

DEBORAH S. HUNT, Clerk

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE MIDDLE DISTRICT OF
) TENNESSEE
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In July 2014, Meeks filed a lawsuit against CCA and the TDOC alleging various claims under the Americans with Disabilities Act (“ADA”), 42 U.S.C. § 12101, *et seq.*; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, *et seq.*; the Rehabilitation Act of 1973, 29 U.S.C. § 701, *et seq.*; and 42 U.S.C. §§ 1981 and 1983. Meeks subsequently filed an amended complaint adding several CCA employees as defendants. The district court dismissed Meeks’s complaint sua sponte pursuant to 28 U.S.C. § 1915(e)(2), concluding that Meeks had failed to

state a claim upon which relief can be granted. Meeks appealed, and we vacated the district court's judgment in part after determining that Meeks had plausibly alleged prima facie elements of ADA retaliation by asserting that the named defendants "took adverse action against him for filing documents in his then-ongoing lawsuit alleging ADA and § 1983 violations by allegedly transferring him to a non-ADA compliant prison facility on October 24, 2012, destroying his property on June 12, 2013, and sanctioning his assault by a prison gang on June 29, 2013." *Meeks v. Tenn. Dep't of Corr.*, No. 14-6300 (6th Cir. Jan. 6, 2016) (order). We remanded for further proceedings regarding Meeks's claims of ADA retaliation against the TDOC and CCA, but affirmed the district court's judgment in all other respects.

Upon remand, CCA filed a Rule 12(b)(6) motion to partially dismiss Meeks's ADA retaliation claims, to which Meeks did not respond. The TDOC filed a separate Rule 12(b)(6) motion to dismiss Meeks's ADA retaliation claims. Both motions argued that Meeks's ADA retaliation claims were barred by the applicable statute of limitations. Meeks responded to the TDOC's motion to dismiss, asserting that his ADA retaliation claims were timely under the "continuing violations doctrine." The TDOC thereafter filed a reply, arguing that the alleged October 2012 transfer, June 2013 property destruction, and June 2013 assault were discrete events that did not constitute continuing violations. The district court concluded that Meeks's ADA retaliation claims were barred by the statute of limitations and granted both motions to dismiss.

While its Rule 12(b)(6) motion was still pending, CCA also filed a motion for summary judgment on Meeks's two remaining ADA retaliation claims that CCA officials (1) placed him in administrative segregation in August 2013 as punishment for seeking protections under the ADA and (2) sanctioned an assault on him in March 2014. CCA argued within its motion that it was entitled to judgment as a matter of law because (1) Meeks's claims were barred by the applicable statute of limitations, (2) Meeks failed to exhaust his administrative remedies, and (3) Meeks did not suffer an adverse action and the defendants did not act with a retaliatory motive. Meeks did not file a response. The magistrate judge recommended that the district court grant CCA's motion for summary judgment because Meeks failed to (1) exhaust his administrative remedies

properly and (2) establish the requisite elements of his retaliation claims. The district court adopted the magistrate judge's report and recommendation over Meeks's objections, thereby granting CCA's motion for summary judgment and dismissing Meeks's remaining retaliation claims under the ADA.

On appeal, Meeks challenges the district court's bases for granting CCA's and the TDOC's Rule 12(b)(6) motions, as well as CCA's motion for summary judgment.

We review de novo the district court's dismissal of a complaint under Rule 12(b)(6). *See Tackett v. M & G Polymers, USA, LLC*, 561 F.3d 478, 481 (6th Cir. 2009). A complaint is subject to dismissal under Rule 12(b)(6) if it fails to plead facts that plausibly state a claim for relief. *See Cataldo v. U.S. Steel Corp.*, 676 F.3d 542, 547 (6th Cir. 2012). When reviewing a Rule 12(b)(6) motion, we must confine our analysis to the pleadings and accept all well-pleaded allegations as true. *See Tackett*, 561 F.3d at 481.

The district court properly determined that Meeks's ADA retaliation claims at issue in those motions were time-barred. The ADA itself does not contain a specific statute of limitations. Thus, federal courts are required to adopt the statute of limitations of the state cause of action most closely analogous to an ADA claim. *See Wilson v. Garcia*, 471 U.S. 261, 266-68 (1985). For ADA claims arising in Tennessee, we apply the one-year statute of limitations which governs § 1983 claims. *See Williams v. Trevecca Nazarene Coll.*, No. 97-5705, 1998 WL 553029, at *1 n.2 (6th Cir. Aug. 17, 1998) (unpublished opinion). According to Meeks's complaint, the relevant events occurred on October 24, 2012 (transferred to a non-ADA compliant facility), June 12, 2013 (seizing and destroying his personal property), and June 29, 2013 (orchestrating a physical attack on him). Meeks, however, did not file his complaint in the present matter until July 2014, more than one year after each aforementioned incident had allegedly occurred. The district court also correctly rejected Meeks's "continuing violations" argument. Aside from conclusory assertions, nothing within Meeks's complaint can be construed as a plausible continuing violation of his rights that occurred within any applicable limitations period. Under these circumstances, the district court properly granted CCA's and the TDOC's Rule 12(b)(6) motions to dismiss Meeks's ADA retaliation claims.

