NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted February 13, 2025*
Decided February 13, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-2311

SHUKEITHA JACKSON,
Plaintiff-Appellant,

v.

ABBVIE INC.,
Defendant-Appellee.

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

No. 23-cv-03747

Mary M. Rowland,
Judge.

ORDER

Five years after AbbVie Inc. fired Shukeitha Jackson, she sued it alleging AbbVie violated Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e–2, and the Civil Rights Act of 1866, *id.* § 1981, based on race discrimination and retaliation. The district court dismissed her suit with prejudice, concluding it was incurably untimely. Because

* 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).

Jackson's suit is untimely and she did not preserve arguments that she seeks to raise on appeal, we affirm.

Jackson's claims were dismissed on the pleadings, so we take the facts that she alleges in her complaint as true. *Schimandle v. Dekalb Cnty. Sheriff's Off.*, 114 F.4th 648, 652 (7th Cir. 2024). Throughout the first half of 2018, a coworker harassed Jackson because she was Black. Jackson complained to her supervisor about the mistreatment in May, and AbbVie fired her on July 31, 2018. Believing that AbbVie fired her illegally, two months later Jackson filed charges with the Illinois Department of Human Rights and the Equal Employment Opportunity Commission, alleging racial harassment and unlawful discharge. More than two years later, in 2020, she filed another charge with the Department and EEOC, raising the same claims but adding facts. The EEOC sent her two right-to-sue notices. First, on September 6, 2022, it notified her of her right to sue on her factually enhanced charge from 2020; then, about nine months later, on June 10, 2023, it notified her of her right to sue on her substantively identical charge from 2018 which she had elected to pursue before the Illinois Human Rights Commission. Three days after receiving the latter of the two notices, she filed this suit, alleging that AbbVie violated Title VII and § 1981 when it failed to stop harassment against her and fired her because of her race and complaints.

AbbVie moved to dismiss Jackson's complaint as untimely, citing Federal Rule of Civil Procedure 12(b)(6). (We note that a motion under Rule 12(b)(6) challenges the legal sufficiency of a claim. But an argument like AbbVie's about an affirmative defense like untimeliness does not challenge the legal sufficiency of a claim; instead, it contests the adequacy of the pleadings, which is the subject of Rule 12(c). We therefore analyze this appeal under that Rule. *See Schimandle*, 114 F.4th at 652.) It argued that she filed her Title VII claim late because 90 days had passed since she received her first right-to-sue notice, and her § 1981 claim was also untimely because the four-year limitations period (beginning in July 2018) had already expired when she sued in 2023. Jackson responded that her receipt of the second right-to-sue notice—which she received three days before suing—governed the timeliness of her suit and that the time to sue on her § 1981 claim was tolled while she exhausted her administrative remedies on her Title VII claim. The district court rejected these arguments and dismissed Jackson's complaint with prejudice, concluding that her claims were untimely and that no amendment could cure that deficiency.

Dismissal on the pleadings was correct. Jackson had 90 days after receiving her first right-to-sue notice to file her Title VII claims. *See* 42 U.S.C. § 2000e-5(f)(1).

According to her complaint, she received that right-to-sue notice on September 6, 2022. Because she sued in June 2023, six months past the 90-day deadline, her suit was untimely. And she does not provide support for her previous contention that her receipt of her second right-to-sue notice governed the timeliness of her suit. Although we have not yet addressed this scenario, the other circuits that have reached it have ruled that the receipt of a second right-to-sue notice based on a substantively identical charge that yielded an earlier notice does not extend or restart the statutory 90-day filing deadline. *See Rivera-Diaz v. Humana Ins. of P.R.*, 748 F.3d 387, 391 (1st Cir. 2014); *Soso Liang Lo v. Pan Am. World Airways, Inc.*, 787 F.2d 827, 828 (2d Cir. 1986); *Spears v. Mo. Dep't of Corrs. & Human Res.*, 210 F.3d 850, 853 (8th Cir. 2000); *Brown v. Unified Sch. Dist. 501*, 465 F.3d 1184, 1186 (10th Cir. 2006). Because Jackson does not dispute that her two charges are substantively identical, this principle applies here to time-bar her Title VII claim.

Jackson's § 1981 claim was also untimely. Because AbbVie fired Jackson in 2018 and § 1981 claims have a four-year statute of limitations, *see* 28 U.S.C. § 1658(a), Jackson needed to file her § 1981 suit before 2023, which she did not do. And statutory exhaustion requirements—like those under Title VII—do not apply to § 1981 or toll that statute's time limits. *See Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 464–66 (1975).

