

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

GAYL THERESE PAYTON

CIVIL ACTION

VERSUS

NO. 21-1325

NEWELL NORMAND, ET AL.

SECTION: R (3)

**ORDER AND REASONS**

The Court has reviewed *de novo* plaintiff's complaint and amended complaint,<sup>1</sup> plaintiff's motion for leave to file an amended complaint,<sup>2</sup> the applicable law, the Magistrate Judge's Report and Recommendation ("R&R"),<sup>3</sup> and plaintiff's objection.<sup>4</sup> The Court orders as follows.

On January 21, 2022, Magistrate Judge Dana M. Douglas conducted a *sua sponte* frivolousness review of plaintiff's case, under 28 U.S.C. § 1915(e)(2)(B), and determined that plaintiff's claims, which arise out of an alleged incident on February 27, 2012, are time-barred by the statute of limitations.<sup>5</sup> In the R&R, Magistrate Judge Douglas recommended that

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<sup>1</sup> R. Doc. 1 (Complaint); R. Doc. 11 (Amended Complaint).

<sup>2</sup> R. Doc. 20.

<sup>3</sup> R. Doc. 29.

<sup>4</sup> R. Doc. 32.

<sup>5</sup> R. Doc. 29 at 4-7.

plaintiff's motion for leave to file an amended complaint be denied as futile, and that her complaint be dismissed with prejudice as legally frivolous.<sup>6</sup>

On February 4, 2022, plaintiff filed a one-page objection to the R&R, stating that she “retained an attorney to pursue her Civil Rights case which was submitted timely.”<sup>7</sup> She further asserts that “[c]omplications concerning this attorney and the complaint he submitted has gone through several phases of the legal system and is presently being seen in state court.”<sup>8</sup> Plaintiff does not provide any details regarding the alleged state case, nor does she explain whether or how the alleged existence of a state case somehow tolls the statute of limitations or otherwise remedies the untimeliness of this federal action. The objection does not address the one-year statute of limitations governing plaintiff's federal claims, nor does it respond to the specific reasons given by the Magistrate Judge as to why plaintiff's complaint in this case is time-barred.

Because the objection does nothing to refute the substance of the R&R, the Court finds that the objection is meritless. The Court further finds that plaintiff's claims in this case are untimely under the one-year statute of

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<sup>6</sup> *Id.* at 7.

<sup>7</sup> R. Doc. 32 at 1.

<sup>8</sup> *Id.*

limitations. Accordingly, the Court adopts the Magistrate Judge's Report and Recommendation as its opinion.

IT IS ORDERED that plaintiff's motion for leave to file an amended complaint<sup>9</sup> is DENIED as futile. IT IS FURTHER ORDERED that plaintiff's complaint<sup>10</sup> is DISMISSED WITH PREJUDICE.

New Orleans, Louisiana, this 9<sup>th</sup> day of February, 2022.

A handwritten signature in black ink that reads "Sarah S. Vance". The signature is written in a cursive style and is positioned above a horizontal line.

SARAH S. VANCE  
UNITED STATES DISTRICT JUDGE

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<sup>9</sup> R. Doc. 20.

<sup>10</sup> R. Doc. 11.