NONPRECEDENTIAL DISPOSITION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 January 16, 2024*
Decided January 29, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-2405

MARK A. VANDENBOOM,
Plaintiff-Appellant,

v.

ROBERT STROHMEYER,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:22-cv-02006-MPB-MJD

Matthew P. Brookman,
Judge.

O R D E R

In his lawsuit under 42 U.S.C. § 1983, Mark VandenBoom alleged that an Indiana medical review panel violated his civil rights when it concluded that he was not the victim of medical malpractice. The district judge dismissed his complaint because it was

* 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).

untimely and because the alleged violations of state law could not amount to a deprivation of due process under the federal Constitution. We affirm.

We draw the following facts, which we accept as true, from VandenBoom's operative complaint. *Dix v. Edelman Fin. Servs., LLC*, 978 F.3d 507, 511 (7th Cir. 2020). In 2016 following a medical procedure that he alleges was "botched," VandenBoom brought a malpractice claim under Indiana law against medical providers involved in the procedure. Under the Indiana Medical Malpractice Act, before he could proceed with his claim in court, a medical review panel had to review its merit and opine on whether the defendants were negligent. IND. CODE § 34-18-8-4. Robert Strohmeyer, an attorney, presided over the panel, which also included three medical providers. The panel found in the defendants' favor.

Four years later VandenBoom sued Strohmeyer in his individual capacity under § 1983, alleging that Strohmeyer was biased against him and violated state procedural laws, depriving him of due process. He added a medical-malpractice claim under Indiana law. VandenBoom moved to proceed in forma pauperis and for court-recruited pro bono counsel. Strohmeyer, for his part, filed a motion to dismiss, arguing that VandenBoom's suit was untimely and failed to state a claim for relief.

The judge addressed both motions in a single order. He denied VandenBoom's motion to proceed in forma pauperis as both moot (VandenBoom had already paid the filing fee) and utterly meritless (he reported an annual household income of $288,000). The judge also declined to recruit pro bono counsel because VandenBoom was neither indigent nor incapable of litigating his claims on his own.

Turning to the motion to dismiss, the judge agreed with Strohmeyer that the suit was untimely under the two-year statute of limitations, which had expired more than two years before VandenBoom filed his complaint. *See Brademas v. Ind. Hous. Fin. Auth.*, 354 F.3d 681, 685 (7th Cir. 2004) (borrowing for suits under § 1983 the two-year statute of limitations for personal-injury claims under IND. CODE § 34-11-2-4); IND. CODE § 34-18-7-1 (two-year statute of limitations for medical-malpractice claims). And although VandenBoom appeared to invoke equitable defenses to the statute of limitations—for example, by saying that his health complications had rendered him "disabled"—the judge reasoned that these allegations were merely conclusory.

In the alternative, the judge also addressed the sufficiency of VandenBoom's allegations, holding that the complaint failed to state a claim for relief. VandenBoom

alleged only that Strohmeyer had violated state law, which is insufficient to state a claim for a violation of his rights under the federal Due Process Clause. The judge noted that the state-law claim was barred for an additional reason: under the Medical Malpractice Act, Strohmeyer was immune from suit for his actions in the course of his duties as a review panelist. IND. CODE § 34-18-10-24. The judge accordingly dismissed the suit in its entirety.

We review the dismissal order de novo. *Dix*, 978 F.3d at 512. To begin, VandenBoom has not meaningfully contested the main reason his suit was dismissed: untimeliness. He continues to hint, without much elaboration, that equitable tolling or a similar doctrine should apply and excuse him from the time-bar. For § 1983 claims, we borrow tolling principles from state law. *See Behav. Inst. of Ind., LLC v. Hobart City of Common Council*, 406 F.3d 926, 932 (7th Cir. 2005). Indiana recognizes disability as grounds for tolling, and that ground appears closest to what VandenBoom alleged in his complaint and argues now. But he has not developed this argument sufficiently for us to apply the exception.

Though we have no reason to question the judge's primary rationale for dismissing the suit, there is no shortage of other reasons listed in his decision, all of which were sound. To withstand the motion to dismiss, VandenBoom's complaint needed to include allegations plausibly suggesting that Strohmeyer deprived him of an interest protected by the Constitution without due process. *See Rock River Health Care, LLC v. Eagleson*, 14 F.4th 768, 773 (7th Cir. 2021). There is no plausible claim for a violation of the federal Constitution based on the facts alleged.

VandenBoom invoked the Fifth Amendment, but the judge correctly explained that the Fifth Amendment's Due Process Clause applies only to federal actors, so the Fourteenth Amendment is the source of the right that VandenBoom asserts here. U.S. CONST. amends. V, XIV; *see Bolling v. Sharpe*, 347 U.S. 497 (1954). He accuses Strohmeyer of violating state procedures and laws, but "the procedures required by state or local law do not define the constitutional requirements of notice and an opportunity to be heard." *Rock River Health Care, LLC*, 14 F.4th at 773. VandenBoom has not alleged any misconduct by Strohmeyer beyond the alleged failure to faithfully apply the Medical Malpractice Act's procedures. *See Lavite v. Dunstan*, 932 F.3d 1020, 1032–33 (7th Cir. 2019). And although VandenBoom has a right to an unbiased decisionmaker, we presume that the medical review panel acted impartially, *see Hess v. Bd. of Trs. of S. Ill. Univ.*, 839 F.3d 668, 675 (7th Cir. 2016), and VandenBoom offers no

specific allegations undermining that presumption. Procedural missteps (even if there were any) do not raise an inference of bias. *See id*.

Regarding the state-law claim, which the judge understood to arise under the Medical Malpractice Act, VandenBoom has not developed any argument contesting the application of the statutory immunity provision, § 34-18-10-24. That's a waiver. *See Pack v. Middlebury Cmty. Schs.*, 990 F.3d 1013, 1021 (7th Cir. 2021).

VandenBoom appears to challenge the judge's refusal to recruit pro bono counsel for him. But his reported earnings vastly exceeded any measure of poverty, which disqualified him from proceeding in forma pauperis. 28 U.S.C. § 1915(a)(1) (IFP status available to those "unable to pay"); *see Coleman v. Lab. & Indus. Rev. Comm'n of Wis.*, 860 F.3d 461, 467 (7th Cir. 2017) (explaining that a plaintiff seeking IFP status must "demonstrat[e] that she is unable to pay the required fees"). And judges can recruit counsel only for indigent litigants. 28 U.S.C. § 1915(e)(1); *see Pickett v. Chi. Transit Auth.*, 930 F.3d 869, 871 (7th Cir. 2019). VandenBoom's assertion on appeal that he is now unemployed does not affect our conclusion. The judge ruled based on the information in front of him at the time, and his decision is unassailable.

Finally, VandenBoom argues that the case should have been heard outside of Indiana because the State has a financial interest in the case—presumably, its interest in not paying damages for the misconduct of a panelist on the state review board. Because he raises this argument for the first time on appeal, we could rightly consider it waived. *See Wonsey v. City of Chicago*, 940 F.3d 394, 398–99 (7th Cir. 2019). Still, the venue rules seek to preserve a plaintiff's choice of forum, and VandenBoom chose to sue in Indiana federal court. *See In re IKO Roofing Shingle Prods. Liab. Litig.*, 757 F.3d 599, 601 (7th Cir. 2014). Moreover, the Southern District of Indiana is not an "Indiana" court; it is part of a separate federal judicial system and has no financial interest in avoiding VandenBoom's claimed damages. *See generally* U.S. CONST. Art. III § 1; 28 U.S.C. § 132.

AFFIRMED