NONPRECEDENTIAL DISPOSITION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 5, 2023*
Decided March 7, 2023

Before

DIANE S. SYKES, *Chief Judge*

DAVID F. HAMILTON, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 21-2017

LARRY WARREN,
Plaintiff-Appellant,

v.

ROBERT VAZQUEZ,
Defendant-Appellee.

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

No. 1:20-cv-02201-SEB-TAB

Sarah Evans Barker,
Judge.

O R D E R

Larry Warren, an Indiana prisoner, sued Deputy Robert Vazquez under 42 U.S.C. § 1983 alleging that over two years earlier, Vazquez violated his Eighth Amendment rights by confining him in an unventilated, crowded, and overheated van. The district

* We have agreed to decide this case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not aid the court. *See* FED. R. APP. P. 34(a)(2)(C).

judge dismissed the complaint as time-barred. Because Warren sued after the expiration of the applicable two-year limitations period, we affirm.

On August 13, 2018, Deputy Vazquez drove Warren from prison to a hearing. Along the way, Vazquez stopped for 30 minutes to pick up another prisoner. Warren alleges that during this stop, he and other prisoners were "shackled" inside an "extremely tight small space" in a van "with no proper ventilation[] and [a] malfunctioning A/C unit on a particularly warm day" of the summer. Warren could not breathe and told Vazquez that he needed air, but Vazquez did nothing.

One day before the second-year anniversary of this incident, on August 12, 2020, Warren tried to sue Vazquez by amending his complaint in a different suit—about his healthcare at the Marion County Jail—to add his claim against Vazquez. *See Warren v. Marion Cnty. Sheriff's Dep't*, No. 1:19-cv-04575-RLY-MPB (S.D. Ind. Aug. 17, 2020) (The complaint was file-stamped August 17, but the district judge applied the prison mailbox rule to the complaint and treated it as filed on August 12.). A week later, the judge in that case (Judge Young) rejected the proposed amended complaint. Citing Rule 15(a)(2) of the Federal Rules of Civil Procedure, Judge Young explained that he would not grant leave to file it because the defendants had not consented to its filing and it raised a claim against a new defendant about matters unrelated to Warren's healthcare at the jail.

Warren responded with a new suit. He filed it on August 19, 2020, the day after Judge Young's dismissal and six days after the two-year anniversary of the van incident. (The complaint was file-stamped August 21, but the judge—Judge Barker, who also applied the prison mailbox rule—treated the date of filing as August 19.) Warren alleged that Deputy Vazquez had violated his Eighth Amendment rights by confining him inside a hot, crowded, and unventilated van. Vazquez moved to dismiss under Rule 12(b)(6), arguing that Warren's claim was untimely. Judge Barker agreed, ruling that Warren filed his suit after the applicable two-year statute of limitations had run. *See Richards v. Mitcheff*, 696 F.3d 635, 637 (7th Cir. 2012); IND. CODE § 34-11-2-4. Warren sought reconsideration, arguing that the judge had applied the wrong limitations period and proposing different theories of liability. The judge denied reconsideration.

On appeal Warren contends that his suit is timely, but we disagree. Suits brought under § 1983 borrow the statute of limitations of a state's personal-injury law. *Shropshear v. Corp. Counsel*, 275 F.3d 593, 594 (7th Cir. 2001). In Indiana that period is two years. § 34-11-2-4. Warren moved for leave to amend his complaint in the case

before Judge Young one day before the expiration of this two-year period. Because Warren attached the proposed amended complaint to his motion, the limitations period for the new claim was tolled while the motion was pending with the court. *Moore v. Indiana*, 999 F.2d 1125, 1131 (7th Cir. 1993). But the tolling effect was wiped away when Judge Young denied the motion to amend. *See Lee v. Cook County*, 635 F.3d 969, 971–72 (7th Cir. 2011). Thus, by the time Warren had filed the separate suit that led to this appeal, it was untimely by six days.

Warren responds that he is entitled to equitable tolling of the six days. In cases under § 1983, state law also governs the principles of equitable tolling. *Shropshear*, 275 F.3d at 596. Indiana permits equitable tolling and authorizes a court to toll a statute of limitations for plaintiffs "who, because of disability, irremediable lack of information, or other circumstances beyond [their] control just cannot reasonably be expected to sue in time." *Behav. Inst. of Ind., LLC v. Hobart City of Common Council*, 406 F.3d 926, 932 (7th Cir. 2005) (quotation marks omitted). In the allegations of his present complaint, Warren was not required to anticipate the limitations defense and respond to it. *See O'Gorman v. City of Chicago*, 777 F.3d 885, 888–89 (7th Cir. 2015). But to qualify for equitable tolling, Warren must establish grounds for it—i.e., a disability, lack of information, or other circumstance beyond his control that prevented him from timely suing. He has not done so. No factor beyond his control made it unreasonable to expect him to sue in time. Rather, it was unreasonable for him to try to add the "overheated van" claim against Vazquez to his earlier suit, which involved different defendants and raised wholly unrelated claims about jail healthcare.

We have considered Warren's other arguments, but none has merit.

AFFIRMED