IN THE UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF GEORGIA
VALDOSTA DIVISION

DAVIS MCARTHUR, by and through DANA MCARTHUR, his Court Appointed Guardian,

Plaintiff,

v. CIVIL ACTION NO. 7:23-cv-00105

CHAD CASTLEBERRY, in his individual and official capacity as chief of the City of Adel, Georgia Police Department, et al.

Defendants.

_____/

MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS OF DEFENDANTS CASTLEBERRY, ROBERTS, GREEN AND FUTCH

COME NOW Chad Castleberry ("Castleberry"), John Gary Roberts ("Roberts"), Taylor Green ("Green"), and Joel Futch ("Futch"), individually and in their official capacities as current and former employees of the City of Adel, Georgia, named as defendants in the above-styled action, and file this memorandum in support of their motion to dismiss the claims of plaintiff Davis McArthur ("Plaintiff") that are being asserted by and through Plaintiff's court appointed guardian, Dana McArthur, showing the Court as follows:

STATEMENT OF FACTS

1. Plaintiff is a mentally-ill individual who was declared legally incapacitated by a guardianship order (the "Guardianship Order") that was entered in the Probate Court of Cherokee County, Georgia on October 13, 2017. (Doc. 1, pp. 2-3.)

2. In the Guardianship Order, Dana McArthur and Andrea McArthur, Plaintiff's adoptive parents, were appointed as Plaintiff's guardian. (Doc. 1, p. 3.)

3. Andrea McArthur died on August 5, 2012, and, since that time, Dana McArthur ("Dana") has served as Plaintiff's sole guardian. (Doc. 1, p. 3.)

4. On the afternoon of August 26, 2019, Plaintiff became suicidal. (Doc. 1, ¶ 10.)

5. At some point on that same day, Plaintiff was transported from his group home to the Phoebe Sumter Regional Medical Center ("Phoebe Sumter") in Americus, Georgia. (Doc. 1, ¶ 11.)

6. Following Plaintiff's arrival at Phoebe Sumter, the medical staff issued a Form 1013 Involuntary Transport Order (the "1013 Order"). (Doc. 1, ¶ 11.)

7. The 1013 Order authorized and mandated Plaintiff's involuntary transport to Greenleaf Psychiatric Hospital ("Greenleaf") in Valdosta, Georgia. (Doc. 1, ¶ 11, p. 5 n.3.)

8. Phoebe Sumter arranged for Transcare Medical, LLC ("Transcare") to transport Plaintiff via ambulance from Phoebe Sumter to Greenleaf. (Doc. 1, ¶ 12.)

9. The regional headquarters for Transcare is in Adel, Georgia. (Doc. 1, ¶ 12.)

10. At some point on August 26, 2019, emergency medical technicians ("EMTs") employed by Transcare assumed Plaintiff's medical care from Phoebe Sumter and began to transport Plaintiff to Greenleaf in Valdosta. (Doc. 1, ¶ 13.)

11. On their way to Greenleaf, the EMTs who initially received Plaintiff from Phoebe Sumter decided to stop in Adel to effect a crew change that would replace the initial attending EMT – Christy Griffin ("Griffin") – with another EMT – Diana Ray ("Ray"). (Doc. 1, ¶ 14.)

12. By the time the ambulance transporting Plaintiff reached Adel, and while the Transcare staff executed the substitution of Ray in place of Griffin, Plaintiff had relapsed into a highly agitated and irrational mental state. (Doc. 1, ¶ 17.)

13. A physical altercation (the "Altercation") ensued between Plaintiff and Ray. (Doc. 1, ¶ 18.)

14. Transcare's paramedic-driver, Roosevelt Norwood ("Norwood"), stopped the ambulance in a parking lot and assumed Ray's place in the Altercation while Ray called 911. (Doc. 1, ¶ 19.)

15. On the day in question, Roberts was a sergeant with the Adel Police Department (Doc. 1, ¶ 5), and Roberts responded to the scene of the Altercation. (Doc. 1, ¶ 20.)

16. On the day in question, Futch and Green were also officers with the Adel Police Department (Doc. 1, ¶¶ 6-7), and Futch and Green arrived at the scene of the Altercation shortly after Roberts. (Doc. 1, ¶ 20.)

17. Following the arrival of Futch and Green, Roberts ordered Futch and Green to seize Plaintiff, handcuff Plaintiff, place Plaintiff in the back of a patrol car, and transport Plaintiff to the Cook County Jail (the "Jail"). (Doc. 1, ¶ 21.)

18. In accordance with the instructions they received from Roberts, Futch and Green seized Plaintiff, handcuffed him, placed him in the back of a patrol car, and transported Plaintiff to the Jail. (Doc. 1, ¶ 23.)