Meeks also challenges the district court's grant of summary judgment in favor of CCA. We review a district court's grant of summary judgment de novo. *Huckaby v. Priest*, 636 F.3d 211, 216 (6th Cir. 2011). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In resolving a summary judgment motion, we view the evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Under the Prison Litigation Reform Act, prisoners must properly exhaust their available administrative remedies before bringing an action challenging prison conditions. 42 U.S.C. § 1997e(a); *see Woodford v. Ngo*, 548 U.S. 81, 93 (2006); *see also Jones v. Smith*, 266 F.3d 399, 400 (6th Cir. 2001) (applying the Prison Litigation Reform Act exhaustion requirements to a prisoner's ADA claims). "Proper exhaustion demands compliance with an agency's deadlines and other critical procedural rules because no adjudicative system can function effectively without imposing some orderly structure on the course of its proceedings." *Woodford*, 548 U.S. at 90-91.

Because the district court's exhaustion ruling arose on summary judgment, only genuine issues of material fact will preclude summary judgment. *See Northup Props., Inc. v. Chesapeake Appalachia, LLC*, 567 F.3d 767, 771 (6th Cir. 2009). Meeks did not respond to CCA's motion for summary judgment, and thus did not "set forth specific facts showing that there is a genuine issue for trial" as to exhaustion. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (quoting *First Nat'l Bank of Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 288 (1968)). The summary judgment record established that Meeks filed four grievances while incarcerated at a CCA-operated facility. Meeks's first grievance was filed in June 2013 and concerned the alleged seizure and destruction of his personal property. However, as discussed above, Meeks's ADA retaliation claim concerning the destruction of his personal property is barred by Tennessee's one-year statute of limitations. Meeks's second grievance was filed in August 2013 and related to his claim that he was placed in protective custody as punishment for seeking protections under the ADA. However, this grievance was deemed to have violated the TDOC's policy because

Meeks filed it more than seven days after the alleged incident. This determination was upheld by the grievance chairperson, the committee, the warden, and the TDOC's deputy commissioner of operations. Meeks's final two grievances concerned incidents unrelated to the present lawsuit. Thus, because CCA established that Meeks failed to exhaust his administrative remedies properly concerning his ADA retaliation claims, the district court properly granted CCA's motion for summary judgment.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

A handwritten signature in black ink, appearing to read "Deborah S. Hunt", is written over a horizontal line.

Deborah S. Hunt, Clerk

No. 17-6292

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jul 10, 2018
DEBORAH S. HUNT, Clerk

DANNY RAY MEEKS,

Plaintiff-Appellant,

$$V.$$

TENNESSEE DEPARTMENT OF CORRECTION; CORRECTION CORPORATION OF AMERICA,

Defendants-Appellees.

ORDER

BEFORE: GUY, COOK, and DONALD, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT

Rich L. Hunt

Deborah S. Hunt, Clerk

Case 1:14-cv-00092 Document 70 Filed 01/11/17 Page 1 of 3 PageID #: 370

other inmates—are time barred under the applicable one-year statute of limitations. (Docket Entry No. 39 at 3-4).

In his response to Defendant TDOC's motion to dismiss, Plaintiff argues, in sum: (1) that the Defendants' acts constitute continuous acts; and (2) that under the continuous wrong doctrine his claims are timely. (Docket Entry No. 46, Plaintiff's Response to Defendant TDOC's Motion to Dismiss, at 2-3; see also Docket Entry No. 1, Complaint, at ¶ 29).

Plaintiff filed this action on July 21, 2014. (Docket Entry No. 1, Complaint). Plaintiff's ADA claims for retaliatory acts are: TDOC's transfer of Plaintiff on October 24, 2012; the Defendants' destruction of his JVC radio/tape/CD player on June 12, 2013; and a sanctioned attack by inmates on Plaintiff on June 29, 2013. Id. at ¶¶ 32-34, 42, 44-45. The Sixth Circuit found these ADA claims to be actionable. (Docket Entry No. 18, Sixth Circuit Opinion, at *5). Plaintiff also asserts ADA retaliation claims for his placement in administrative segregation on August 9, 2013 and another inmate attack on March 13, 2014. (Docket Entry No. 1, Complaint, at ¶¶ 54-58, 74-76).