Jackson offers two responses on appeal, but neither is persuasive. She first argues that the district court should have given her leave to amend her complaint to include facts supporting equitable tolling of her claim-filing deadlines. It is true that, in pleading a complaint, a plaintiff need not anticipate an affirmative defense like the statute of limitations or attempt to rebut it. *Sabo v. Erickson*, __F.4th __, __, 2025 WL 354484, at *2 (7th Cir. Jan. 31, 2025) (en banc). But "we have repeatedly held that a party opposing a motion in the district court must inform the court of the factual and legal reasons why the motion should not be entered, and if it fails to do so it cannot then raise those arguments on appeal." *O'Gorman v. City of Chicago*, 777 F.3d 885, 890 (7th Cir. 2015) (citations omitted). Once AbbVie argued in its motion to dismiss that equitable tolling would not extend Jackson's deadlines to sue on her Title VII and § 1981 claims, Jackson had to assert facts and legal reasons to counter AbbVie's position. But she did not. Nor did she ask for leave to amend to assert those facts. It is thus too late to attempt to raise those new facts for the first time on appeal. *See id.* (affirming dismissal of complaint as untimely where plaintiff failed to provide the district court with a reason not to dismiss her complaint including granting him leave to amend).

Similarly, Jackson contends that the district court should not have allowed AbbVie to argue untimeliness as a defense because she asserts, for the first time on appeal, that AbbVie concealed evidence about her claims. This is an argument for equitable estoppel. Again, Jackson had the opportunity to assert facts supporting this equitable-estoppel contention to the district court in her response to AbbVie's motion to dismiss. But she failed to do so, and therefore she may not ask us to address it now. *See Braun v. Vill. of Palatine*, 56 F.4th 542, 553 (7th Cir. 2022).

AFFIRMED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

SHUKEITHA JACKSON,

Plaintiff,

v.

ABBVIE INC.,

Defendant.

Case No. 23-cv-03747

Judge Mary M. Rowland

ORDER

Plaintiff Shukeitha Jackson brings this *pro se* lawsuit against Defendant AbbVie, Inc. [1]; [9]. Jackson has filed suit under Title VII of the Civil Rights Act of 1964 and 42 U.S.C §1981. *Id.* at 3-4. Before the Court is Defendant's motion to dismiss under F.R.C.P. 12(b)(6) for failure to state a claim. [15].

BACKGROUND

Jackson initially filed two separate charges of discrimination with the Equal Employment Opportunity Commission ("EEOC") and the Illinois Department of Human Rights ("IDHR"). [16-1]. Jackson's charges are based on the same alleged conduct that occurred between May 2018 and July 2018. *Id.* On September 18, 2018, Jackson filed her first Charge of discrimination with the IDHR and the EEOC ("Charge I"). In Charge I, Jackson alleged three counts: 1 count of harassment, and 2 counts of retaliatory discharge. *Id.* at 2-3. Jackson alleged that AbbVie, Inc. ("AbbVie") failed to stop racial harassment by a co-worker. *Id.* at 3. Jackson further alleged that AbbVie retaliated against her when it discharged her employment

because she complained about the racial harassment. *Id.* at 4. Jackson stated that her job performance was similar to that of non-black employees who were not discharged, and her manager told her she was being terminated because "it was not working out." *Id.* Charge I states the cause of discrimination as "Race Retaliation". *Id.* at 2.

On June 22, 2020, Jackson filed a second charge with the IDHR and the EEOC ("Charge II"). *Id.* at 5. Jackson alleged four claims in total: two claims of racial harassment and two claims of unlawful discharge. *Id.* In the second charge, she added more facts than in the initial charge, including details about the specifics of the harassment. *Id.* Jackson further stated the racial harassment "created a hostile [,] intimidating and offensive workplace". *Id.* at 6-7. Jackson's unlawful discharge claims included: one based on race, and one based on retaliation. *Id.* Charge II again states the cause of discrimination as "Race Retaliation". *Id.* at 5.

Because Jackson filed two different charges with the EEOC, the agency assigned Jackson two different case numbers. *See id.* With respect to Charge I, the EEOC issued a right to sue letter to Jackson on September 6, 2022. [9] at 7. Prior to that, however, Jackson elected to pursue her remedies with respect to Charge I by filing a complaint before the Illinois Human Rights Commission ("IHRC") on September 14, 2020. [16] at 2. The IHRC dismissed Jackon's complaint (Charge I) almost two years later, on August 23, 2022, for want of prosecution. *Id.* In its decision, the IHRC found Jackson: "ha[d] [] done nothing to materially advance her case over the past two years and has on three (3) separate occasions neglected to meet court-

ordered deadlines that she requested and received over Respondent's objections." It found that "these dilatory tactics and corresponding failures to comply with the orders of this administrative court have resulted in [Jackson] producing no discovery whatsoever in this matter to date." *Id.* The court further found that Jackson did not even attempt to provide a substantive response to "any discovery request served by Respondent." The court thus held that her "refusal to participate in the case [was] both *strategic and intentional*" and dismissed the case with prejudice. (emphasis added) *Id.*