19. Neither Roberts, Futch, nor Green offered Plaintiff any medical treatment for Plaintiff's obvious wounds and/or care for Plaintiff's obvious psychiatric crisis. (Doc. 1, ¶ 25.)

20. Neither Roberts, Futch, nor Green made an effort to ascertain the reason that Plaintiff was being transported by ambulance, Plaintiff's medical status, or Plaintiff's need for continuing emergency care. (Doc. 1, ¶ 26.)

21. After Plaintiff was removed from the scene, Roberts approached the uniformed Transcare EMTs at the scene of the Altercation and obtained cursory statements from those individuals. (Doc. 1, ¶ 28.)

22. After Plaintiff arrived at the Jail, Plaintiff was processed and Plaintiff remained incarcerated in that facility until he posted bond nine (9) days later. (Doc. 1, ¶¶ 29, 32.)

23. On August 22, 2022, Plaintiff filed suit against Roberts, Futch, Green, and the Police Department for the City of Adel, and that lawsuit is hereinafter referred to as the "First Lawsuit." *McArthur v. Chad Castleberry, et al.*, 7:22-cv-00085, Doc. 1 (M.D. Ga. 2022)

24. The Court dismissed the First Lawsuit on September 13, 2023. *Id.*, Doc. 8.

25. On September 25, 2023, Plaintiff filed this lawsuit (the "Lawsuit"). (Doc. 1.)

26. In the complaint he filed in this matter, Plaintiff names Roberts, Futch, and Green as defendants. (Doc. 1, ¶¶ 5-7.)

27. In addition, Plaintiff named Chad Castleberry as a defendant. (Doc. 1, ¶ 4.)

28. Castleberry is the Chief of the Adel Police Department, and he is hereinafter referred to as "Chief Castleberry." (Doc. 1, ¶ 4.)

29. In Count I of the complaint, Plaintiff asserts a variety of claims against Roberts, Futch, Green, and Chief Castleberry (the "Adel Defendants") pursuant to 42 U.S.C. § 1983. (Doc. 1, ¶¶ 29-37.)

30. In Count II of his complaint, Plaintiff asserts claims against the Adel Defendants pursuant to U.S. Code Title 42, Chapter 21. (Doc. 1, ¶¶ 38-51.)

31. In Count III of his complaint, Plaintiff seeks injunctive relief, and, in Count IV, Plaintiff seeks declaratory relief. (Doc. 1, ¶¶ 52-61.)

For the reasons set forth below, the claims Plaintiff is asserting against the Adel Defendants are subject to dismissal.

ARGUMENT AND CITATION OF AUTHORITY

The claims Plaintiff is asserting against the Roberts, Futch, and Green (the "Patrol Officers") pursuant to 42 U.S.C. § 1983 for alleged violation of the Constitution and laws of the United States (including U.S. Code Title 42, Chapter 21) are subject to dismissal because those claims fail to state a claim because they are barred by the applicable statute of limitations or are otherwise not viable. In addition, the § 1983 claims Plaintiff is asserting against Chief Castleberry are barred by the statute of limitations or are otherwise not viable. Furthermore, Plaintiff does not have standing to assert a claim for the injunctive relief he is seeking. Moreover, Plaintiff's claim for declaratory relief is barred by the statute of limitations or is otherwise subject to dismissal because the underlying causes of action are not viable.

I. The claims Plaintiff is asserting against the Patrol Officers pursuant to 42 U.S.C. § 1983 for alleged violations of the Constitution and laws of the United States (including U.S. Code Title 42, Chapter 21) fail to state a claim to relief because they are barred by the statute of limitations or are otherwise not viable.

According to Plaintiff's complaint, Plaintiff is asserting § 1983 claims against the Patrol Officers for alleged violation of certain rights afforded by the Constitution and laws of the United States. In particular, Plaintiff is asserting claims for the alleged violation of: (a) the right to be free from the unreasonable seizure of his person; (b) the right to be free from cruel and unusual punishment; (c) the right to be free from racial discrimination in the administration of emergency medical services; (d) the right to be free from wrongful seizure; and (e) the rights enumerated under U.S. Code Title 42, Chapter 21. (Doc. 1, ¶ 31a-h.) However, as explained below, those claims are either barred by the applicable statute of limitations or are otherwise not viable.

A. A number of the § 1983 claims Plaintiff is asserting against the Patrol Officers are barred by the applicable statute of limitations.

