

United States Court of Appeals
for the Fifth Circuit

No. 25-20377

United States Court of Appeals
Fifth Circuit

FILED

October 20, 2026

Thomas B. Plunkett, III
Clerk

REBECCA FRASER,

Plaintiff—Appellant,

versus

UNIVERSITY OF TEXAS MEDICAL BRANCH,

Defendant—Appellees.

Appeal from the United States District Court
for the Southern District of Texas
USDC No. 4:23-CV-854

Before ELROD, *Chief Judge*, RICHMAN and RAMIREZ, *Circuit Judges*.

PER CURIAM:*

Plaintiff-Appellant Rebecca Fraser appeals the district court's grant of Defendant-Appellee University of Texas Medical Branch's Rule 12(b)(6) motion to dismiss her claims of sex discrimination and retaliation under Title VII for failing to timely file a lawsuit and the district court's denial of Fraser's motion to amend her second amended complaint. Fraser argues that she did not receive notice of her right to sue until December 9, 2022, and when she

* This opinion is not designated for publication. *See* 5TH CIR. R. 47.5.

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filed her lawsuit on March 8, 2023, she was within the ninety-day period as required by 42 U.S.C. § 2000e-5(f)(1). In the alternative, Fraser argues that justice required the district court to grant her motion to amend her second amended complaint. Because the district court correctly determined that Fraser received notice on December 4, 2022, making her March 8, 2023, lawsuit untimely and that permitting further amendments to Fraser's complaint would be futile, we AFFIRM.

Rebecca Fraser filed a charge with the EEOC alleging sex discrimination, harassment, and retaliation. On December 1, 2022, the EEOC issued a Determination and Notice of Rights (the "Notice"). The Notice was sent to Fraser and her counsel via e-mail and mail. Fraser filed the lawsuit at issue before us in the district court on March 8, 2023. The district court dismissed Fraser's Title VII claims in her second amended complaint under Rule 12(b)(6) for failure to timely bring a lawsuit and denied Fraser's request to amend her complaint. The district court determined that, even if the December 1, 2022, e-mail notice was insufficient, the three-day presumption of receipt for the mail notice applied and her claims were time-barred. The district court further determined that Fraser did not identify any particular grounds to amend her complaint, nor did she suggest that she could plead additional facts to allege her lawsuit was timely. Fraser appealed to this court.

On appeal, Fraser raises three issues.¹ She claims the district court committed error when it: (1) determined that her Title VII complaint was untimely filed; (2) failed to allow Fraser to proceed with her civil action under the doctrine of equitable tolling for the ninety-day statutory period; and (3)

¹ Fraser also argues that the district court erred by relying on records outside of the complaint attached to the Appellee's motion to dismiss. Because we do not address the issue of notice by e-mail, we do not reach this argument.

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denied Fraser's motion to amend her complaint. We review a Rule 12(b)(6) dismissal *de novo*. *Allen v. Hays*, 65 F.4th 736, 743 (5th Cir. 2023). We review a denial of leave to amend pleadings for abuse of discretion. *Robertson v. Intratek Computer, Inc.*, 976 F.3d 575, 584 (5th Cir. 2020) (citing *Filgueira v. U.S. Bank Nat. Ass'n*, 734 F.3d 420, 422 (5th Cir. 2013)).

To survive a Rule 12(b)(6) motion, Fraser's complaint must contain "sufficient factual matter, accepted as true, to 'state a claim for relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Fraser does not need to provide "exhaustive detail to avoid dismissal, but the pleaded facts must allow a reasonable inference that [she] should prevail." *Mandawala v. Ne. Baptist Hosp.*, 16 F.4th 1144, 1150 (5th Cir. 2021) (alteration in original). We take factual conclusions as true, but disregard legal conclusions and conclusory allegations. *Id.* We resolve all questions of fact "in favor of the plaintiff." *Lewis v. Fresne*, 252 F.3d 352, 356 (5th Cir. 2001).

First, we address the timeliness of Fraser's lawsuit. Fraser had ninety days after she received the Notice to file a lawsuit. 42 U.S.C. § 2000e-5(f)(1). The ninety-day period began when either Fraser or her attorney received the notice. *See Ringgold v. Nat'l Maint. Corp.*, 796 F.2d 769, 770 (5th Cir. 1986). This ninety-day "limitation period is strictly construed." *Taylor v. Books A Million, Inc.*, 296 F.3d 376, 379 (5th Cir. 2002). The December 1, 2022, Notice was mailed to both Fraser's address in Lampasas, Texas and her attorney's address in Dallas, Texas. Fraser asserts that she did not receive the notice because she moved in January 2022 without notifying the EEOC, but she does not provide any evidence regarding her counsel's receipt of the Notice by mail. Because "the date of receipt is not known," we "apply a presumption that [Fraser's attorney] received the notice in three days," making the date of receipt December 4, 2022. *Jenkins v. City of San Antonio Fire Dep't*, 784 F.3d 263, 267 (5th Cir. 2015). Therefore, when Fraser's

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attorney filed Fraser's lawsuit on March 8, 2023, ninety-four days had passed after receipt of the Notice, which made it time-barred.²

Second, we address Fraser's claim under the equitable tolling doctrine. Fraser did not raise equitable tolling before the district court. "A party forfeits an argument by failing to raise it in the first instance in the district court—thus raising it for the first time on appeal" *Rollins v. Home Depot USA*, 8 F.4th 393, 397 (5th Cir. 2021). This applies to equitable tolling. *See Prince Rivers v. Fed. Express Ground*, 731 F. App'x 298, 301 (5th Cir. 2018) (holding that because the plaintiff did not raise equitable tolling before the district court, the argument was waived on appeal). Thus, Fraser forfeited her equitable tolling argument by not raising it before the district court.

Last, we address the district court's denial of Fraser's motion to amend her complaint. Under Rule 15(a), courts should grant leave to amend a complaint "when justice so requires" and should do so "absent some justification for refusal." *U.S. ex rel. Willard v. Humana Health Plan of Tex. Inc.*, 336 F.3d 375, 386 (5th Cir. 2003) (citation omitted). "Leave to amend . . . may be denied when the party seeking leave has repeatedly failed to cure deficiencies by amendments previously allowed and when amendment would be futile." *Id.* at 387 (citing *Foman v. Davis*, 371 U.S. 178, 183 (1962)). Fraser

² We do not need to address the e-mail notice that Fraser's attorney received because of the presumption of receipt for the mail notice. However, Fraser's attorney also received three separate e-mails regarding Fraser's case. On December 1, 2022, an EEOC investigator e-mailed Fraser's attorney informing him that the EEOC had concluded its investigation into his client's charge and advising him that the EEOC would issue the Notice "immediately." Later the same day, the EEOC e-mailed Fraser's attorney informing him that the Notice was available to download. On December 9, 2022, the EEOC sent an e-mail reminding Fraser's attorney that the Notice was available for download. Despite receiving these e-mails, Fraser's attorney did not download the Notice until February 15, 2023.

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sought to amend her complaint to “allege more specific facts in support of [her] causes of action.” The district court granted Fraser leave to address these specific issues previously, yet Fraser failed to cure the timing deficiencies identified by the district court. Because Fraser failed to address the same deficiencies that she now seeks to cure, the district court did not abuse its discretion when it determined that further amendment would be unproductive.

For the foregoing reasons, the district court’s judgment dismissing the action is **AFFIRMED**.