

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

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No. 18-14156-D

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LUZETHA WARDRICK,

Plaintiff-Appellant,

versus

WARDEN, LEE ARRENDALE STATE PRISON,  
BELINDA HOWARD,  
Lee Arrendale State Prison,  
CO2 OFCR. DODD,  
OFFICER FOUNTAIN,  
Lee Arrendale State Prison,  
LEE ARRENDALE STATE PRISON,

Defendants-Appellees.

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Appeal from the United States District Court  
for the Northern District of Georgia

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Before: WILSON, WILLIAM PRYOR and NEWSOM, Circuit Judges.

BY THE COURT:

Luzetha Wardrick, in the district court, filed a notice of appeal and a motion to proceed on appeal *in forma pauperis*. The district court determined that Wardrick was indigent and assessed the \$505.00 filing fee, pursuant to the Prison Litigation Reform Act of 1995, 28 U.S.C. § 1915. The district court then certified that this appeal is frivolous and not taken in good faith. Because the district court already has determined that Wardrick is indigent, and has instituted a partial payment plan under 28 U.S.C. § 1915(a) and (b), the only remaining issue is whether the

appeal is frivolous. *See* 28 U.S.C. § 1915(e)(2)(B)(i). This Court now finds that the appeal is frivolous, DENIES leave to proceed, and DISMISSES the appeal.

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

LUZETHA WARDRICK,

Plaintiff,

vs.

KATHY SEABOLT, et al.,

Defendants.

CIVIL ACTION FILE

NO. 2:18-CV-94-RWS

**JUDGMENT**

This action having come before the court, Honorable Richard W. Story, United States District Judge, for consideration of the magistrate judge's report and recommendation, and the court having approved and adopted the same, it is

**Ordered and Adjudged** that the action be, and the same hereby is **dismissed**.

Dated at Gainesville, Georgia, this 14<sup>th</sup> day of September, 2018.

JAMES N. HATTEN  
CLERK OF COURT

By: s/Daniel Ross  
Deputy Clerk

Prepared, Filed and Entered  
in the Clerk's Office  
September 14<sup>th</sup>, 2018  
James N. Hatten  
Clerk of Court

By s/Daniel Ross  
Deputy Clerk

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION

LUZETHA WARDRICK,	:	
Plaintiff,	:	
v.	:	CIVIL ACTION NO.
	:	2:18-CV-0094-RWS
KATHY SEABOLT, et al.,	:	
Defendants.	:	

ORDER

Presently before the Court is the Magistrate Judge's Report and Recommendation (R&R) recommending that the instant action be dismissed. [Doc. 7]. Plaintiff has filed her objections in response to the R&R. [Doc. 9].

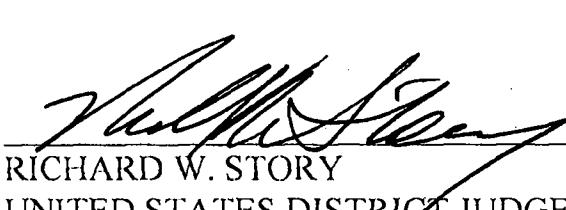
A district judge has broad discretion to accept, reject, or modify a magistrate judge's proposed findings and recommendations. United States v. Raddatz, 447 U.S. 667, 680 (1980). Pursuant to 28 U.S.C. § 636(b)(1), the Court reviews any portion of the Report and Recommendation that is the subject of a proper objection on a *de novo* basis and any non-objected portion under a "clearly erroneous" standard.

In her 42 U.S.C. § 1983 complaint, Plaintiff raises claims related to an eye injury she suffered at Lee Arrendale State Prison in 2012. In the R&R, the Magistrate Judge recommends that Plaintiff's complaint be dismissed because it was filed well after the expiration of the two-year statute of limitations applicable to § 1983 actions brought in Georgia.

Plaintiff's objections consist of a seemingly random collection of documents, which, at most, indicate that (1) Plaintiff may have had another civil action filed in Habersham County Superior Court that was dismissed on procedural grounds, and (2) Plaintiff unsuccessfully sought the assistance of counsel with regard to her claims. However, neither of those facts are sufficient to entitle Plaintiff to the extraordinary remedy of equitable tolling or otherwise save her case from dismissal.

Accordingly, the R&R, [Doc. 7], is hereby **ADOPTED** as the order of this Court, and the complaint is **DISMISSED** pursuant to 28 U.S.C. § 1915A.