"Section 1983 has no statute of limitations of its own, and instead is governed in each case by the forum state's general personal injury statute of limitations." *Reynolds v. Murray*, 170 Fed. Appx. 49, 50 (11th Cir. 2006); *Lovett v. Ray*, 327 F.3d 1181, 1182 (11th Cir. 2003) ("Federal courts apply their forum state's statute of limitations for personal injury actions to actions brought pursuant to 42 U.S.C. § 1983."). As such, in Georgia, the two-year statute of limitations set forth in O.C.G.A. § 9-3-33 applies to § 1983 claims. *Wilson v. Hamilton*, 135 Fed. Appx. 213, 214 (11th Cir. 2005); *Lawson v. Glover*, 957 F.2d 801, 803 (11th Cir. 1987) (two-year limitations period under O.C.G.A. § 9-3-33 applies to § 1983 claims); *Emory v. Macon-Bibb Cty.*, 2020 WL 3050711, *3 (M.D. Ga. June 8, 2020). Therefore, Plaintiff had two years from the date his claims accrued in which to file a § 1983 claim. *See id*.

Although "the length of the statute of limitations is determined by reference to state law, the accrual date of a § 1983 cause of action is a question of federal law that is *not* resolved by reference to state law." *Shepherd v. Wilson*, 663 Fed. Appx. 813, 817 (11th Cir. 2016) (emphasis in original). With respect to accrual, the Eleventh Circuit has consistently stated that, under federal law, the point of accrual depends on the plaintiff's injury, and "[t]o decide [the issue of accrual], a court must first identify the injuries that the plaintiff allegedly suffered and then determine when the plaintiff could have sued for them." *Villalona v. Holiday Inn Express & Suites*, 824 Fed. Appx. 942, 946 (11th Cir. 2020).

As such, generally, a § 1983 cause of action accrues when the plaintiff has a "complete cause of action"—in other words, when the plaintiff's injury occurs giving him a claim to relief. *See Foudy v. Indian River County Sheriff's Office*, 845 F.3d 1117, 1123 (11th Cir. 2017); *see also Wallace v. Kato*, 549 U.S. 384, 388 (2007) ("Under [federal principles of accrual], it is the standard

rule that accrual occurs when the plaintiff has a complete and present cause of action, that is, when the plaintiff can file suit and obtain relief."). However, on occasion, the Eleventh Circuit has also held that accrual does not occur until the plaintiff discovers the injury—the so-called "discovery rule"—"such that the statute of limitations begins to run on a [§ 1983] claim when the facts which would support a cause of action are apparent or should be apparent to a person with a reasonably prudent regard for his rights." *Foudy*, 845 F.3d at 1122-23 (quotations omitted); *see also Mullinax v. McElhenney*, 817 F.2d 711, 715-17 ("Section 1983 actions do not accrue until the plaintiff knows or has reason to know that he has been injured."). And most recently, in *Villalona*, the Eleventh Circuit attempted to meld these concepts, stating a § 1983 cause of action "will not accrue until the plaintiff knows or should know (1) that he has suffered an injury that forms the basis of his action and (2) the identity of the person or entity that inflicted the injury." 824 Fed. Appx. at 946. As explained below, regardless of which iteration of the accrual date is applied, a number of the claims Plaintiff is asserting against the Patrol Officers in this matter accrued more than two years prior to the filing of this lawsuit and, therefore, are barred.

1. The § 1983 claims Plaintiff is asserting against the Patrol Officers as a result of an alleged violation of his right to be free from unreasonable seizure of his person and wrongful seizure are barred by the statute of limitations.

In his complaint, Plaintiff claims that the Patrol Officers violated his clearly established rights (1) to be free from the unreasonable seizure of his person (Doc.1, ¶ 31b) and (2) to be free from wrongful seizure. (Doc. 1, ¶ 31e.) With respect to such claims, the United States District Court for the Southern District of Georgia recently held that a claim based on an alleged unreasonable seizure accrues "when either the seizure ends or the plaintiff is held pursuant to legal process." *Jackson v. City of Willacoochee*, 2023 WL 174996, *2 (S.D. Ga. 2023)). Here, Plaintiff alleges that he was seized by Futch and Green on August 26, 2019, and Plaintiff alleges that the

seizure ended nine (9) days later when he was released from the Jail. (Doc. 1, ¶¶ 10; 23; 32.) As such, any claim Plaintiff may have had as a result of an alleged unlawful seizure accrued on September 4, 2019 when Plaintiff was released from the Jail. However, Plaintiff did not file this Lawsuit until September 25, 2023. Because Plaintiff did not file suit within two years of the date on which his seizure claims accrued, those claims are barred by the statute of limitations. *Id.* (dismissing the plaintiff's unlawful seizure claim because it was not asserted within two years of the date it accrued, and, therefore, was barred by the statute of limitations).

