United States Court of Appeals for the Fifth Circuit

No. 25-10983

United States Court of Appeals
Fifth Circuit
FILED
August 18, 2026
Lyle W. Cayce
Clerk

Charles S. Gaither,

Plaintiff—Appellant,

versus

Jessica Carter, *individually*; Bank of America, N.A.,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-171

Before Stewart, Graves, and Wilson, *Circuit Judges*.

Per Curiam:[*]

In 2020, Charles S. Gaither, who is African-American, tried to pay his mortgage in full with Bank of America (BANA), but his personal check was initially rejected. In 2025, he sued BANA and branch manager Jessica Carter,[1] asserting claims for racial discrimination under 42 U.S.C. § 1981, intentional infliction of emotional distress (IIED), and violations of Texas

[*] This opinion is not designated for publication. *See* 5th Cir. R. 47.5.

[1] BANA was unable to locate any employee by that name.

state law. The district court dismissed his suit for failure to state a claim and denied leave to amend the complaint because the limitations period had elapsed. Because Gaither's claims are time-barred, we AFFIRM.

I. BACKGROUND

Gaither alleges he is a longtime customer of BANA, where he kept several accounts and a mortgage. On July 14, 2020, he visited BANA's Hulen Branch in Fort Worth, Texas to settle his mortgage balance. Gaither describes Hulen as a predominately white, affluent suburb in Tarrant County. A bank representative named Ron informed him that BANA required payment via certified cashier's check or wire transfer, and he rejected Gaither's personal check and accused him of fraud.

The following day, Gaither requested a wire transfer from InFirst Federal Credit Union. A BANA employee helped Gaither fill out the wire request form, but wrote down the account number incorrectly, and BANA rejected the wire transfer. On July 16, Gaither finally paid his mortgage with a check from Tarrant County Credit Union, which he claims was neither a certified nor a cashier's check.

On January 6, 2025, Gaither sued BANA and Carter. He alleged that BANA's staff racially discriminated against him when they refused to accept his personal check, and this refusal cost him additional interest and the wire transfer fee. His claims included: (1) racial discrimination in violation of § 1981, (2) IIED, (3) a violation of Texas Business & Commerce Code § 17.50(a)(3) (DTPA), and (4) a violation of Texas Labor Code § 21.051.[2]

[2] Gaither did not brief his Texas Labor Code claim on appeal. It has been abandoned. *McDowell v. Home Depot USA, Inc.*, 126 F. App'x 168, 170 (5th Cir. 2005) (per curiam).

BANA removed the suit in February 2025, and moved to dismiss for failure to state a claim.

The district court granted BANA's motion and dismissed the action with prejudice. Gaither filed a motion to alter or amend the judgment under 59(e), or alternatively, for a new trial under 59(a), which the district court denied. Gaither appealed.

II. STANDARD OF REVIEW

We review a district court's dismissal under Rule 12(b)(6) de novo, accepting all well-pleaded facts as true. *Body by Cook, Inc. v. State Farm Mut. Auto. Ins.*, 869 F.3d 381, 385 (5th Cir. 2017). We ordinarily review a district court's denial of leave to amend for abuse of discretion. *Scott v. U.S. Bank Nat'l Ass'n*, 16 F.4th 1204, 1208 (5th Cir. 2021) (per curiam). But "when a district court's denial of leave to amend was based solely on futility, we apply a de novo standard of review identical, in practice, to the standard used for reviewing a dismissal under Rule 12(b)(6)." *Id.* (citation omitted).