The ADA does not contain a statute of limitations and in such instances, the Court is to apply the appropriate state statute of limitations. McCormick v. Miami Univ., 693 F.3d 654, 662 (6th Cir. 2012). The Court deems Tenn. Code Ann. § 28-3-104, the one-year statute of limitations for federal civil rights actions, to be the "appropriate" state statute of limitations, as Plaintiff's retaliation claims are based on federal law prohibiting discrimination. Wright v. Tennessee, 628 F.2d 949, 951 (6th Cir. 1980); see also Johnson v. Memphis Light Gas & Water Div., 777 F.3d 838, 843 (6th Cir. 2015).

As to Plaintiff's retaliation claims for the October 24, 2012 transfer, the June 12, 2103 property destruction, and the June 29, 2013 inmate assault, these claims are time-barred under Tenn. Code Ann. § 28-3-104. As to the continuing-wrong doctrine, the Sixth Circuit has held in § 1983


retaliation transfer claims that the Nat'l R.R. Passenger Corp. v. Morgan, 536 U.S. 101 (2002) holding on untimely claims applies. Thus, even if these untimely claims "are sufficiently related to those occurring within the limitations period," Sharpe v. Cureton, 319 F.3d 259, 268 (6th Cir. 2003), those claims remain time barred. Assuming Plaintiff's claims for the August 9, 2013 administrative segregation and the March 3, 2014 assault are related claims, under Sharpe, Plaintiff's claims against Defendants TDOC and CCA for the October 24, 2012 transfer, the June 12, 2013 property destruction, and the June 29, 2013 inmate assault remain time barred.

As to Plaintiff's reference to his filing of his prior action concerning his October 24, 2012 transfer claim timely in that action, Meeks v. Schofield, 3:10-cv-545, the res judicata doctrine bars this claim. Allen v McCurry, 449 U.S. 90, 94 (1980). That claim was adjudicated on the merits as a Section 1983 claim, and the Sixth Circuit held the transfer was not proven to be an adverse action. See Meeks v. Schofield, 625 F.App'x 697, 702 (6th Cir. 2015).

For these reasons, Defendant TDOC's motion to dismiss (Docket Entry No. 40) is **GRANTED** and Defendant CCA's motion for partial dismissal (Docket Entry No. 38) is **GRANTED**. Plaintiff's claims for the October 24, 2012 transfer, the June 12, 2103 property destruction, and the June 29, 2013 inmate assault are **DISMISSED with prejudice**.

It is so **ORDERED**.

ENTERED this the 10th day of January, 2017.



WILLIAM J. HAYNES, JR.
Senior United States District Judge

theory is not applicable” because the Supreme Court has held that, when redress is sought for discrete acts of discrimination or retaliation, the continuing violation doctrine may not be invoked to allow recovery for acts that occurred outside the filing period. Docket No. 47, *citing National Railroad Passenger Corp. v. Morgan*, 122 S. Ct. 2061, 2070-71 (2002). TDOC argues that, pursuant to Supreme Court precedent, “Each discrete discriminatory act starts a new clock for filing charges alleging that act.” *Id.*, *quoting Id.* at 2072. TDOC contends that the Sixth Circuit, in *Sharpe v. Cureton*, 319 F.3d 259, 267-68 (6th Cir. 2003), extended the Supreme Court’s holding to § 1983 retaliatory transfer claims, stating, “Accordingly, *Morgan* overturns prior Sixth Circuit law addressing serial violations, i.e., plaintiffs are now precluded from establishing a continuing violation exception by proof that the alleged acts of discrimination [or retaliation] occurring prior to the limitations period are sufficiently related to those occurring within the limitations period.” *Id.*, *quoting Id.* TDOC reiterates its assertions that the continuing violation theory is inapplicable to Plaintiff’s claims, and that the alleged retaliatory transfer to a non-ADA compliant prison facility on October 24, 2012, the alleged destruction of property on June 12, 2013, and the alleged sanctioning of his assault by a prison gang on June 29, 2013 are distinct, discrete events which occurred more than one year prior to the signing and filing of Plaintiff’s July 2014 Complaint such that Plaintiff’s claims are time-barred. *Id.*

TDOC, in its Reply, also argues that, to the extent that Plaintiff argues that his transfer to South Central Correctional Facility was a “continuing wrong” during the period he was incarcerated there, Plaintiff is mistaken because, “A continuing wrong is established by continuing tortious acts, not by continual harmful effects from an original, completed act.” *Id.*, *quoting Village of Milford v. K-H Holding Corp.*, 390 F. 3d 926, 933 (6th Cir. 2004); *citing also*,

Cornelius v. Michigan Attorney Grievance Commission, 510 Fed. Appx. 404, 406 (6th Cir. 2013).