2. The § 1983 claim Plaintiff is asserting against the Patrol Officers as a result of an alleged violation of his right to be free from cruel and unusual punishment is barred by the statute of limitations.

In his complaint, Plaintiff alleges that the Patrol Officers violated his "right to be free from cruel and unusual punishment." (Doc. 1, ¶ 31b.) As the Court is aware, "the Eighth Amendment forbids the 'inflict[ion]' of 'cruel and unusual punishments.'" *Hoffer v. Secretary, Florida Dept. of Corr.*, 973 F.3d 1263, 1270 (11th Cir. 2020) (quoting U.S. Const. Amend VIII.) And "[t]he Eighth Amendment's prohibition on conditions of confinement that amount to cruel and unusual punishment also applies to pre-trial detainees through the Fourteenth Amendment's due process clause." *Bennett v. Chitwood*, 519 Fed. Appx. 569, 573 (11th Cir. 2013). However, the basis for the claim for cruel and unusual punishment that Plaintiff is asserting against the Patrol Officers is not apparent.

According to the complaint, Plaintiff's only interaction with the Patrol Officers occurred on August 26, 2019. (Doc. 1, ¶ 10.) On that day, the Patrol Officers responded to the scene of the Altercation. (Doc. 1, ¶ 20.) Following their arrival, on orders from Roberts, Futch and Green seized Plaintiff, handcuffed him, placed him in the back of their patrol car, and transported Plaintiff to the Jail for processing and confinement. (Doc. 1, ¶¶ 21; 23.) Plaintiff further alleges that the

Patrol Officers did not provide him with any medical treatment for his obvious wounds and/or any care for his obvious psychiatric crisis. (Doc. 1, ¶ 25) Based on that allegation, it is presumed that the claim for cruel and unusual punishment that Plaintiff is asserting against the Patrol Officers is based on the alleged failure on the part of the Patrol Officers to provide Plaintiff with medical and/or psychiatric treatment. In that regard, the Adel Defendants recognize that a failure to provide medical treatment can rise to the level of cruel and unusual punishment. *See Estell v. Gamble*, 429 U.S. 97, 104-05 (1976). But the claim Plaintiff is asserting against the Patrol Officers based on cruel and unusual punishment is barred by the applicable statute of limitations.

Based on the foregoing, any claim for cruel and unusual punishment that Plaintiff is asserting as a result of the Patrol Officers' alleged failure to provide Plaintiff with medical treatment accrued when the Patrol Officers interacted with Davis on August 26, 2019. (Doc. 1, ¶ 10.) Plaintiff, however, did not file his complaint in this matter until September 25, 2023 – more than four years after the claim accrued. (Doc. 1.) As such, the claim for cruel and unusual punishment that Plaintiff is asserting against the Patrol Officers is barred by the two-year statute of limitations applicable to § 1983 claims.

3. The § 1983 claim Plaintiff is asserting against the Patrol Officers as a result of an alleged violation of his right to be free from racial discrimination in the administration of medical services is barred by the statute of limitations.

As discussed in the preceding section, Plaintiff alleges that, on August 29, 2019, the Patrol Officers did not offer Plaintiff "any medical treatment for his obvious wounds and/or any care for his obvious psychiatric crisis." (Doc. 1, ¶ 25.) In addition, Plaintiff alleges that the Patrol Officers did not make "any effort to ascertain the nature/reason of/for Plaintiff's EMS transport, [Plaintiff's] medical status, and/or the need for [Plaintiff's] continuing medical care." (Doc. 1, ¶ 26.) Furthermore, "Plaintiff contends that the deprivation of [Davis's] clearly established rights

was, at least in part, racially motivated . . . ." (Doc. 1, ¶ 35.) Based on those allegations, Plaintiff is asserting a § 1983 claim against the Patrol Officers due to the alleged violation of his right to be free from racial discrimination in the administration of emergency medical services. (Doc. 1, ¶ 31d.) However, as discussed below, that claim is also barred by the statute of limitations.

As discussed in the preceding section, the only interaction between Plaintiff and the Patrol Officers occurred on August 29, 2019. On that day, the Patrol Officers responded to the scene of the Altercation, and, after they arrived, Futch and Green took Plaintiff into custody and transported Plaintiff to the Jail. (Doc. 1, ¶¶ 20-23.) Thus, if the Patrol Officers denied medical care to Plaintiff, they did so on August 29, 2019. And Plaintiff would have been aware of that denial at the time it occurred, meaning Plaintiff's claim accrued on August 29, 2019. However, as discussed above, Plaintiff did not file this lawsuit until September 25, 2023, and, therefore, any claim arising from the alleged denial of medical care to Plaintiff is barred by the applicable two-year statute of limitations.

