduct discovery in order to respond to a summary judgment motion. Fed. R. Civ. P. 56(f); International Shortstop, Inc. v. Rally's, Inc., 939 F.2d 1257, 1266 (5th Cir. 1991), cert. denied, 112 S. Ct. 936 (1992). The Rule requires, first, that the party seeking a continuance submit an affidavit detailing the reasons for failing to respond to the summary judgment motion with summary judgment evidence of its own. The Rule also requires that the affidavit show how the additional information will defeat the summary judgment motion by creating genuine issues of material fact. Id. at 1266-67. A district court's denial of a Rule 56(f) request is reviewed for abuse of discretion. Id.

Karp filed a detailed affidavit with the district court. The district court did not rule on the motion before dismissing Karp's complaint. As in International Shortstop, where this Court vacated

and remanded a summary judgment order due to the district court's failure to allow a continuance pursuant to Rule 56(f), Karp has made unsuccessful attempts, prior to the district court's ruling on the motion to dismiss/summary judgment motion, to obtain discovery from the defendants relating to the contract and fraud claims, see International Shortstop, 939 F.2d at 1267-68. His Rule 56(f) motion also details the evidence he seeks through further discovery, and how that evidence relates to his contract and fraud claims.

The delay also does not appear to be the result of any dilatory tactics by Karp and, as this Court noted in International Shortstop: "a continuance of a motion for summary judgment for purposes of discovery should be granted almost as a matter of course." Id. at 1267 (internal quotations and citations omitted). While the requests made by Karp in his Rule 56(f) motion relating to his RICO, nuisance, negligence, libel, negligent and intentional infliction of emotional distress, and student records claims are rendered moot by the dismissal of these claims, his requests pertaining to his claims of breach of contract and fraud should be pursued further.

The district court did, however, dismiss Karp's breach of contract and fraud claims on jurisdictional grounds, finding that any damages Karp may have sustained from the breach of contract and fraud would not be sufficient to support the amount in controversy requirement for diversity jurisdiction. As this Court has consistently held, however, the amount in controversy requirement

should be decided based upon what the complaint itself states, unless it appears or can be shown that the amount stated in the complaint is not claimed in good faith. Nat. Union Fire Ins. Co. of Pittsburgh v. Russell, 972 F.2d 628, 630 (5th Cir. 1992).

To justify dismissal on the question of good faith, "it must appear to a legal certainty that the claim is really for less than the jurisdictional amount." Id. (internal quotations and citations omitted). This question cannot be properly evaluated on the present record, as the information Karp has already sought via his Rule 56(f) motion may have an impact on this analysis.

We affirm the trial court's dismissal as to all grounds of recovery except the contract and fraud claims. We reverse the trial court's dismissal of the fraud and contract claims and remand those claims to the trial court for further handling in accordance with this opinion.