**IT IS SO ORDERED**, this 17<sup>th</sup> day of Sept, 2018.



RICHARD W. STORY

UNITED STATES DISTRICT JUDGE

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
GAINESVILLE DIVISION**

LUZETHA WARDRICK, GDC ID # 1102828, Plaintiff,	:	CIVIL ACTION NO. 2:18-CV-00094-RWS-JCF
	:	
	:	
V.	:	
	:	
WARDEN KATHY SEABOLT, BELINDA HOWARD, CO2 OFFICER DODD, OFFICER FOUNTAIN, Lee Arrendale State Prison, Defendants.	:	PRISONER CIVIL ACTION 42 U.S.C. § 1983
	:	
	:	
	:	

**MAGISTRATE JUDGE'S ORDER AND  
FINAL REPORT AND RECOMMENDATION**

In response to the Court's previous order (Doc. 3), Plaintiff has filed an amended complaint (Doc. 5) and a financial affidavit seeking leave to proceed *in forma pauperis* ("IFP") (Doc. 6). This matter is ready for frivolity review.

**I. The Filing Fee**

Leave to proceed IFP is **GRANTED**. Because it appears that there are insufficient funds in Plaintiff's inmate account to pay an initial partial filing fee (*see* Doc. 6), no initial fee is required. But Title 28 U.S.C. § 1915(b)(2) obligates this Court to collect from Plaintiff the full statutory filing fee of \$350.00 as funds are deposited into Plaintiff's inmate account; the \$50.00 administrative fee is waived for a prisoner

proceeding IFP. Plaintiff's custodian will deduct money from Plaintiff's account in monthly or other incremental installments in the amount of 20% of the preceding month's income credited to the account, in each month in which the account balance exceeds \$10.00, until the \$350.00 fee is paid in full. The Warden of Plaintiff's place of incarceration or the Warden's designee **SHALL COLLECT** the monthly payments from Plaintiff's inmate account **AND REMIT** them to the Clerk of the United States District Court for the Northern District of Georgia until the \$350.00 filing fee is paid in full, as verified by separate notice from the Clerk to the Warden. The Clerk **SHALL TRANSMIT** a copy of this Order to the Warden.

## **II. The Legal Framework**

To state a claim for relief under 42 U.S.C. § 1983, a plaintiff must allege that a person acting under color of state law deprived him of a right, privilege, or immunity secured by the Constitution or laws of the United States. *Richardson v. Johnson*, 598 F.3d 734, 737 (11th Cir. 2010). Title 28 U.S.C. § 1915A requires a federal court to conduct an initial screening of a prisoner complaint seeking redress from a governmental entity, or from an officer or employee of such an entity, to determine whether the complaint (1) is frivolous, malicious, or fails to state a claim upon which relief may be granted, or (2) seeks monetary relief from a defendant who is immune

from such relief. “Dismissal of a prisoner’s complaint [under 28 U.S.C. § 1915A] as time-barred is appropriate if it appears beyond a doubt from the complaint itself that the prisoner cannot avoid a statute of limitations bar.” *Interial v. Chippi*, 427 Fed. Appx. 842, 843 (11th Cir. 2011) (citing *Hughes v. Lott*, 350 F.3d 1157, 1163 (11th Cir. 2003)).

### **III. Discussion**

In its previous order, the Court stated:

Plaintiff complains about permanent damage to her left eye she allegedly received on February 12, 2012, due to the alleged negligence of two Lee Arrendale State Prison [] officers. (See Doc. 1 at 3). But negligence is not actionable under § 1983, and her complaint appears barred by the two-year statute of limitations that applies here because she has not alleged that any event about which she sues occurred within two years of her filing her complaint.

(Doc. 3 at 3). In her amended complaint, Plaintiff has not fixed this problem. (See Doc. 5).

A two-year statute of limitations applies to § 1983 claims arising out of events occurring in Georgia. *Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003). “The statute of limitations on a section 1983 claim begins to run when the facts [that] would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights.” *Van Poyck v. McCollum*, 646 F.3d 865, 867

(11th Cir. 2011) (internal quotations omitted). It appears that all of the events about which Plaintiff complains occurred more than six years before she signed her original complaint in this action on June 4, 2018. (*See* Doc. 1). The two-year statute of limitations bars Plaintiff's claims, which are untimely by more than four years. She has offered no basis for the Court to toll the limitations period for that length of time to allow her otherwise untimely claims to proceed. *See Combs v. Nelson*, 419 Fed. Appx. 884, 886 (11th Cir. 2011) ("'Equitable tolling is a rare remedy to be applied in unusual circumstances, not a cure-all for an entirely common state of affairs.'") (quoting *Wallace v. Kato*, 549 U.S. 384, 396 (2007))).

**IV. Conclusion**

**IT IS THEREFORE RECOMMENDED** that Plaintiff's complaint, as amended (Docs. 1, 5), be **DISMISSED** as time-barred. *See* 28 U.S.C. § 1915A.

The Clerk is **DIRECTED** to withdraw the reference to the Magistrate Judge.

**SO ORDERED and RECOMMENDED** this 27th day of July, 2018.

/s/ J. Clay Fuller  
J. Clay Fuller  
United States Magistrate Judge

**Additional material  
from this filing is  
available in the  
Clerk's Office.**