4. The claims Plaintiff is asserting against the Patrol Officers pursuant to U.S. Code Title 42 Chapter 21 are barred by the statute of limitations or are otherwise not viable.

Plaintiff is also asserting a § 1983 claim against the Patrol Officers pursuant to U.S. Code Title 42, Chapter 21. (Doc. 1, ¶ 31f.) And Plaintiff specifically describes the nature of that claim in Count II of his complaint. (Doc. 1, ¶ 31f; Doc. 1, ¶¶ 38-51.) In Count II, Plaintiff alleges that the Patrol Officers "acted in violation of Title 42, Chapter 21 of the U.S. Code which prohibits racial discrimination with respect to the provision of public accommodations, such as Georgia's emergency medical transport services under its Form 1013." (Doc. 31, ¶ 49.) In other words, Plaintiff is claiming that, when the Patrol Officers seized Plaintiff on August 29, 2019 – which

interrupted Plaintiff's transport via ambulance from Phoebe Sumter to Greenleaf – the Patrol Officers violated Davis's right to public accommodation.

"The United States Congress has enacted two statutes that establish civil rights in the context of public accommodations: (1) Title II of the Civil Rights Act of 1964, § 201, *et seq., as amended,* 42 U.S.C. § 2000a, *et. seq.*; and (2) 42 U.S.C. § 1981." *Scott v. Mackey,* 2019 WL 7606239, *3 (N.D. Fla. 2019). In this matter, any claim Plaintiff is asserting pursuant to 42 U.S.C. § 1981 is barred by the statute of limitations and Plaintiff has not alleged facts sufficient to support a claim pursuant to 42 U.S.C. § 2000a.

1. Any claim Plaintiff is asserting pursuant to § 1981 is barred by the statute of limitations.

Courts have recognized that "§ 1981 does not provide an independent cause of action against state actors." *Riles v. Augusta-Richmond County Commission,* 2017 WL 3597488, *2 (S.D. Ga. 2017) (citing *Butts v. Cnty of Volusia,* 222 F.3d 891, 894 (11th Cir. 2000). "Rather 42 U.S.C. § 1983 is the exclusive federal remedy for violations by state actors of the rights guaranteed by § 1981." *Id.*, *2 (citing *Bryant v. Jones,* 575 F.3d 1281, 1288 n.1 (11th Cir. 2009)); *Varn v. City of Nashville, Ga.,* 2023 WL 2589224, *6 (M.D. Ga. 2023) ("In the present case, Defendant Edwards and the City of Nashville, GA, are both state actors. Accordingly, to the extent that Plaintiff brings claims pursuant to 42 U.S.C. § 1981, independent of § 1983, those claims are DISMISSED . . . .") (emphasis in original).

As discussed above, in Georgia, claims asserted pursuant to § 1983 have a two-year statute of limitations. Therefore, if Plaintiff was denied a public accommodation, Plaintiff was required to file suit within two years of that alleged denial—i.e. when that accrued. Here, Plaintiff alleges that Plaintiff was denied a public accommodation on August 29, 2019, and, thus, Plaintiff's claims accrued on that day. (Doc. 1.) But Plaintiff did not file this lawsuit until September 25, 2023.

(*Id*.) As a result, any § 1983 claim that Plaintiff is asserting as a result of the alleged violation of rights afforded to Plaintiff by § 1981 is barred by the statute of limitations.

2. Plaintiff has not alleged facts sufficient to support a claim pursuant to 42 U.S.C. § 2000a.

"Because only equitable relief is available under § 2000a, courts have found that no statute of limitations applies to § 2000a claims." *Jackson v. Waffle House*, 413 F.Supp.2d 1338, 1362 (11th Cir. 2006). As such, the merits of Plaintiff's § 2000a claim must be considered.

In relevant part, § 2000a states that "all persons shall be entitled to full and equal enjoyment of the goods, services, facilities, privileges, advantages, and accommodations *of any place of public accommodation*, as defined in this section, without discrimination or segregation on the ground of race, color, religion or national origin." *Benjamin v. American Airlines, Inc*, 2015 WL 8968297, *8 (S.D. Ga. 2015) (citing 42 U.S.C. § 2000a) (emphasis supplied).

> [Thus, t]o establish a claim under § 2000a, a plaintiff must demonstrate that he (1) is a member of a protected class, (2) attempted to contract for services and afford himself or herself of the full benefits and enjoyment of a public accommodation, (3) was denied the full benefits or enjoyment of a public accommodation, and (4) such services were available to similarly situated persons outside of his or her protected class who received full benefits or were treated better.

