United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

Submitted March 26, 2020*
Decided May 4, 2020

Before

DAVID F. HAMILTON, Circuit Judge
MICHAEL B. BRENNAN, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge

No. 19-1434

MARIA M. ROSAS,
Plaintiff-Appellant,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

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*We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

v. No. 18 C 5340

ADVOCATE CHRIST MEDICAL CENTER, et al.,
Defendants-Appellees.

Gary Feinerman,
Judge.

ORDER

Maria Rosas contends that a state agency and others wrongfully institutionalized her ten years ago. The district court correctly rules that the agency is not a "person" subject to suit and the two-year statute of limitations blocks her claims, so we affirm.

This case concerns Rosas's two mental health institutionalizations—one in 2009 and another in 2010. (In reviewing her claims, we accept as true her well-pleaded allegations and draw all reasonable inferences in her favor. *See, e.g., Anicich v. Home Depot U.S.A., Inc.*, 852 F.3d 643, 648 (7th Cir. 2017)). She alleges that in 2009, a neighbor reported to the Chicago police that she had been revving her car engine and throwing rocks at cars and houses. Police

arrived and found Rosas in her car, revving the engine, and refusing to leave. Rosas says she was merely trying to warm her car and that when police arrived she feared for her safety and did not want to get out. She denies that she was throwing rocks.

Her first hospitalization occurred next. The police transported Rosas to a medical center, where a doctor diagnosed her with "acute onset psychosis" and "delusional behavior." Rosas was soon transferred to the Madden Mental Health Center, a state psychiatric hospital. She objected to staying there and told staff that she wanted to go home. Medical staff mistreated and over-medicated her, she also alleges. Madden discharged her the next month.

Rosas's second hospitalization occurred the following year after a similar trajectory. Rosas was seen vandalizing cars at an automotive body shop. When she returned to that shop a few days later, the owner called the police. The police officer reported (falsely, Rosas alleges) that she admitted to having mental health issues. She was taken to a hospital

briefly, and then, as in 2009, to Madden. There, she refused to sign a "consent for services" but remained there for a week. Rosas alleges that, because of a "conspiracy" to commit her without justification, her experience at Madden exacerbated her depression and "heightened [her] fear of doctors."

Six years later, in 2016, Rosas (with her daughter's help) began investigating her hospitalizations to prepare for this lawsuit. She received her medical and police records that police officers, along with other "known and unknown" co-conspirators, agreed to "exaggerate and fabricate allegations against her and thereby deprive her of her constitutional rights." She further alleges that the staff at the hospitals failed to prevent this abuse. At the outset of the suit, Rosas asked the district court to recruit counsel. She listed 26 calls that she made to lawyers, and their responses. Her submission showed that she did not follow-up on the responses. For instance, Legal Aid Chicago invited her to attend one of its walk-in clinics, but she did not; after Loevy & Loevy said that it did not

have native Spanish speakers, she did not tell the firm that she speaks some English; and after Miner, Barnhill & Galland said that it would call her back, she did not seek a return call. The court denied her motion to recruit counsel, concluding that Rosas had not shown an inability to afford counsel or a reasonable effort to obtain counsel on her own.

The district court later granted defendants' motions to dismiss. It ruled that Madden Health Center was part of a state agency (the Illinois Department of Human Services), and thus was not a "person" under 42 U.S.C. §§ 1983, 1985, or 1986. *Will v. Michigan Dept. of State Police*, 491 U.S. 58, 71. The claims against the other defendants could not proceed, the court explained, because the statute of limitations blocked them. The statute of limitations for claims under § 1986, which is set forth in the statute itself, is one year; the limitations period for §§ 1983 and 1985 claims, borrowed from Illinois law, is two years. *See Lewis v. City of Chicago*, 914 F.3d 472, 477 (7th Cir. 2019) (§ 1983); *Small v. Chao*, 398 F.3d 894, 898 (7th Cir. 2005) (§ 1985). The court

rejected Rosas's tolling argument: she argued that, until she obtained medical records in 2017, she did not know the cause of her injuries. The court explained that Rosas did not need those records to know the cause of her injuries, and in any case she had not offered a reason she could not have obtained them earlier.

On appeal, Rosas first argues that the district court abused its discretion when denying her motion to recruit counsel, but we disagree. Rosas asked for counsel before the defendants had been served. Until defendants have responded to a complaint, the district court faces "the difficulty of accurately evaluating the need for counsel." *Mapes v. Indiana*, 932 F.3d 968, 971-72 (7th Cir. 2019). Furthermore, "[a] litigant's good faith ... effort to obtain counsel is a necessary condition to the provision of judicial assistance to recruit a lawyer." *Pickett v. Chi. Transit Auth.*, 930 F.3d 869, 871 (7th Cir. 2019); *see also Pruitt v. Mote*, 503 F.3d 647, 654 (7th Cir. 2007) (en banc). The district court here reasonably concluded that Rosas to show that she made such an

effort because she did not follow up on any of her calls, including the potentially promising leads.

