

AD

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 00-2963

FREDERICK EVANS,
Appellant

v.

MARTIN F. HORN; JOSEPH LEHMAN; DAVID YOUNG;
JEFFREY A. BEARD; MARGARET MOORE; TERRY HENRY;
J. HARVEY BELL; ROBERT S. BITNER;
JOSEPH F. MAZURKIEWICZ; SAM MAZZOTA;
ROBERT W. MEYERS; LYNN EATON; BILL CARVER;
LAURENCE REID; STUART F. BOONE; JILL FLUCK;
ROBIN M. LEWIS; WILLIAM FAIRALL

On Appeal From the United States District Court
For the Middle District of Pennsylvania
(D.C. Civil No. 00-cv-00981)
District Judge: Honorable A. Richard Caputo

Submitted Under Third Circuit LAR 34.1(a)
May 14, 2002

Before: RENDELL, ALDISERT and GREENBERG, Circuit Judges

JUDGMENT

This case came on to be heard on the record from the United States District Court
for the Middle District of Pennsylvania and was submitted pursuant to Third Circuit LAR

Received and Filed

6-26-02

Marcia M. Waldron,
Clerk

34.1(a) on May 14, 2002. On consideration whereof, it is now here

ORDERED and ADJUDGED by this court that the order of the District Court entered on September 28, 2000 be and the same is hereby affirmed. All of the above in accordance with the opinion of this court.

ATTEST:



Acting Clerk

DATED: May 15, 2002

Certified as a true copy and issued in lieu of a formal mandate on June 26, 2002

Teste: 

Clerk, United States Court of Appeals
for the Third Circuit

UNREPORTED - NOT PRECEDENTIAL

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(Filed: May 15, 2002)

OPINION

Received and Filed

5/15/02
Marcia M. Waldron,
Clerk

PER CURIAM

Appellant, Frederick Evans, appeals the District Court's order dismissing his civil rights complaint pursuant to 28 U.S.C. § 1915(e), for failure to state a claim upon which relief may be granted. For essentially the reasons set forth in the district court's Memorandum Opinion, we will affirm its order of dismissal.

The district court provided a detailed recitation of the facts giving rise to Evans' cause of action; therefore, we provide only a summary here. On June 2, 2000, Evans filed a complaint pursuant to 42 U.S.C. § 1983 in the District Court naming 18 defendants from the Pennsylvania Department of Corrections. Evans alleged that defendants deprived him of his personal property and violated several of his civil rights when they failed to deliver to him a new television set he had ordered from a vendor, and then refused to provide him with copies of relevant paperwork supporting their contention that the whole matter was simply a shipping error on the part of the vendor. The events surrounding Evans' allegations occurred in 1993 and the institutional grievance process he subsequently pursued was completed in 1995. Accordingly, the Magistrate Judge to whom his action was assigned issued a Report recommending that the complaint be dismissed pursuant to 28 U.S.C. § 1915(e)(2)(ii) for failure to state a claim, as it was filed beyond the 2 year limitations period. Over Evan's objections, the District Court adopted the Report and dismissed the complaint.

As noted by the district court, claims brought pursuant to 42 U.S.C. § 1983 are

subject to the state statute of limitations for personal injury actions. Wilson v. Garcia, 471 U.S. 261, 266-67 (1985). The statute of limitations for a personal injury action in Pennsylvania is two years. 42 Pa. Cons. Stat. Ann. § 5524. We agree with the district court that because the events giving rise to Evans' claims occurred more than two years prior to the date on which the complaint was filed, the action is time barred.

Additionally, we find no basis on this record to invoke the doctrine of equitable tolling. While it is true that in a prior action defendant John Doe (later identified as William Fairall) was dismissed without prejudice, that dismissal was entered pursuant to Rule 4(m) of the Federal Rules of Civil Procedure because Evans could not effect service of the summons and complaint at that time. See Evans v. Horn, M.D. Pa. Civ. No. 95-cv-01218. Moreover, contrary to Evans' assertion, the Report subsequently issued by the Magistrate Judge in a second case docketed at Evans v. Horn, M.D. Pa. Civ. No. 96-cv-01394, did not provide that the statute of limitations on this action would be tolled indefinitely pending the discovery of John Doe's identity. Rather, the Magistrate Judge concluded that the claim regarding the alleged concealment of John Doe's identity was not "cognizable" in the subsequent action given the prior dismissal language.

This Report did not purport to afford Evans an open-ended extension of time within which to amend his previously dismissed complaint or to file yet another complaint challenging the alleged wrongdoing of these defendants which took place back in 1993 and 1995. Appellant had an obligation to commence suit against an identified John Doe

within the limitations period or to seek to timely amend his original complaint to add a named defendant, not institute yet another suit nearly five years after the filing of the original complaint when he happened to learn the identity of John Doe during a related state court proceeding. See Ammlung v. City of Chester, 494 F.2d 811, 816 (3d Cir. 1974) ("The running of a Pennsylvania statute of limitations against a federal cause of action is not tolled under Pennsylvania concepts of tolling by the commencement of a similar suit in state court."). See also Falsetti v. Local Union No. 2026, United Mine Workers of America, 355 F.2d 658, 662 (3d Cir. 1966)(prior actions in state courts do not toll the applicable state statute of limitations); Pace Industries, Inc. v. Three Phoenix Co., 813 F.2d 234, 240 (9th Cir. 1987)(same); Ramirez de Arellano v. Alvarez de Choudens, 575 F.2d 315, 320 (1st Cir. 1978)(same); Williams v. Walsh, 558 F.2d 667 (2nd Cir. 1977)(same). Thus, even assuming Evans' action is not now barred by the doctrine of *res judicata*, it was nonetheless untimely filed.

Accordingly, for the foregoing reasons, we will affirm the order of the district court.

TO THE CLERK OF COURT:

Please file the foregoing opinion.