Id. at 1361. Here, Plaintiff does not have a viable claim pursuant to § 2000a because: (1) Plaintiff was not denied an accommodation of a "place of public accommodation;" and (2) Plaintiff fails to allege that he was treated any differently than a similarly situated person outside of his protected class.

a. Plaintiff was not denied a public accommodation.

"According to [2000a], an establishment 'which serves the public is a place of public accommodation . . . if its operations affect commerce, or if discrimination or segregation by it is

supported by [s]tate action.'" *Trimble v. Emory Healthcare, Inc.*, 2021 WL 1244864, *4 (N.D. Ga. 2021) (quoting 42 U.S.C. § 2000a(b)).

> Such establishments include:
>
> (1) Any inn, hotel, motel, or other establishment which provides lodging to transient guests . . . ;
>
> (2) any restaurant, cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment; or gasoline station;
>
> (3) any motion picture house, theater, concert hall, sports arena, stadium or other place of exhibition or entertainment; and
>
> (4) any establishment (A)(i) which is physically located within the premises of any establishment otherwise covered by this section, or (ii) within the premises of which is physically located any such covered establishment, and (B) which holds itself out as serving patrons of such covered establishment.

Id. (quoting 42 U.S.C. § 2000a(b)).

Notably, Courts have held that, if a location does not fall within a category specifically identified by the statute, it is not a "place of public accommodation." For instance, in *Trimble*, the Court observed that the plaintiffs' complaint contained no allegations that would bring Emory Hospital within the statutory definition of place of "public accommodation." *Id.* In that regard, the Court commented that the plaintiffs did not allege "for example, that the hospital is a place of lodging, a place of eating, a place of entertainment, or a place within or surrounding one of these types of premises." *Id.* As such, the Court concluded that the plaintiffs failed to adequately allege that Emory Hospital was a place of public accommodation. *Id.*, *5; *see also Benjamin v. American Airlines, Inc.*, 2015 WL 8968297 (S.D. Ga. 2015) (holding that an airport is not a covered establishment under § 2000a); and *Tippins v. City of Dadeville, Alabama*, 23 F.Supp.3d 1393

(M.D. Ala. 2014) ("[A] cemetery is not 'a place of public accommodation' within the meaning of § 2000a(b).").

Because an ambulance does not meet the statutory definition of a "place of public accommodation," Plaintiff does not have a viable claim under § 2000a as a result of any action the Patrol Officers may have taken that resulted in the interruption of Plaintiff's transport via ambulance. For that reason, Plaintiff's § 2000a claim is subject to dismissal. *Trimble,* 2021 WL 1244864, *5.

b. Plaintiff has not identified a comparator.

"Under the fourth prong of a § 2000a claim, Plaintiffs must plead an 'apt comparator' outside the alleged protected class 'who was not subjected to the same harsh treatment' as Plaintiffs." *Id.* When a plaintiff's complaint does not mention a comparator who received more favorable treatment, it is subject to dismissal. *Id.*

Here, like in *Trimble,* Plaintiff's complaint does not mention any other ambulance patient or passenger who received more favorable treatment from the Patrol Officers. And for that reason, Plaintiff's complaint is subject to dismissal. *Id.*

II. The claims Plaintiff is asserting against the Patrol Officers pursuant to § 1983 for alleged violation of the Constitution and laws of the State of Georgia are subject to dismissal.

"'Section 1983 provides a private cause of action against any person who, under color of state law, deprives an individual of 'any rights, privileges, or immunities secured by the Constitution and laws' of the United States." *Chrisley v. Waites,* 478 F.Supp.3d 1271, 1274 (N.D. Ga. 2020) (quoting *Burban v. City of Neptune Beach,* 920 F.3d 1274, 1278 (11th Cir. 2019). "The Supreme Court has interpreted § 1983 to allow for actions 'brought to enforce rights created by federal statutes as well as by the Constitution.'" *Id.* Thus, "[w]hile the violation of state law may

(or may not) give rise to a state tort claim, it is not enough by itself to support a claim under section 1983." *Knight v. Jacobson,* 300 F.3d 1272, 1276 (11th Cir. 2002). As a result, Plaintiff cannot assert a viable § 1983 claim against the Patrol Officers for alleged violation of the Constitution and laws of the State of Georgia. But that is exactly what Plaintiff is attempted to do.