Without disputing that the longest limitations is two years, Rosas next argues that the limitations period should be tolled for two reasons. Both are unavailing. First, she contends that, because of her mental illness, she could not "manage ... her estate" (the standing for disability under Illinois' guardianship statute, 5 ILCS 70/1.06), and she did not know that she could sue until 2018. But she did not raise this argument in the district court, so she has forfeited the contention. *See Scheidler v. Indiana*, 914 F.3d 535, 540, 544 (7th Cir. 2019).

Second, she argues that she did not discover her injuries until 2017—when she (with her daughter's help) obtained her records. But a claim accrues "when a plaintiff knows the fact and the cause of injury." *Amin Ijbara Equity Corp. v. Vill. Of Oak Lawn*, 860 F.3d 489, 493 (7th Cir. 2017). And Rosas alleges in her complaint that she knew in 2009 and 2010 that Madden and its staff had civilly confined her without adequate justification. Thus,

Rosas did not need to obtain any records to know of her alleged injury in 2010, which means that the two-year limitations period ended by 2012. Moreover, even if she need those records to learn the identities of defendants, she and her daughter did not begin to ask for them until more than six years after 2010, by which time the limitations period had already ended four years earlier. And she did not present to the district court a reason why she or her daughter was prevented from seeking those record earlier. *See Rosado v. Gonzalez*, 832 F.3d 714, 716-17 (7th Cir. 2016). Finally, any asserted ignorance of the legal significance of what she knew back in 2010 does not justify equitably tolling the statute of limitations. *See Tobey v. Chibucos*, 890 F.3d 634, 646 (7th Cir. 2018). Thus, the claims are time-barred. See *Amin Ijbara Equity Corp. v. Vill. Of Oak Lawn*, 860 F.3d at 493; *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009) (statute of limitations defense blocks a claim where "the relevant dates are set forth unambiguously in the complaint"). In addition, in her reply brief, Rosas argues for the first time that

she was in fact still disabled until 2017, but she forfeited that point by failing to raise it earlier.

Rosas does not challenge the district court's conclusion that Madden is not a "person" capable of being sued under §§ 1983, 1985, or 1986, so we need not address that part of the court's order.

AFFIRMED

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
Eastern Division

MARIA M. ROSAS
Plaintiff,
vs.

18 C 5340
Judge Gary Feinerman

ADVOCATE CHRIST MEDICAL CENTER, MacNEAL HOSPITAL, MADDEN MENTAL HEALTH CENTER, and CHICAGO POLICE DEPARTMENT.
Defendants.

ORDER

Defendants' motion to dismiss [26][29][33][63] are granted for the reasons set forth below. This case is dismissed with prejudice. The 3/13/2019 status hearing [71] is stricken. Enter judgment order. Civil case closed.

STATEMENT

In this suit under 42 U.S.C. §§ 1983, 1985, and 1986. Maria Rosas alleges that Defendants were responsible for her wrongful mental health-related

commitments in 2009 and 2010. Doc. 15. Rosas was discharged from her second commitment in June 2010. *Id.* at ¶ 78. She did not file this suit until August 2018. Doc. 1. Anticipating a statute of limitations problem, Rosas alleges that did not realize that the commitments may have violated §§ 1983, 1985, and 1986 until late 2016 or early 2017, when she began requesting and obtaining relevant police department, fire department, and medical records. Doc. 15 at ¶¶ 5-7, 10, 34-78.

As Defendant Madden argues and Rosas admits, Madden is part of the Illinois Department of Human Services, a state agency. Doc. 29 at 2 (citing 20 ILCS 1705/4(a)). Doc. 55 at ¶ 9 (admitting that "Madden" ... [is] a state hospital supervised by the Illinois Department of Human Services") (emphasis omitted). Because "a state agency[] is not a 'person' that can be sued under" § 1983, *Owens v. Godinez*, 860 F.3d 434, 438 (7th Cir. 2017), or under §§ 1985 or 1986, *see Small v. Chao*, 398 F.3d 894, 898 (7th Cir. 2005), Rosas's claims against Madden fail as a matter of law. *See Vt. Agency of Nat. Res. v. United*

States ex rel. Stevens, 529 U.S. 765, 779 (2000) ("We ... routinely address[] *before* the question whether the Eleventh Amendment forbids a particular statutory cause of action to be asserted against States, the question whether the statute *permits* the cause of action it creates to be asserted against States ... ").

