IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 18-50931
Summary Calendar

United States Court of Appeals
Fifth Circuit
FILED
March 8, 2019
Lyle W. Cayce
Clerk

JOSE A. PEREZ,

Plaintiff - Appellant

v.

PHYSICIAN ASSISTANT BOARD; MARGARET K. BENTLEY, in her official and personal capacities,

Defendants - Appellees

Appeal from the United States District Court
for the Western District of Texas
USDC No. 1:18-CV-198

Before JOLLY, COSTA, and HO, Circuit Judges.

PER CURIAM:*

Jose Perez's license to practice as a physician assistant was revoked after years of state administrative proceedings. In the fall of 2011, Perez was notified that the Texas Physician Assistant Board (PAB) filed a complaint against him alleging he violated the Texas Physician Assistant Act. Perez then acknowledged receipt by filing an answer. In the spring of 2013, Perez was

* Pursuant to 5TH CIR. R. 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIR. R. 47.5.4.

provided with a Notice of Adjudicative Hearing and a copy of the complaint. He failed to appear at his hearing and the administrative adjudicator dismissed the case and entered a default judgment against Perez. On March 7, 2014, the PAB issued a default order revoking Perez's license. Texas law requires judicial challenges to such administrative orders to be brought within thirty days. In 2015 and 2016, long after the deadline elapsed, Perez filed multiple state court suits that were dismissed as improperly filed and untimely.[1]

On March 5, 2018 Perez, proceeding pro se, filed this suit in federal court against the PAB and its presiding officer, Margaret K. Bentley, in her official and personal capacities. Proceeding under 28 U.S.C. § 1983, he alleged "class of one retaliation" and other due process violations. Additionally, he alleged that the PAB violated his rights under the Takings Clauses of the United States and Texas constitutions. The district court dismissed Perez's federal claims with prejudice under Federal Rule of Civil Procedure Rule 12(b)(6) as barred under Texas's two-year statute of limitations, which is borrowed in federal court for § 1983 actions. The district court proceeded to decline to exercise supplemental jurisdiction over Perez's state law takings claim. The court then denied Perez's Rule 59(e) motion for reconsideration.

This court reviews dismissals under Rule 12(b)(6) de novo and decisions to abstain from exercising supplemental jurisdiction and denial of Rule 59(e) motions for abuse of discretion. *See Powers v. United States*, 783 F.3d 570, 576 (5th Cir. 2015) (supplemental jurisdiction); *Stokes v. Gann*, 498 F.3d 483, 484

[1] Perez also filed a federal suit in 2013 that was dismissed under *Younger* abstention because his state administrative proceedings were still pending. *See Perez v. TX Med. Bd.*, 556 F. App'x 341 (5th Cir. 2014) (citing *Younger v. Harris*, 401 U.S. 37 (1971)).

(5th Cir. 2007) (Rule 12(b)(6)); *Templet v. HydroChem Inc.*, 367 F.3d 473, 477 (5th Cir. 2004) (Rule 59(e)).

Federal courts considering claims under § 1983 borrow the relevant state's statute of limitations for general personal injury actions. *See Redburn v. City of Victoria*, 898 F.3d 486, 496 (5th Cir. 2018). In Texas, the limitations period is two years. *See id.* Federal law governs when the cause of action accrues and dictates that the limitations period begins when the plaintiff becomes aware that he has suffered an injury or has sufficient information to know that he has been injured. *See id.* Perez became aware of the injury on March 7, 2014 when his license was revoked, which means that the present suit filed on March 5, 2018 is time-barred.

Attempting to avoid this conclusion, on appeal, Perez argues, first, that the statute of limitations does not apply to claims brought under the Takings Clause and, second, that the statute of limitations should have been tolled because he diligently pursued his action in state court and he was prevented from filing the federal claims by extraordinary circumstances. He also argues that the district court committed a litany of procedural errors including: declining to exercise supplemental jurisdiction over his state law claim; failing to conduct de novo review of the magistrate judge's report and recommendation; dismissing with prejudice rather than allowing him to amend his complaint to cure defects; denying his Rule 59(e) motion; and awarding costs to the defendants.

Perez's arguments are unavailing. As an initial matter, Perez's assertion that the statue of limitations does not apply to takings claims is foreclosed by our recent decision in *Redburn* where we held that the same Texas two-year statute of limitation applies to a federal Takings Clause claim brought under § 1983. *See* 898 F.3d at 496. Additionally, Perez does not make out a case for equitable tolling which requires that he show "(1) that he has been pursuing

his rights diligently, and (2) that some extraordinary circumstance stood in his way." *Holland v. Florida*, 560 U.S. 631, 655 (2010). First, he did not diligently pursue his rights in state courts and administrative processes. He had thirty days under Texas law to seek judicial review of his license revocation and failed to do so until two years after the revocation. *See Perez v. Phys. Assistant Bd.*, No. 03-00732-cv, 2017 WL 5078003 (Tex. App. Oct. 31, 2017) ("The record conclusively established that Perez did not bring this suit against the Board until 2016, well after the thirty-day statutory deadline for bringing suit for review of the 2014 order."). Second, he has alleged no exceptional circumstances justifying tolling—he was aware of his injury and was in no way precluded from filing a federal action. Even allowing for his pro se status, Perez's failure to file was due solely to his erroneous view of the law and lack of diligence, which does not qualify as an exceptional circumstance. Therefore, the district court correctly dismissed his claims as barred by the statute of limitations. Furthermore, the district court did not abuse its wide discretion in declining to exercise supplemental jurisdiction over Perez's state law takings claim because the suit was devoid of claims arising under federal law. *See Noble v. White*, 996 F.2d 797, 799 (5th Cir. 1993) ("District courts enjoy wide discretion in determining whether to retain supplemental jurisdiction over a state claim once all federal claims are dismissed.").

Finally, this court can find no merit in any of Perez's remaining alleged procedural violations. First, the district court stated that it conducted de novo review of the magistrate's report before adopting its recommendations and Perez does not present a reason for doubt on this point. *See, e.g.*, *Bannistor v. Ullman*, 287 F.3d 394, 399 (5th Cir. 2002) ("[A] district court's statement that it conducted de novo review is presumptively valid, if not dispositive."). Second, the court did not err when it denied Perez the opportunity to cure the defects in his claims because the time-barred claims were incurable. Third,

the district court did not abuse its discretion in denying Perez's Rule 59(e) motion, which he used as a vehicle to raise new arguments and rehash old ones rather than to bring to the court's attention any manifest error of law or fact or newly discovered evidence. *See Templet*, 367 F.3d at 479. Fourth, the PAB and Bentley are the prevailing parties making the award of costs appropriate. *See United States ex rel. Long v. GSDMIdea City, L.L.C.*, 807 F.3d 125, 128 (5th Cir. 2015) ("'[A] dismissal with prejudice is tantamount to a judgment on the merits' and renders a defendant the prevailing party for the purpose of allocating costs." (quoting *Schwarz v. Folloder*, 767 F.2d 125, 130 (5th Cir. 2015))).

Accordingly, the judgment of the district court is AFFIRMED.