United States Court of Appeals for the Fifth Circuit

United States Court of Appeals
Fifth Circuit
FILED
November 3, 2026
Thomas B. Plunkett, III
Clerk

No. 26-30293
Summary Calendar

DAVID WAYNE GIBSON, JR.,

Plaintiff—Appellant,

versus

AMERICAN TRAVEL ASSOCIATES,

Defendant—Appellee.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:25-CV-353

Before WILLETT, DUNCAN, and ENGELHARDT, *Circuit Judges*.

PER CURIAM:[*]

After American Travel Associates fired David Wayne Gibson, Jr. ("Gibson") six months into the job, Gibson sued for employment discrimination. Proceeding pro se and in forma pauperis Gibson amended his complaint twice, once of his own volition and again after the district court dismissed the case but granted Gibson's request for leave to amend, resulting

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

in a Second Amended Complaint. After the magistrate judge issued a Report and Recommendation dismissing the Second Amended Complaint, the district court overruled Gibson's objections, accepted the Report and Recommendation, and dismissed the case with prejudice after finding that amendment would be futile. Gibson appeals that order's denial of leave to amend.

The Second Amended Complaint brought claims for employment discrimination under the Americans with Disabilities Act ("ADA") and the Louisiana Employment Discrimination Law ("LEDL"). Gibson alleged that he has a documented history of bipolar disorder and ADHD. He requested accommodations related to his disabilities and a formal meeting was held on October 18, 2022. According to the Second Amended Complaint, Gibson was fired ten days later on October 28, 2022. Gibson filed an administrative charge with the Equal Employment Opportunity Commission ("EEOC") in September 2023. The EEOC subsequently dismissed the charge, and Gibson filed suit on July 16, 2024.

In reviewing the Second Amended Complaint for failure to state a claim under 28 U.S.C. § 1915(e)(2)(B)(ii), the Report and Recommendation concluded that Gibson had filed outside of the 300-day window and therefore would be unable to recover on any harm flowing from his termination or any alleged retaliation. *See Ramirez v. City of San Antonio*, 312 F.3d 178, 181 (5th Cir. 2002) ("Under the ADA, a plaintiff must file a charge of discrimination within 300 days of the alleged discriminatory act."). The Report and Recommendation also concluded that Gibson had filed his lawsuit outside of the LEDL's one-year statute of limitations.

In his Objection to the Report and Recommendation, Gibson argued that equitable tolling should apply in his case. He explained only that he "was managing a serious medical condition, including cancer, which rendered him

functionally unable to file an EEOC charge." Finding this assertion insufficient, the district court overruled Gibson's Objection and dismissed the case with prejudice, denying leave to amend.

Gibson appealed the district court's denial of leave to amend. Denial of leave to amend is reviewed for abuse of discretion. *Butler v. S. Porter*, 999 F.3d 287, 292 (5th Cir. 2021).

Gibson sought to amend his complaint to support an equitable tolling theory. "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).

As Gibson's brief acknowledges, when seeking leave to amend to plead equitable tolling, plaintiffs must allege *specific facts* that would be included in an amended complaint. Gibson must have facts to show that 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)). As discussed above, Gibson's Objection said only that he "was managing a serious medical condition, including cancer, which rendered him functionally unable to file an EEOC charge." This is insufficient, and we find no abuse of discretion in denying leave to amend.

AFFIRMED.