Rosa's [sic] claims against the other defendants (Chicago Police Department, Advocate Christ Medical Center, and MacNeal Hospital) fail on limitations grounds. (Advocate and MacNeal raised the limitations issue in their motions to dismiss, Doc. 33 at 4-8; Doc. 63 at 3, and the Chicago Police Department was permitted at the motion hearing. Doc. 71, to adopt their argument.) The limitations period is two years for Rosa's [sic] §§ 1983 and 1985 claims, *see Lewis v. City of Chicago*, 914 F.3d 472, 478 (7th Cir. 2019); *Small,* 398 F.3d at 898, and one year for her § 1986 claim, see 42 U.S.C. § 1986. A claim under those statutes "accrues 'when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and

obtain relief.'" *Amin Ijbara Equity Corp. v. Vill. Of Oak Lawn*, 860 F.3d 489, 493 (7th Cir. 2017) (quoting *Wallace v. Kato*, 549 U.S. 384, 388 (2007)). For Rosas, that was (at the latest) in June 2010, when she was released from her second commitment. It follows that the limitations periods expired in June 2011 for her § 1986 claim and June 2012 for her §§ 1983 and 1985 claims, years before she filed this suit.

Rosas argues that the statutes of limitations do not bar her claims because she did not discover the true cause of her injuries until obtaining copies of her medical records and relevant police department and fire department reports in "Dec. 2017/Jan. 2018." Doc. 54 at ¶ 20; Doc. 67 at ¶ 17. That argument fails to persuade. Rosas's claims accrued when she "*should have known* of [her] injury." *Sellers v. Perry*, 80 F.3d 243, 246 (7th Cir. 1996); *see also Clark v. City of Braidwood*, 318 F.3d 764, 767 (7th Cir. 2003) ("[T]he limitations period is tolled ... if [the plaintiff] cannot obtain information necessary to file suit."). That occurred at the latest

when she was discharged from her commitments; she did not need records related to those commitments to know that she had been committed and her experiences while committed. Doc. 54 at ¶ 20 (Rosas noting that in 2016 Rosas "remembered how medical personnel [in 2009 and 2010] kept telling her that she had to be" at Madden); Doc. 67 at ¶ 17 (same); see *Evans v. Pokson*, 603 F.3d 362, 363 (7th Cir. 2010) (explaining that a claim for unconstitutional seizure accrues at the time of the seizure, not after further details are learned or develop). Moreover, even assuming (incorrectly) that Rosas's claims would have accrued until she reasonably could have obtained copies of the relevant records and reports, she has not explained why she could not have obtained those materials shortly after her discharges in 2009 and 2010. *See Clark*, 318 F.3d at 767 (holding that the discovery rule applies only where "a reasonable [plaintiff] would not have discovered the injury earlier"); *Cathedral of Joy Baptist Church v. Vill. of Hazel Crest*, 22 F.3d 713, 717 (7th Cir. 1994) (holding that

the plaintiff must "exercise[e] [sic] reasonable diligence" to successfully invoke the discovery rule).

Accordingly, because Rosas's claims accrued upon or shortly after her releases from 2009 and 2010 commitments, her claims are time-barred. Dismissal at the pleading stage on this ground is appropriate because the limitations bar are plain from the complaint. *See Collins v. Vill. of Palatine*, 875 F.3d 839, 842 (7th Cir. 2017); *Chi. Bldg. Design, P.C. v. Mongolian House, Inc.*, 770 F.3d 610, 613 (7th Cir. 2014).

Given the foregoing, there is no need to address Defendants' other grounds for dismissal. And because the limitations bars (which apply with equal force to the claims against Madden) could not be cured with repleading, the dismissal is with prejudice. *See Cardenas v. City of Chicago*, 646 F.3d 1001, 1008 (7th Cir. 2001) (explaining that dismissal with prejudice is "appropriate" after the statute of limitations has expired).

March 7, 2019 _____/s/_____

United States District Judge

United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

September 10, 2020

Before

DAVID F. HAMILTON, Circuit Judge
MICHAEL B. BRENNAN, Circuit Judge
MICHAEL Y. SCUDDER, Circuit Judge

No. 19-1434

IRMA ROSAS,

Plaintiff-Appellant,

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
v. No. 1:18-cv-5340

ADVOCATE HEALTH AND HOSPITALS CORPORATION, doing business as ADVOCATE CHRIST MEDICAL CENTER, et al.,

Defendants-Appellees.

Gary Feinerman,
Judge.

ORDER

Plaintiff-appellant filed a petition for rehearing and rehearing *en banc* on May 18, 2020. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.