Finally, TDOC, in its Reply, notes that Plaintiff's reference to an October 23, 2012 filing refers to a complaint he filed in a different case entirely, which is completely irrelevant to the instant action. *Id.*, comparing Case No. 3:12-cv-00545 with Case No. 1:14-cv-00092. TDOC maintains that Plaintiff's October 23, 2012 filing of a complaint in a different action has no bearing on the events alleged in the instant action, nor does it effect the relevant statute of limitations in this case.

On July 21, 2014, Plaintiff, a TDOC inmate, filed this action pursuant to 42 U.S.C. § 1983 and the Americans With Disabilities Act ("ADA"). Docket No. 1. This Court reviewed Plaintiff's Complaint pursuant to 28 U.S.C. § 1915(e)(2) and dismissed it sua sponte for failure to state a claim. *See* Docket Nos. 4, 5. Plaintiff appealed to the Sixth Circuit, which affirmed the dismissal except as to Plaintiff's ADA retaliation claims against TDOC and Corrections Corporation of America ("CCA"). Docket No. 18. Specifically, the Sixth Circuit found that Plaintiff "plausibly alleged the prima facie elements of ADA retaliation by asserting that the TDOC took adverse action against him for filing documents in his then-ongoing lawsuit alleging ADA and § 1983 violations by allegedly transferring him to a non-ADA compliant prison facility on October 24, 2012, destroying his property on June 12, 2013, and sanctioning his assault by a prison gang on June 29, 2013." *Id.*

As noted, Plaintiff filed his Complaint in this action on July 21, 2014.¹ Docket No. 1. In

¹ Although Plaintiff argues in his Response that he timely-filed his Complaint on October 23, 2012 and he cites Case No. 3:12-cv-00545 as support for that proposition, the complaint filed in Case No. 3:12-cv-00545 was actually filed on April 17, 2012 (some six months before the

his Complaint, Plaintiff avers that TDOC retaliated against him for filing documents in his then-ongoing ADA and § 1983 action. *Id.* Specifically, Plaintiff avers that TDOC transferred him to a non-ADA compliant prison facility on October 24, 2012, destroyed his property on June 12, 2013, and sanctioned his assault by a prison gang on June 29, 2013. *Id.*

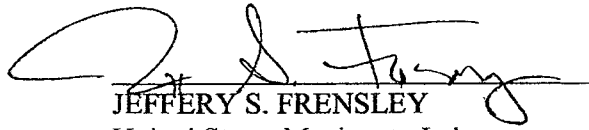
Although there is no explicit statute of limitations under the ADA, courts look to the statute of limitations set forth in the most analogous state cause of action, which, in Tennessee, is a personal injury action. *McCormick v. Miami Univ.*, 693 F.3d 654, 663 (6th Cir. 2012). Tenn. Code Ann. § 28-3-104(a) sets forth a one-year statute of limitations period for personal injury actions in Tennessee. Thus, Plaintiff's ADA retaliation claims are subject to a one-year statute of limitations.

As can be seen, the allegedly retaliatory actions of which Plaintiff complains occurred more than one year prior to the filing of the Complaint in this matter. Moreover, the actions of which Plaintiff complains (namely, the transfer to a non-ADA compliant prison facility, the destruction of his property, and the sanctioning of an assault on him by a prison gang) are three separate and distinct events, each having its own one-year statute of limitations. Because Plaintiff filed his Complaint in this action more than one year after the alleged events occurred, they are time-barred. Accordingly, the undersigned recommends that TDOC's Motion to Dismiss (Docket No. 41) be GRANTED and that TDOC be TERMINATED as a Defendant in this action.

Under Rule 72(b) of the Federal Rules of Civil Procedure, any party has fourteen (14)

allegedly retaliatory transfer of which Plaintiff complains), as Miscellaneous Case No. 3:12-mc-35. See CMECF report for Case No. 3:12-cv-00545. That case was converted to a Civil Case on May 29, 2012, and was terminated on March 31, 2014. *Id.*

days after service of this Report and Recommendation in which to file any written objections to this Recommendation with the District Court. Any party opposing said objections shall have fourteen (14) days after service of any objections filed to this Report in which to file any response to said objections. Failure to file specific objections within fourteen (14) days of service of this Report and Recommendation can constitute a waiver of further appeal of this Recommendation. *See Thomas v. Arn*, 474 U.S. 140, 106 S.Ct. 466, 88 L. Ed. 2d 435 (1985), *reh'g denied*, 474 U.S. 1111 (1986); 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72. 152 pages


JEFFERY S. FRENSLEY
United States Magistrate Judge