In Count I of his complaint, Plaintiff seeks to assert § 1983 claims for alleged violations of: (1) his right to receive the emergency care mandated by the Georgia Mental Health Code (Doc. 1, ¶ 31c); (2) the rights granted to Plaintiff under Section 1, Paragraph XIII of the Georgia Constitution (Doc. 1, ¶ 31g); and (3) the rights granted to Plaintiff under Section 1, Paragraph XVII of the Georgia Constitution (Doc. 1, ¶ 31h). However, as discussed, Plaintiff cannot assert § 1983 claims based on alleged violations of the Georgia Constitution. *Robinson v. Georgia,* 2008 WL 4500105, *4 (M.D. Ga. 2008) ("The rights guaranteed by the Georgia Constitution are not rights that are secured by either the United States Constitution or federal law. As a result, Plaintiffs' § 1983 claim based on an alleged violation of the Georgia Constitution is dismissed." (internal citations omitted)). Similarly, an alleged violation of a Georgia statute will not support a claim under § 1983. *Frederick v. Glynn County Sheriff's Department,* 2008 WL 60394, *2 (S.D. Ga. 2008) ("Section 1983 does not provide a cause of action for alleged violations of state law."). As a result, here, the § 1983 claims that Plaintiff is asserting against the Patrol Officers as a result of their alleged violation of the Georgia Constitution and the Georgia Mental Health Code are subject to dismissal.

III. The § 1983 claims Plaintiff is asserting against Chief Castleberry are barred by the statute of limitations or are otherwise not viable.

Plaintiff does not allege that Chief Castleberry responded to the scene of the Altercation, and there is no allegation that Chief Castleberry has any involvement with Plaintiff. Instead, in Count I, Plaintiff alleges that Chief Castleberry violated Plaintiff's statutory and Constitutional

rights by virtue of Chief Castleberry's alleged failure to implement protocols regarding the rights of mentally ill individuals and the handling of patients subject to a 1013 Order. (Doc. 1, ¶ 34a-b.) Plaintiff also alleges that Chief Castleberry failed to train and supervise his officers regarding the "proper handling of mentally ill individuals" and patients "made the subject of an involuntary Form 1013 Order." (Doc. 1, ¶ 34c-e.) Based on those allegations, Plaintiff is asserting claims pursuant to § 1983. However, those claims are barred by the statute of limitations.

As discussed, in Georgia, the statute of limitations for § 1983 claims is two years. *Emory,* 2020 WL 3050711, *3. Thus, with respect to the § 1983 claims Plaintiff is asserting against Chief Castleberry, Plaintiff was required to assert those claims within two years of the date on which they accrued. *Id.* As also discussed, a § 1983 cause of action accrues when the plaintiff has a "complete cause of action." *Foudy,* 845 F.3d at 1123.

Here, at the latest, Plaintiff's § 1983 claims accrued on September 4, 2019 when Plaintiff was released from the Jail. (Doc. 1, ¶¶ 10; 23; 32.); *see Milsaps v. Taylor,* 2022 WL 1908830, *2-4 (M.D. Ga. 2022) (statute of limitations for § 1983 claims based on alleged unconstitutional policies, practices, and customs, and for an alleged failure to train, accrued when the events that form the basis of the claim occurred); *Allen v. Hatch,* 2009 WL 734762, *2 (S.D. Ga. 2009) (§ 1983 claim for failure to supervise and failure to train arising out of an arrest accrued on the day of the arrest). However, even though his claim accrued on September 4, 2019, Plaintiff did not file the Lawsuit until September 25, 2023, which was more than two years after the claims accrued. As a result, the § 1983 claims Plaintiff is asserting against Chief Castleberry are barred by the statute of limitations.

It also appears that, in Count II of his complaint, Plaintiff is asserting a claim against Chief Castleberry pursuant to Title 42 Chapter 21 of the U.S. Code. (Doc. 1, ¶¶ 50-51.) However, as

set forth above, any claim Plaintiff is asserting against Chief Castleberry pursuant to § 1981 (via § 1983) is barred by the statute of limitations, and any claim Plaintiff is asserting against Chief Castleberry pursuant to § 2000a is subject to dismissal because Plaintiff does not allege that Chief Castleberry implemented any policy or practice that resulted in Plaintiff being denied the accommodation of a place of public accommodation or that resulted in a similarly situated individual outside of Plaintiff's class receiving more favorable treatment.

