

UNITED STATES COURT OF APPEALS

For the Seventh Circuit

Chicago, Illinois 60604

May 17, 2023

Before:

Frank H. Easterbrook, *Circuit Judge*

Amy J. St. Eve, *Circuit Judge*

Thomas L. Kirsch II, *Circuit Judge*

STUART J. SHICKS

Plaintiff-Appellant,

No. 22-3297

V.

INDIANA DEPT OF CHILD

SERVICES, et al.,

Defendants-Appellees,

]Appeal from the United

]States District Court for

]the Northern District of

]Indiana, Fort Wayne Division.

]No. 1:21-cv-00224-DRL

]

]Damon R. Leichty, Judge

ORDER

On consideration of the papers filed in this appeal and review of the short record,

IT IS ORDERED that this appeal is DISMISSED for lack of jurisdiction.

Rule 4(a) of the Federal Rules of Appellate Procedure requires that a notice of appeal in a civil case be filed in the district court within 30 days of the entry of the judgment or order appealed. In this case judgment was entered on November 22, 2022, and the notice of appeal was filed on December 28, 2022, six days late.

On January 17, 2023, plaintiff-appellant Stuart Shicks filed a motion to extend the time to appeal. In his motion plaintiff-appellant Shicks says that clerk should back date filings to the day he mailed it. But, as the district court noted, the mailbox rule applies only to prisoner filings; no such rule exists for non-prisoners, like plaintiff-appellant Stuart Shicks. The court went on to determine that plaintiff-appellant Stuart Shicks “has not shown good cause or

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excusable neglect.” We conclude that the district court did not abuse its discretion in denying plaintiff-appellant Shicks’ request to extend the appeal period. *See Sherman v. Quinn*, 668 F.3d 421, 425 (7th Cir. 2012) (a district court’s determination whether to extend the time to appeal is reviewed for an abuse of discretion).

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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION

STUART JON SHICKS
Plaintiff,

v.
DCS et al.

Defendants,

CAUSE NO: 1:21-CV-224DRL

OPINION AND ORDER

Stuart Jon Shicks sues the Indiana Department of Child Services and various state actors because DCS removed his child from former spouses home on April 13, 2016. He advances a 42 U.S.C. § 1983 claim, albeit based on a deprivation of unspecified constitutional rights. The defendants request summary judgement on multiple grounds. Because the statute of limitations plainly bars Mr Shicks claim, the court grants the motion.

BACKGROUND

In April 2016, DCS began investigating claims that Mr. Shicks former spouse abused and neglected their minor son. She was the child's primary guardian at the time. DCS removed the child from her home on April 13, 2016. The child has remained in foster care since the removal. DCS Family Case Manager Karen Karrer determined that the allegations supporting removal were substantiated. DCS attorney Matthew A. Skeens filed a verified petition alleging a child in need of services (CHINS). On April 15, 2016, the Allen Superior Court found probable cause that Mr. Shicks son was a qualified CHINS. The court determined that foster care was appropriate and ordered Mr. Shicks to complete drug screening and supply DCS with various information. Mr. Shicks was present for this hearing. On May 18, 2016, the Allen Superior Court ruled that Mr. Shicks son was a CHINS. On January 3, 2017 the court determined that termination of parental rights was in the child's best interests. The court found that Mr Shicks had failed to maintain communication with DCS and had not visited his son regularly.

The Allen Superior Court authorized DCS to file a petition to terminate Mr. Shicks parental rights on March 2, 2020. Mr. Shicks whereabouts were then unknown. He finally contacted DCS in February 2021. He was instructed to complete a mental health

evaluation. He failed to complete his requirements. Mr Shicks filed a complaint here on June 4, 2021. His attempt to regain custody of his child remains ongoing in the Allen Superior Court. On April 20, 2022, Mr Shicks attended a hearing by telephone regarding termination of his parental rights. He was told what he needed to regain custody. He was uncooperative and DCS proceeded with termination. As of September 1, 2022, the Allen Superior Court has not yet ruled on termination of Mr. Shicks parental rights.

STANDARD

Summary judgment is warranted 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)*. The non-moving party must present the court with evidence on which a reasonable jury could rely to find in his favor. The court must construe all facts in the light most favorable to the non-moving party, viewing all reasonable inferences in that party’s favor and avoid temptation to decide which party’s version of the facts is more likely true. (*Weaver v. Speedway LLC*) 28 F.4th 816, 820 (7th Circuit 2022) (*Bigger v. Facebook Inc.*) 947 F. 3d 1043, 1051 (7th Circuit 2020) (*Joll v Valparaiso Cmty. Schs*) 953 F 3d 923, 924-25 (7th Circuit 2020) (*Payne v. Pauley*) 337 F3d 767, 770 (7th Circuit 2003).

In performing its review the court “is not to sift through the evidence pondering the nuances and inconsistencies and decide whom to believe.” *Waldridge v. Am. Hoechst Corp.* 24 F.3d 918,920 (7th Cir. 1994). Instead, the “court has one task and one task only to decide based on the evidence of record whether there is any material dispute of fact that requires trial.” The court must grant a summary judgment motion when no such genuine factual issue-a triable issue-exists under the law. *Luster v. Ill. Dept of Corr.* 652 F.3d 726, 731 (7th Cir. 2011).