On June 10, 2023, Jackson received an additional right to sue letter from the EEOC regarding Charge II. [16] at 3. Nine months after receiving the initial right to sue letter, Jackson relied on it to file her complaint in this Court on June 13, 2023. [1]. In her complaint, Jackson states that the facts supporting her claims of discrimination are "Substantial Evidence for: Racial Harassment – Count I, Racial Discrimination – Count II, and Racial Retaliation – Count III". [1] at 5. After receiving this Court's permission to proceed *in forma pauperis*, the complaint was deemed filed on August 30, 2023. [8].

AbbVie timely filed the present motion to dismiss for failure to state a claim under Rule 12(b)(6). [15].

STANDARD

A motion to dismiss tests the sufficiency of a claim, not the merits of the case. *Gociman v. Loyola Univ. of Chi.*, 41 F.4th 873, 881 (7th Cir. 2022); *Gunn v. Cont'l Cas. Co.*, 968 F.3d 802, 806 (7th Cir. 2020). To survive a motion to dismiss under Rule

12(b)(6), the claim "must provide enough factual information to state a claim to relief that is plausible on its face and raise a right to relief above the speculative level." *Haywood v. Massage Envy Franchising, LLC*, 887 F.3d 329, 333 (7th Cir. 2018) (quoting *Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 736 (7th Cir. 2014)); *see also* Fed. R. Civ. P. 8(a)(2) (requiring a complaint to contain a "short and plain statement of the claim showing that the pleader is entitled to relief"). A court deciding a Rule 12(b)(6) motion accepts the well-pleaded factual allegations as true and draws all reasonable inferences in the pleading party's favor. *Lax v. Mayorkas*, 20 F.4th 1178, 1181 (7th Cir. 2021).

Dismissal for failure to state a claim is proper "when the allegations in a complaint, however true, could not raise a claim of entitlement to relief." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 558 (2007). Deciding the plausibility of the claim is "a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Bilek v. Fed. Ins. Co.*, 8 F.4th 581, 586-87 (7th Cir. 2021) (quoting *W. Bend Mut. Ins. Co. v. Schumacher*, 844 F.3d 670, 676 (7th Cir. 2016)). Although *pro se* complaints are held to a less stringent standard, they are not excused from meeting the basic requirements of the federal rules. *Killebrew v. St. Vincent Health*, 295 Fed. App'x 808, 810 (7th Cir. 2008).

DISCUSSION

AbbVie argues that Jackson's Title VII and 42 U.S.C §1981 claims are time barred. Specifically, Jackson's Title VII claims are time-barred because she failed to file her complaint within 90 days of receiving her first right-to-sue letter. [15] at 2.

AbbVie further argues that Jackson's § 1981 claims are based on alleged conduct that ended in July 2018 and are thus barred by § 1981's four-year statute of limitation. *Id.* In her one-page response, Jackson argues that her Title VII claims are not time barred because she filed within "90 days of receiving the second right-to-sue letter issued by the Equal Employment Opportunity Commission dated June 10, 2023." [23] at 1. Jackson further argues that her § 1981 claims are not time barred because "the four-year statute of limitations begins after exhaustion of administrative remedies." *Id.* The Court agrees with AbbVie.

A. Jackson's Title VII claims are time-barred.

A plaintiff must file her Title VII complaint within 90 days of receiving a right-to-sue letter from the EEOC. 42 U.S.C. § 2000E–5 (F)(1); *see also Velasco v. Illinois Dept. of Human Serv.*, 246 F.3d 1010, 1018 (7th Cir. 2001) ("[A] plaintiff must file an action for race discrimination within 90 days of receiving a right-to-sue letter") (internal citation omitted). If multiple charges are filed and the charges are substantively the same, the first right-to-sue letter controls. *See Avet v. Dart*, 2022 WL 2982109, at *4-6 (N.D.Ill., 2022) (finding the plaintiff filed their federal complaint too late because Charge 1 and Charge 2 are the same). Complaints are time barred even when *pro se* litigants have received multiple right-to-sue letters on different dates. *MacGregor v. DePaul University*, 2010 WL 4167965, at *3 (N.D.Ill. 2010) (citing *Abdullah v. Prada U.S. Corp.*, 520 F.3d 710, 713 (7th Cir. 2008). Courts can grant rare equitable tolling exceptions to the 90-day limitation if the plaintiff has made a "good faith error" or "has been prevented in some extraordinary way from filing his

complaint in time." *MacGregor*, 2010 WL 4167965, at *3 (quoting *Jones v. Madison Service Corp.*, 744 F.2d 1309, 1314 (7th Cir. 1984).