III. DISCUSSION

A § 1981 claim arising post-contract formation "is subject to a four-year statute of limitations period under 28 U.S.C. § 1658."[3] *Nicholson v.*

[3] We have previously held that "where a section 1981 claim is brought in Texas, the two-year statute of limitations for personal injury actions in Texas controls." *Jones v. Alcoa, Inc.*, 339 F.3d 359, 364 (5th Cir. 2003). However, because Gaither's post-contract-formation claim could not have been brought before the 1991 amendment to § 1981, the four-year catch-all statute of limitations applies instead. *See Jones v. R.R. Donnelley & Sons Co.*, 541 U.S. 369, 382 (2004) ("We conclude that a cause of action arises under an Act of Congress enacted after December 1, 1990—and therefore is governed by § 1658's 4–year statute of limitations—if the plaintiff's claim against the defendant was made possible by a post–1990 enactment." (citation modified)); *Fonteneaux v. Shell Oil Co.*, 289 F. App'x 695, 699 (5th Cir. 2008) (per curiam) (explaining that the 1991 amendment to § 1981 created the cause of action for discrimination occurring after contract formation).

W.L. York, Inc., No. 23-20440, 2024 WL 913378, at *3 (5th Cir. Mar. 4, 2024) (per curiam). The DTPA has a two-year statute of limitations. Tex. Bus. & Com. Code Ann. § 17.565. Gaither's claims are time-barred unless they are equitably tolled because the alleged incident occurred on July 14, 2020, and Gaither did not file his lawsuit until January 6, 2025—almost four and a half years later.

Gaither argues that he adequately pled that his claims are equitably tolled. Alternatively, he contends that the district court abused its discretion by denying him leave to amend to further allege equitable tolling.

"We review a district court's denial of equitable tolling for abuse of discretion." *Bernstein v. Maximus Fed. Servs., Inc.*, 63 F.4th 967, 969 (5th Cir. 2023). "When equitable tolling is raised as a defense to a motion to dismiss, this court assumes the pleaded facts as true, and will remand if the plaintiff has pleaded facts that justify equitable tolling." *Id.* (citation modified).

"The doctrine of equitable tolling preserves a plaintiff's claims when strict application of the statute of limitations would be inequitable." *Lambert v. United States*, 44 F.3d 296, 298 (5th Cir. 1995). Equitable tolling can apply if a "litigant establishes two elements: (1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way and prevented timely filing." *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255 (2016) (citation modified). The extraordinary circumstance must derive from "matters outside [a litigant's] control." *Id.* at 257.

Gaither asserts that the extraordinary circumstance that prevented his timely filing was BANA's intentional concealment of its branch manager's identity. He argues that he did not know he had been discriminated against until he spoke to the manager, who told him that BANA could refuse service to any customer "without justification."

However, he did not allege facts to show that he diligently pursued his rights after this conversation. He did not explain how, when, or how often he tried to speak to a branch manager after his payments were rejected, or how BANA obstructed his attempts to learn of the manager's identity. Moreover, he failed to clarify *when* he spoke to the branch manager—a date that would allow us to accurately calculate the limitations period, even if his claims were equitably tolled. Without any of these facts, he cannot show he "acted with reasonable diligence throughout the period he seeks to toll." *Smith v. Vannoy*, 848 F. App'x 624, 628–29 (5th Cir. 2021) (per curiam) (quoting *Smith v. McGinnis*, 208 F.3d 13, 17 (2d Cir. 2000)); *see Farmer v. D & O Contractors, Inc.*, 640 F. App'x 302, 306 (5th Cir. 2016) (per curiam) (holding that the district court did not abuse its discretion in denying equitable tolling where the plaintiffs did not diligently pursue their RICO claims or establish that they were prevented from asserting their rights).

And the district appropriately denied Gaither's motion for leave to amend his equitable tolling arguments. Gaither still did not provide facts to show that he diligently pursued his rights either in his appellate briefing or at oral argument.

The district court dismissed with prejudice Gaither's claims against Carter for lack of service of process. Ordinarily, dismissal for lack of service of process must be without prejudice. FED. R. CIV. P. 4(m). However, because these claims are also time-barred, we affirm dismissal on that basis. *See Collins v. Dep't of the Treasury*, 83 F.4th 970, 978 (5th Cir. 2023) ("We may affirm a dismissal on any basis supported by the record." (citation omitted)).

IV. CONCLUSION

We AFFIRM the dismissal of Gaither's claims as time-barred.