IV. Plaintiff does not have standing to assert claims for injunctive relief.

In Count III of his complaint, Plaintiff asserts a claim for injunctive relief against Chief Castleberry. (Doc. 1, ¶¶ 52-59.) Notably, Plaintiff seeks prospective relief. Specifically, Plaintiff seeks injunctive relief that will require Chief Castleberry to (1) train City of Adel police officers in regard to the proper implementation and effectuation of an 1013 Order; (2) develop and implement adequate training, policies, practices, and oversight to assure the proper handling of mentally ill and/or suicidal individuals in conformity with the rights of those individuals under the Georgia Mental Health Code; and (3) prohibit any police officer of the City of Adel from taking any action that terminates an active 1013 Order. (Doc. 1, ¶ 57.) Plaintiff also seeks injunctive relief that prohibits Chief Castleberry from placing any officer in active service until such officer has received proper training in the clearly established rights of the mentally ill and/or suicidal persons. (Doc. 1, ¶ 59.) However, Plaintiff does not have standing to assert such a claim.

"[A]s to prospective relief, '[b]ecause injunctions regulate future conduct, a party has standing to seek injunctive relief only if the party alleges . . . a real and immediate – as opposed to a merely conjectural or hypothetical – threat of future injury." *American Humanist Association, Inc. v. City of Ocala*, 127 F.Supp.3d 1265, 1274 (M.D. Fla. 2015). "Indeed, 'a prayer for injunctive and declaratory relief requires an assessment, at this stage of the proceeding, of whether the

plaintiff has sufficiently shown a real *and* immediate threat of future harm.'" *Id.* (emphasis in original) (citing *Elend v. Basham,* 471 F.3d 1199, 1207 (11th Cir. 2006). Notably, "[a]bstract injury is not sufficient to establish an injury in fact." *Johnson v. DeKalb County, Georgia,* 391 F.Supp.3d 1224, 1260 (N.D. Ga. 2019). "[F]or an injury to suffice for prospective relief, it must be imminent." *Id.*

Here, there is no allegation that Plaintiff faces a real and immediate threat of future harm. Indeed, the allegations in Plaintiff's complaint suggest otherwise. According to the complaint, Plaintiff resides in Americus, which, according to Google maps, is approximately 100 miles from Adel, and there is no allegation that Plaintiff travels through Adel on a regular basis. As such, there is no "imminent" threat of harm to Plaintiff and, therefore, Plaintiff lacks standing to seek prospective relief by way of injunction. For that reason, Plaintiff's claim for injunctive relief is subject to dismissal.

V. Plaintiff's claim for declaratory relief is barred by the statute of limitations or is otherwise subject to dismissal because the underlying causes of action are not viable.

In Count IV of his complaint, Plaintiff asserts a claim for declaratory relief. (Doc. 1, ¶¶ 60-61.) In particular, Plaintiff seeks a declaratory judgment that he had the statutory right to: (1) receive an emergency medical assessment and treatment; (2) be transported to Greenleaf without interruption or delay; and (3) remain in the care, custody and/or control of Transcare until he was released to Greenleaf. (Doc. 1, ¶ 60.) However, because the § 1983 claims underlying Plaintiff's request for declaratory relief are subject to dismissal, so is Plaintiff's request for declaratory relief. *Innova Investment Group, LLC v. Village of Key Biscayne*, 2020 WL 6781821, *6 (S.D. Fla. 2020).

"Because declaratory relief is a procedural mechanism, it depends on an underlying substantive cause of action and cannot stand on its own." *Id.* (quotations omitted). "Similarly,

actions for declaratory relief do not have their own statute of limitations, but rather 'must be brought within the limitations period applicable to the substantive claim underlying the request for declaratory relief." *Id.* (quotations omitted). Thus, "[w]here all the substantive claims have [ ] been dismissed, the claim for declaratory relief is also dismissed." *Id.* (quotations omitted).

Here, all of the § 1983 claims that Plaintiff is asserting against the Adel Defendants are barred by the statute of limitations or are otherwise subject to dismissal due to their failure to state a claim. Moreover, Plaintiff does not have a viable claim under U.S. Code Title 42, Chapter 21 because any § 1981 claim Plaintiff is asserting (via § 1983) is barred by the statute of limitations, and because Plaintiff does not have a viable claim under § 2000a due to the fact that an ambulance does not meet the statutory definition of "a place of public accommodation" and Plaintiff did not identify a similarly situated individual outside of his protected class that was treated more favorably. Therefore, because Plaintiff's underlying substantive claims are subject to dismissal, Plaintiff's claim for declaratory relief is also subject to dismissal. *Id.*

CONCLUSION

For the reasons set forth below, the Adel Defendants respectfully request that the Court enter an order that dismisses with prejudice the claims that Plaintiff is asserting against them.

This 19th day of October, 2023.

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CERTIFICATE OF SERVICE

I hereby certify that on October 19, 2023, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

s/Raleigh W. Rollins
Raleigh W. Rollins