Here, Jackson received the first right-to-sue letter on September 6, 2022. Despite this, she did not file her federal complaint until June 13, 2023, nine months later and well after the 90-day deadline. Although Jackson filed a second charge and received that letter later, it was substantively the same allegations she alleged in Charge I, and it is well established that "[a] claimaint cannot resuscitate an expired claim by submitting it a second time." *Avet*, 2022 WL 2982109 at *6 (collecting cases). Her second right-to-sue letter could not revive the expired claim—she was required to file suit by **November 6, 2022**, and failed to do so.

Jackson failed to argue that her claims should be equitably tolled, waiving the issue. Nevertheless, the Court does not find she has made a good faith error or was prevented from filing a timely complaint. Indeed, the IHRC explicitly found that Jackson was dilatory and strategic in failing to prosecute her case previously. In sum, because Jackson's claims are substantively the same and she failed to file a complaint within 90 days of receiving the first right-to-sue letter, Jackson's Title VII claims are time barred.[1]

B. Jackson's § 1981 claims are time-barred.

§1981 claims have a four-year statute of limitations from the date of the alleged conduct. 28 U.S.C. § 1658. Unlike Title VII claims, §1981 claims *do not* have an

[1] Jackson failed to allege any facts to put AbbVie on notice of the allegations against it. Jackson has not described who discriminated against her, when it happened, on how many occasions, or provided any facts to support her claims. She has failed to meet the basic pleading requirements under the Rules. The Court dismisses the case on this basis as well.

administrative exhaustion requirement. *Williams v. Cnty. Of Cook*, 969 F. Supp. 2d 1068, 1080 (N.D. Ill. 2013) ("[u]nlike Title VII claims, § 1981 and § 1983 claims do not require the plaintiff to first exhaust administrative remedies before bringing a suit in federal court.").

Here, Jackson alleges that AbbVie wrongfully terminated her on July 31, 2018. [5] at 2. Jackson therefore had until **July 31, 2022**, four years later, to file suit. Jackson failed to do so by the deadline, instead filing suit on June 13, 2023, nearly a year after she was required to. Because Jackson failed to file within the four-year statute of limitation, her §1981 claims are similarly time barred.

Jackson's reliance on *Johnson v. Rivera*, 272 F.3d 519 (7th Cir. 2001) is misplaced and inapplicable. There, the prisoner plaintiff was required to exhaust an administrative grievance process prior to filing suit under the Prisoner Litigation Reform Act ("PLRA"). *Id.* at 522. Under §1981, unlike the PLRA, plaintiffs do not have an exhaustion requirement. Further, the Supreme Court has held that the EEOC's exhaustion requirement does not toll the statute of limitations for Title VII claims (where exhaustion *is* required). *See Johnson v. Ry. Express Agency, Inc.*, 421 U.S. 454, 464-466 (1975). Jackson could have, and indeed was required to, bring suit during the four-year period.

Normally, a district court dismisses an original complaint *without* prejudice to allow a plaintiff an opportunity to cure deficiencies in the original pleading. *See Donald v. Cook County Sheriff's Department*, 95 F.3d 548, 555 (7th Cir. 1996) (district courts are to allow a *pro se* plaintiff ample opportunity to amend the complaint when

it appears the plaintiff can state a meritorious claim). However, Jackson's claims are time barred, and she cannot cure this deficiency. Further, Jackson's case was previously dismissed by the IHRC because of her "dilatory tactics". Here, the procedural deficiencies, coupled with Jackson's previous opportunity to litigate the case, convince the Court that any leave to amend would be futile. The Court therefore dismisses Jackson's complaint with prejudice.

CONLUSION

For the reasons stated herein, the Court grants Defendant's motion to dismiss. [15]. Plaintiff's complaint is dismissed with prejudice. Civil case terminated.

ENTER:

Dated: July 2, 2024

Mary M Rowland

MARY M. ROWLAND
United States District Judge

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

March 10, 2025

Before

FRANK H. EASTERBROOK, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

No. 24-2311

SHUKEITHA JACKSON,
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Mary M. Rowland,
Judge.

ORDER

On March 6, 2025, appellant filed a motion to reconsider and vacate judgment which the court construes as a petition for rehearing. On consideration of the petition for rehearing, the judges on the original panel voted to deny rehearing. It is, therefore, **ORDERED** that the petition for rehearing is **DENIED**.

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