DISCUSSION

A. Motion for Summary Judgment

The defendants argue that summary judgment should be granted on multiple grounds: the statute of limitations, the Rooker-Feldman doctrine, Eleventh Amendment immunity, and § 1983’s requirement of personal involvement, among others. Though compelling, the court need not address each argument because Mr. Shicks’ § 1983 claim is barred by the statute of limitations. See *Johnson v. Illinois*,

1997 U.S. App. LEXIS 17963, 3 (7TH Cir. July 15, 1997) (“We need not address whether the district court was correct to dismiss on Rooker-Feldman grounds, because we agree that the statute of limitations barred the complaint.”). Jurisdictional issues normally precede the merits, see *Onishi v. Chapleau*, 848 Fed.Appx. 211, 212 (7th Cir. 2021), though another defense may take priority when “there is no practical difference in the outcome,” *Isby v. Bayh*, 75 F.3d 1191, 1196 (7th Cir. 1996); *Brewer v. Sproat*, 2017 U.S. Dist. LEXIS 92830, 10 (C.D. Ill. June 16, 2017). The lack of clarity about whether Mr. Shicks seeks to overturn a state court judgment, see *Swartz v. Heartland Equine Rescue*, 940 F.3d 387, 390-91 (7th Cir. 2019), and whether he sued the individual defendants in their official or individual capacities (given they cannot be sued in their official capacities under § 1983), see *Will v. Mich. Dept of State Police*, 491 U.S. 58, 71 (1989), favors this same approach. The defendants argue for summary judgment because the statute of limitations expired. “In general, § 1983 actions continue to be governed by the forum state’s personal-injury statute of limitations.” *Campbell v. Forest Preserve Dist.*, 752 F.3d 665, 668 (7th Cir. 2014); *Campbell v. Chappelow*, 95 F.3d 576, 580 (7th Cir. 1996). In Indiana, a personal injury action must commence within two years after the cause of action accrues. *Ind. Code* § 34-11-2-4, “Section 1983 claims accrue when the plaintiff knows or should know that his or her constitutional rights have been violated.” *Lawshe v. Simpson*, 16 F.3d 1475, 1478 (7th Cir. 1994). In his complaint, Mr. Shicks writes that “this case is a 5 year old case” and points to the date his son was removed by DCS (April 13, 2016) as the basis for his claim. His request for relief stems from a violation of “due process” that “resulted in [his] son being taken out of [his] custody without any future plans of reunification.” He also alleges that Family Case Manager Kimberly Herzog made false statements about his ability to care for his child, but he never reproduces the statements of alleges when they occurred. He seeks damages from DCS for using the court to take possession of his child. Summary judgment based on the statute of limitations is appropriate only when there are no genuine issues of material fact regarding the claim’s accrual date. *Yorger v. Pittsburgh Corning Corp.*, 733 F.2d 1215, 1219 (7th Cir. 1984). To avoid summary judgment on the statute of limitations Mr. Shicks must present facts

raising a triable issue as to when his § 1983 claim accrued. His response proves largely unintelligible but nothing alerts the court to an additional harm under § 1983 that falls within the statute of limitations. To be actionable, any harm under § 1983 must have occurred on or after June 4, 2019. Only three pieces of evidence submitted by Mr. Shicks fall within the limitations period. First is a letter recognizing Mr. Shicks' completion of an alcohol and drug assessment from February 23, 2022. Second is a recusal order from February 14, 2022. Third is a Fort Wayne police report from May 31, 2021, in which law enforcement recounts Mr. Shicks coming to the station to report discrimination from DCS agents and Allen County magistrates. He never asserts an identifiable constitutional harm from these events, only the removal of his son in 2016. Mr. Shicks had until April 13, 2018 to bring a § 1983 claim, and the court must grant summary judgment for the defendants.

B. Motion to Seal.

The defendants filed a motion to maintain certain exhibits supporting their motion for summary judgment under seal. Mr. Shicks did not respond. There is a strong presumption that information relied on in a judicial decision will be available to the public, and a party seeking to maintain a document under seal must show good cause to overcome the public's interest in judicial transparency. *Cnty. Materials Corp. v. Allan Block Corp.*, 502 F.3d 730, 740 (7th Cir. 2007). One ground or good cause is that the information to be sealed is "required by statute to be maintained in confidence." *Baxter Int'l, Inc. v. Abbott Labs.*, 297 F.3d 544, 546 (7th Cir. 2002). The defendants argue that the exhibits [ECF 93] are protected by Indiana law on multiple grounds. First, they contain records and reports made during the course of a child abuse investigation. *Ind. Code* § 31-33-18-1. Second, all but [ECF 93-9] are confidential court proceedings concerning children exempt from public disclosure. *Ind. Code* § 31-39-1-2. A review of these exhibits confirms their protected status. For good cause, the court grants the motion to seal.

CONCLUSION

Because the statute of limitations bars Mr. Shicks' § 1983 claim and he cannot bring a cause of action under 18 U.S.C. § 242, the court GRANTS the defendants' summary judgment motion [ECF 92]. For good cause shown, the court GRANTS the motion to seal [ECF 97]

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the exhibits in [ECF 93]. This order adjudicates all claims against all remaining defendants and thus terminates the case.

SO ORDERED,
Daimon R. Leichty Judge, United States District Court
November 21, 2022

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