

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.

PLAINTIFF'S RESPONSE TO THE MOTION TO DISMISS OF  
DEFENDANTS CASTLEBERRY, ROBERTS, GREEN AND FUTCH

COMES NOW DAVIS MCARTHUR, by and through his Court-Appointed  
Guardian, DANA MCARTHUR, Plaintiff, filing this Response to Defendants' Motion  
to Dismiss, showing the Court as follows:

1.

Plaintiff, Davis McArthur ("Davis"), has suffered from *multiple* diagnosed mental  
illnesses throughout his entire life. On October 13, 2017, Davis was legally determined  
to be mentally ill and, as such, lacking in mental capacity by the Probate Court of  
Cherokee County, Georgia. (Doc. 1, pp. 2-3.)

2.

Plaintiff has been under the court-appointed guardianship of Dana McArthur (who  
brings this suit on Davis' behalf) since that time. At all times through Davis' entire  
lifetime, he has been incapable of managing the ordinary affairs of his life without the

substantial assistance of his parents and (since attaining the age of majority) his court-appointed guardians.

3.

The Statement of Facts provided by Defendants is accurate, in all respects. (Doc. 3, pp. 1-4.)

4.

Defendants' Motion to Dismiss is based upon the contention that Plaintiff's claims under 42 U.S.C. § 1983 are now barred by the Statutes of Limitations. "Section 1983 does not specify a statute of limitations, but Federal Courts apply the law of the forum state for personal injury actions to Section 1983 claims. *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.").

5.

The statute of limitations for personal injury actions in Georgia is two (2) years, as specified by O.C.G.A. § 9-3-33; therefore, absent some basis for tolling, a person asserting claims under 42 U.S.C. § 1983 must bring them within two (2) years from the date those claims accrue. *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). However, under the law in Georgia, the statutes of limitations applicable to Davis' claims have been tolled.

6.

Georgia law expressly provides that a plaintiff is entitled to tolling of the applicable statute of limitations during periods when he or she is "legally incompetent because of intellectual disability or mental illness." O.C.G.A. § 9-3-90(a) (disability before accrual of right of action). *Martin v. Herrington Mill, LP*, 730 S.E.2d 164, 166 (Ga. Ct. App. 2012).

7.

Georgia law leaves no doubt. Davis McArthur's status as a mentally ill individual who has long been judicially determined to be lacking in mental capacity due to multiple mental illnesses, entitles him to the tolling benefits of O.C.G.A. § 9-3-90. However, it must also be noted that the federal courts of appeal generally agree that the 'accrual' of a claim is a federal issue, and that, in assessing the applicable date, if there is more than one plausible alternative, the Supreme Court has often leaned towards picking the earlier date. Martin A. Schwartz & John E. Kirklin, 1C Section 1983 Litigation: Claims & De-fenses, § 12.4, at 13 (3d ed. 1997).

8.

Defendants have not offered a "plausible" alternative for determining the accrual date for a mentally ill claimant, such as Davis, who suffers from a permanent mental incapacity and who has been judicially determined to be mentally incapacitated.

9.

A close examination of the cases cited by Defendants reflects that they have completely ignored Davis' mental incapacity—seemingly arguing that his claims

‘accrued’ when (a) he “knew” or “should have known” that he had a ‘complete’ claim, (b) that Davis had a ‘complete’ and present cause of action, or (c) that he could have acted. Such arguments are circular...it’s precisely because Davis is mentally incapacitated that he has not been able to assert his own claims, and that is also why his claims are tolled.

10.

The Defendants (correctly) cite the Eleventh Circuit’s holdings to the effect 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 v. Indian River County Sheriff’s Office*, 845 F.3d 1117, 1123 (11th Cir. 2017); *see also Mullinax v. McElhenney*, 817 F.2d 711, 715-17. They also cite *Villalona v. Holiday Inn Express & Suites*, 824 Fed. Appx. 942, 946 (11th Cir. 2020), for the proposition that 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. These cases raise the obvious question: when should a mentally ill, mentally incapacitated individual be charged with ‘knowledge’ that he has suffered numerous violations of his Constitutional rights?

12.

Having failed to bring forward any “plausible alternative” to the unique facts and circumstances of this case and Georgia’s specifically applicable tolling statute, Defendants Motion should be denied.

WHEREFORE, Plaintiff respectfully prays for the following relief:

- a. An Order Denying Defendants' Motion to Dismiss.
- b. Such other and further relief to which Plaintiff may show himself justly entitled.

This 9<sup>th</sup> day of November 2023.

Respectfully submitted,  
THE LAW OFFICES OF BILL REED

By: /s/ Bill Reed  
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Certificate of Service

This is to certify that I have served a copy of the foregoing Response upon all counsel of record this 9<sup>th</sup> day of November 2023, by email and the ECF filing system.

By: /s/ Bill Reed  
James William ("Bill") Reed