NO. 20-

IN THE

Supreme Court of the United States

JOSPEPH W. LATTISAW,

Petitioner,

v.

DISTRICT OF COLUMBIA,

Respondent.

MOTION FOR LEAVE TO FILE OUT OF TIME

Per Rule 21, Joseph W. Lattisaw, moves this court to file an out of time petition. According to directions from this honorable Court, the writ of certiorari was due on or before June 26, 2020. Despite Petitioner's best efforts, he was unable to meet the deadline due to underlying conditions related to COVID-19. In addition, the logistics of preparing the paper filings proved more daunting than anticipated, and the filing packages were not fully assembled by the filing deadline of June 26, 2020. The Petitioner does not believe that any prejudice will result due to the delay.

Unfortunately, I have been unable to reach the opposing party to ascertain whether the opposing party has an objection.

Date: September 2, 2020

Respectfully submitted,

Joseph W. Lattisaw, *Pro Se*
1621 University Blvd., West
Silver Spring, MD 20902-3641
jlattisaw@verizon.net
(240)418-6194

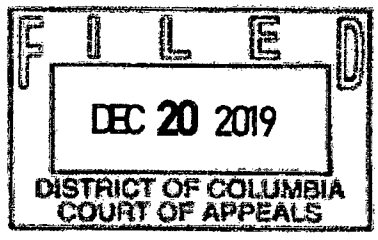
DISTRICT OF COLUMBIA COURT OF APPEALS

No. 18-CV-97

JOSEPH W. LATTISAW, APPELLANT,

v.

DISTRICT OF COLUMBIA, APPELLEE.



Appeal from the Superior Court
of the District of Columbia
(CAB-8677-16)

(Hon. Elizabeth Carroll Wingo, Trial Judge)

(Submitted October 24, 2019 Decided December 20, 2019)

Before FISHER, EASTERLY, and MCLEESE, *Associate Judges*.

MEMORANDUM OPINION AND JUDGMENT

PER CURIAM: Appellant Joseph W. Lattisaw sued the District of Columbia, raising numerous claims. The trial court dismissed the complaint as barred by the statute of limitations. Mr. Lattisaw challenges that ruling. We affirm.

I.

Mr. Lattisaw, a former Metropolitan Police Department (MPD) officer, alleges that in 2002 he was the victim of sexual harassment by an MPD supervisor. He further alleges that an internal report he filed was later altered to characterize him as the initiator of the harassment and was publicly posted at the station where he worked.

Mr. Lattisaw filed numerous administrative and judicial complaints against MPD based on this incident, including before the District of Columbia Office of Human Rights, the Equal Employment Opportunity Commission, federal district court, and the Superior Court. Mr. Lattisaw apparently did not obtain relief in any of those proceedings.

In 2006, the Police and Firefighters' Retirement and Relief Board upheld MPD's recommendation that Mr. Lattisaw take disability retirement. Mr. Lattisaw was given a pension reflecting a disability not incurred in the performance of duty (non-POD). The award was based on a determination that Mr. Lattisaw had experienced unusual depression and anxiety following the 2002 incident, which had not subsided after therapy and medication and rendered Mr. Lattisaw unable to return to full duty. This court affirmed the Board's decision in 2010.

This court also affirmed the dismissal of Mr. Lattisaw's first complaint in Superior Court, for failure to exhaust administrative remedies. *Lattisaw v. District of Columbia*, 905 A.2d 790, 794-95 (D.C. 2006). The court held that the complaint contained claims against MPD as to which Mr. Lattisaw had failed to file a grievance, and that the failure to exhaust procedures available within MPD barred the civil suit from moving forward. *Id.*

In 2013, Mr. Lattisaw filed a lawsuit against MPD in federal district court, raising federal civil-rights claims and claims under District of Columbia law. *Lattisaw v. District of Columbia*, 118 F. Supp. 3d 142, 145 (D.D.C. 2015). The district court dismissed the federal claims as time-barred and for failure to state a plausible claim, and declined to exercise jurisdiction over the D.C. claims. *Id.* at 163. The D.C. Circuit affirmed. *Lattisaw v. District of Columbia*, 672 F. App'x 22, 23 (D.C. Cir. 2016) (per curiam).

