No. 16-2630

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHNNY TIPPINS,)
)
Plaintiff-Appellant,)
)
v.)
) ORDER
NWI-1, INC., et al.,)
)
Defendants-Appellees,)
)
FRUIT OF THE LOOM)
)
Interested Party-Appellee.)

Before: CLAY, Circuit Judge.

Johnny Tippins, a Michigan prisoner proceeding pro se, has filed a third motion to recall the mandate in his appeal from the district court's dismissal of his complaint against NWI-1, Inc., LePetomane II, Inc., LePetomane III, Inc., and Velsicol Chemical, LLC.

In 2015, Tippins filed a complaint against the defendants in the Circuit Court of Gratiot County, Michigan, alleging that he was injured as a result of drinking contaminated water while incarcerated in a state prison in St. Louis, Michigan from 2004 to 2007. The defendants removed the action to the United States District Court for the Eastern District of Michigan and added Fruit of the Loom, Inc., as an interested party. After the case was removed, the district court dismissed the complaint as untimely. Tippins appealed, and this court affirmed the district court's judgment. *Tippins v. NWI-1, Inc.*, No. 16-2630 (6th Cir. Oct. 11, 2017) (order). Tippins now moves this court for a third time to recall the mandate.

"Although courts of appeals have the inherent authority to recall a mandate, such power should only be exercised in extraordinary circumstances because of the profound interests in repose attached to a court of appeals mandate." *United States v. Saikaly*, 424 F.3d 514, 517 (6th

Cir. 2005) (order). "The sparing use of the power demonstrates it is one of last resort, to be held in reserve against grave, unforeseen contingencies." *Calderon v. Thompson*, 523 U.S. 538, 550 (1998). While Tippins argues that he seeks for this court to correct a clerical mistake or clarify an outstanding mandate because he erroneously included LePetomane II, Inc. and LePetomane III, Inc. as defendants in his complaint, he is merely attempting to reargue our previous determination that the district court had jurisdiction over his complaint. Moreover, amending a complaint to remove a defendant is not the correction of a clerical error. *See United States v. Robinson*, 368 F.3d 653, 656 (6th Cir. 2004) (explaining, in the criminal context, that "a clerical error must not be one of judgment or even of misidentification, but merely of recitation, of the sort that a clerk or amanuensis might commit, mechanical in nature" (citation omitted)). Finally, Tippins's argument that this court did not correctly apply Michigan Compiled Laws § 600.5855 is merely an attempt to reargue the determination that his complaint was untimely, which is not a basis for recalling the mandate. Accordingly, Tippins has failed to demonstrate extraordinary circumstances warranting recalling the mandate.

We also now enjoin Tippins from future filings in this case. "There is nothing unusual about imposing prefiling restrictions in matters with a history of repetitive or vexatious litigation." *Feathers v. Chevron U.S.A., Inc.*, 141 F.3d 264, 269 (6th Cir. 1998). And we may, facing this type of litigation, "place[] limits on a reasonably defined category of litigation because of a recognized pattern of repetitive, frivolous, or vexatious cases within that category." *Id.* Tippins has displayed a pattern of repetitive, frivolous, and vexatious litigation in this court related to his assertion that he was injured as a result of drinking contaminated water while he was incarcerated at the St. Louis Correctional Facility. To date, Tippins has filed a petition for rehearing and three motions to recall the mandate in this case. And in Case No. 17-1508, which also concerns injuries that Tippins allegedly sustained as a result of drinking contaminated water at the St. Louis Correctional Facility, he has filed a petition for rehearing and two motions to recall the mandate. Finally, the district court has enjoined Tippins from future filings without court permission regarding his injuries from drinking contaminated water. *Tippins v. Caruso*, No. 2:14-cv-10956 (E.D. Mich. Feb. 16, 2017) (order).

APPENDIX

B

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 16-2630

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

JOHNNY TIPPINS,

Plaintiff-Appellant,

v.

NWI-1, INC., et al.,

Defendants-Appellees,

FRUIT OF THE LOOM,

Interested Party-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF MICHIGAN

ORDER

Before: SUHRHEINRICH, MOORE, and CLAY, Circuit Judges.

Johnny Tippins, a Michigan prisoner proceeding *pro se*, appeals the district court's dismissal of his complaint against NWI-1, Inc., LePetomane II, Inc., LePetomane III, Inc., and Velsicol Chemical, LLC. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

On October 23, 2015, Tippins filed a complaint against the defendants in the Circuit Court of Gratiot County, Michigan, alleging that he was injured as a result of drinking contaminated water while incarcerated in a state prison in St. Louis, Michigan from 2004–2007. The defendants removed the action to the United States District Court for the Eastern District of Michigan and added Fruit of the Loom, Inc. as an interested party. After the case was removed to the district court, the district court granted the defendants' motions to dismiss and entered

judgment in their favor. On appeal, Tippins argues that the district court erred in dismissing his claims as untimely. Because Tippins failed to raise claims under the Comprehensive Environmental Response, Compensation, and Liability Act in his complaint before the district court, we will not review them for the first time on appeal. *See United States v. Ellison*, 462 F.3d 557, 560 (6th Cir. 2006).

We review de novo a district court's dismissal of a complaint on statute of limitations grounds. *Banks v. City of Whitehall*, 344 F.3d 550, 553 (6th Cir. 2003). Pursuant to Michigan law there is a three-year statute of limitations for personal injury claims and claims brought under the Michigan Natural Resources and Environmental Protection Act. Michigan Compiled Laws §§ 600.5805(10) and 324.20140(1)(c). "Under Michigan's 'discovery rule,' a plaintiff's claim accrues when the plaintiff discovers, or through the exercise of reasonable diligence should have discovered, (1) an injury and (2) the causal connection between the injury and the defendant's breach." *Vill. of Milford v. K-H Holding Corp.*, 390 F.3d 926, 932 (6th Cir. 2004) (citing *Moll v. Abbott Labs.*, 506 N.W.2d 816, 824 (Mich. 1993)). While Tippins claims that he did not know of his injury until 2014, when he discovered that the prison drinking water contained the p-CBSA contaminant, in his complaint he alleged that he was diagnosed with Graves' disease in 2007 and that, while incarcerated from 2004–2007, he suffered stomach pain, headaches, throat pain, nausea, and fatigue. Because Tippins knew of his injury by 2007 at the latest, the district court did not err in determining that his claims are untimely.

Accordingly, we **AFFIRM** the judgment of the district court.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

APPENDIX

C

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

No: 16-2630

Filed: November 27, 2017

JOHNNY TIPPINS

Plaintiff - Appellant

v.

NWI-1, INC., LEPETOMANE II, INC., as Trustee of the Fruit of the Loom Successor Liquidation Trust; LEPETOMANE III, INC., as Trustee of the Fruit of the Loom Custodial Trust; VELSICOL CHEMICAL, LLC, fka Velsicol Chemical Corporation

Defendants - Appellees

FRUIT OF THE LOOM

Interested Party - Appellee

MANDATE

Pursuant to the court's disposition that was filed 10/11/2017 the mandate for this case hereby issues today.

COSTS: None