In 2016, Mr. Lattisaw filed the current action in Superior Court. In his complaint, Mr. Lattisaw alleges violations of the D.C. Human Rights Act, intentional and negligent infliction of emotional distress, defamation, and violations of the Workers' Compensation Act and the Retirement and Disability Act. The trial court dismissed the complaint on the ground that the claims were time-barred under the applicable statutes of limitations.

II.

A trial court may dismiss a claim if "the claim is time-barred on the face of the complaint." *Logan v. LaSalle Bank Nat'l Ass'n*, 80 A.3d 1014, 1020 (D.C. 2013). This court reviews de novo orders dismissing a complaint as time barred. *Waugh v. MedStar Georgetown Univ. Hosp.*, 203 A.3d 784, 786 (D.C. 2019). We find no error in the trial court's dismissal of the complaint.

The trial court ruled that Mr. Lattisaw's claims were subject to statutes of limitations ranging from one to three years. We do not understand Mr. Lattisaw to

dispute that ruling. The actions by the District of Columbia that Mr. Lattisaw alleges in the complaint almost all occurred between 2002 and 2006, from the time of the alleged sexual harassment until Mr. Lattisaw's retirement from MPD. Mr. Lattisaw's 2016 suit raising claims based on those actions thus would appear to be time barred. The complaint does refer to certain events occurring after 2006, but the only specific such events mentioned relate to actions of administrative agencies or to the litigation of Mr. Lattisaw's prior judicial or administrative complaints. Mr. Lattisaw cannot in the current action raise claims that rest on a challenge to the resolution of those separate earlier proceedings. *See generally, e.g.*, *Molovinsky v. Monterey Coop., Inc.*, 689 A.2d 531, 533 (D.C. 1996) ("Under the doctrine of *res judicata* or claim preclusion, a final judgment on the merits embodies all of a party's rights arising out of the transaction involved, and precludes relitigation in a subsequent proceeding of all issues arising out of the same cause of action between the same parties or their privies, whether or not the issues were raised in the first trial.") (citation and internal quotation marks omitted).

We are not persuaded by Mr. Lattisaw's challenges to the trial court's dismissal order. First, Mr. Lattisaw appears to argue that the statutes of limitations were tolled while he sought various forms of judicial and administrative relief between his retirement in 2006 and the filing of his Superior Court complaint in 2016. We see no basis for relief on this ground.

Although in some circumstances the filing of an administrative or judicial complaint can toll the running of a statute of limitations, it is not generally true that the filing of such complaints tolls the statute of limitations as to all possible claims. *See Carter v. District of Columbia*, 980 A.2d 1217, 1223 (D.C. 2009) ("It would make no sense for the [agency] complaint to toll the running of the statute with respect to claims not asserted in that complaint.").

Mr. Lattisaw has not attempted to explain specifically how his various administrative and judicial complaints operated to toll his particular claims for a sufficient period of time to prevent the statute of limitations from running as to those claims. We see no basis for concluding that such tolling occurred. For example, even assuming that the federal action operated to toll the statute of limitations as to all of Mr. Lattisaw's claims, that action was not filed until 2013. Given that the events at issue occurred from 2002 to 2006, and given the relative brevity of the applicable statutes of limitation, the statutes of limitations would have run long before 2013.

Second, Mr. Lattisaw attempts to rely on the doctrine of "relation back." That doctrine does not aid Mr. Lattisaw. Under that doctrine, amendments to pleadings may in certain circumstances "relate[] back to the date of the original pleading" in the same lawsuit. Super. Ct. Civ. R. 15(c). "Rule 15(c) simply does not apply where . . . the party bringing suit did not seek to amend or supplement [the] original pleading, but rather[] opted to file an entirely new complaint at a subsequent date." *Stewart-Veal v. District of Columbia*, 896 A.2d 232, 237 (D.C. 2006) (brackets and internal quotation marks omitted). Thus, Mr. Lattisaw's prior lawsuits cannot serve as a basis for treating as timely his claims in the current lawsuit.

Third, Mr. Lattisaw argues that he did not deliberately delay the filing of this lawsuit, and that dismissal of a lawsuit with prejudice is not warranted under Super. Ct. Civ. R. 41(b) in the absence of such deliberate delay. The trial court in this case did not dismiss the complaint under Rule 41(b), which relates to dismissal based on a failure to follow court rules. Rather, the trial court dismissed the action on the separate ground that Mr. Lattisaw waited too long before filing this suit and his claims are therefore barred by the applicable statutes of limitations.

Fourth, Mr. Lattisaw refers in passing to the doctrine of laches. That doctrine is not applicable, however, where a statute of limitations applies. *Naccache v. Taylor*, 72 A.3d 149, 155-56 (D.C. 2013). Because Mr. Lattisaw has not disputed the trial court's conclusion that his claims are governed by statutes of limitations, we have no occasion to consider the doctrine of laches.

Fifth, Mr. Lattisaw makes numerous arguments relating to the underlying merits of his claims. Because we uphold the trial court's ruling that Mr. Lattisaw's suit was filed too late, we are unable to consider Mr. Lattisaw's arguments as to whether those claims would have had merit had they been brought earlier.

Sixth, Mr. Lattisaw raises claims that were not included in the complaint and arguments on appeal that were not properly presented to the trial court. "Generally, issues not raised in the trial court will not be considered on appeal." *Akassy v. William Penn Apts. Ltd. P'ship*, 891 A.2d 291, 302 (D.C. 2006). We therefore do not consider such claims and arguments.

Finally, Mr. Lattisaw argues that his pro se status should have entitled him to more leniency in the trial court. This court has held that "in matters involving pleadings, service of process, and timeliness of filings, *pro se* litigants are not always held to the same standards as are applied to lawyers." *Padou v. District of Columbia*, 998 A.2d 286, 292 (D.C. 2010) (brackets and internal quotation marks omitted).

Still, "the general principle is that such a litigant can expect no special treatment from the court." *Id.* (brackets and internal quotation marks omitted). The record before us shows that Mr. Lattisaw had a fair opportunity to present his claims to the trial court and that the trial court showed proper consideration for Mr. Lattisaw's lack of legal training.

For the foregoing reasons, the judgment of the Superior Court is

Affirmed.

ENTERED BY DIRECTION OF THE COURT:

JULIO A. CASTILLO
Clerk of the Court

Copies to:

Honorable Elizabeth Carroll Wingo

Director, Civil Division
QMU

Joseph W. Lattisaw
1621 University Boulevard West
Silver Spring, MD 20902

Copies e-served to:

Loren L. AliKhan, Esquire
Solicitor General for DC

No. 18-CV-97

Copies e-served to:

Lucy Pittman, Esquire

Loren AliKhan, Esquire
Solicitor General – DC

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District of Columbia
Court of Appeals

No. 18-CV-97

JOSEPH W. LATTISAW,

Appellant,

v. **CAB8677-16**

DISTRICT OF COLUMBIA,

Appellee.

BEFORE: Blackburne-Rigsby, Chief Judge; Glickman, Fisher, * Thompson, Beckwith, Easterly, * McLeese, * and Deahl, Associate Judges.

ORDER

On consideration of appellant's motion for leave to file the lodged petition for rehearing or rehearing *en banc*, it is

ORDERED that appellant's motion for leave to file the lodged petition for rehearing or rehearing *en banc* is granted, and the Clerk shall file appellant's petition for rehearing or rehearing *en banc*. It is

FURTHER ORDERED by the merits division* that the petition for rehearing is denied; and it appearing that no judge of this court has called for a vote on the petition for rehearing *en banc*, it is

FURTHER ORDERED that the petition for rehearing *en banc* is denied.

PER CURIAM

Copies to:

Honorable Elizabeth C. Wingo

Director, Civil Division
Quality Management Unit

Joseph Lattisaw
1621 University Blvd. West
Silver Spring, MD 20902

No. 18-CV-97

Copies e-served to:

Lucy Pittman, Esquire

Loren AliKhan, Esquire
Solicitor General – DC

pii

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