[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 22-11901

Non-Argument Calendar

IRINA CHEVALDINA,

Plaintiff-Appellant,

versus

CENTER FOR INDIVIDUAL RIGHTS,
MICHAEL E. ROSMAN,

Defendants-Appellees,

TERENCE J. PELL,

Defendant.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 1:20-cv-24690-WPD

Before BRASHER, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff-Appellant Irina Chevaldina appeals following the dismissal of her Second Amended Complaint against a law firm that previously represented her ("the Center") and that firm's attorney. On appeal, Chevaldina argues the district court erred in dismissing her suit for failure to state a claim and based on the relevant statutes of limitations.[1] We write only for the parties who are already familiar with the facts. Accordingly, we include only such facts as are necessary to understand our opinion. We will address each of her challenges in turn.

I.

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[1] Chevaldina identified several other orders of the district court in her notice of appeal but has not challenged any of these orders in her brief on appeal. Accordingly, we conclude that any challenge to these orders is abandoned. *See Irwin v. Hawk*, 40 F.3d 347, 347 n.1 (11th Cir. 1994) (noting that litigant abandons an issue by failing to challenge it on appeal and applying the same to a *pro se* litigant). Likewise, she has abandoned Court Four, civil conspiracy, by not challenging the district court's opinion resolving that claim.

We review *de novo* a district court's dismissal of a complaint for failure to state a claim. *Evanto v. Fed. Nat'l Mortg. Ass'n*, 814 F.3d 1295, 1297 (11th Cir. 2016). We also review *de novo* questions of law, including questions of statutory interpretation and the interpretation and application of statutes of limitations. *SEC v. Graham*, 823 F.3d 1357, 1360 (11th Cir. 2016); *Ctr. for Biological Diversity v. Hamilton*, 453 F.3d 1331, 1334 (11th Cir. 2006). In doing so, we construe *pro se* pleadings liberally. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

A district court may properly dismiss a complaint for failure to state a claim if it is apparent from the face of the complaint that the applicable statute of limitations bars the claim. *United States v. Henco Holding Corp.*, 985 F.3d 1290, 1296 (11th Cir. 2021).

Under Florida law, a two-year statute of limitations applies to actions seeking relief for "professional malpractice, . . . whether founded on contract or tort" with the limitations period running "from the time the cause of action is discovered or should have been discovered with the exercise of due diligence." Fla. Stat. Ann. § 95.11(4)(a); *Larson & Larson, P.A. v. TSE Indus., Inc.*, 22 So. 3d 36, 41 (Fla. 2009).

"The 'delayed discovery' doctrine generally provides that a cause of action does not accrue until the plaintiff either knows or reasonably should know of the tortious act giving rise to the cause of action." *Raie v. Cheminova, Inc.*, 336 F.3d 1278, 1280 (11th Cir. 2003) (quoting *Hearndon v. Graham*, 767 So. 2d 1179, 1184 (Fla. 2000)); *see also* Fla. Stat. § 95.031.

Here, we conclude the district court correctly dismissed Count One and Count Two of Chevaldina's Second Amended Complaint ("SAC")[2] for failure to state a claim under the relevant statute of limitations. *Henco Holding Corp.*, 985 F.3d at 1296.[3] Because Counts One and Two related to the Center's prior representation of Chevaldina in the earlier *Katz* litigation, the district court correctly concluded that a two-year statute of limitations applied. Fla. Stat. § 65.11(4)(a). By any measure, Counts One and Two were brought after that time. At least by May 2017, Chevaldina was aware of the claims she now brings against the Center. At that time (and as part of the separate litigation commenced by the Center

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[2] Count one is Chevaldina's breach of contract claim against the Center, which alleges a breach of the attorney-client retainer agreement pursuant to which the Center represented Chevaldina in the *Katz* litigation, which case and which representation ended in 2015. Count Two is her breach of fiduciary duty claim against the Center based on alleged breaches of that same retainer agreement and attorney-client relationship.

[3] Chevaldina also challenges several of the district court's procedural rulings, which she asserts, among other things, violated Fed. R. Civ. P. 12(g)(2). We conclude, however, that the errors, if any, in this respect were harmless. *Equal Emp't Opportunity Comm'n v. STME, LLC*, 938 F.3d 1305, 1322–23 (11th Cir. 2019); 28 U.S.C. § 2111; *see also Doe v. Columbia-Brazoria Indep. Sch. Dist.*, 855 F.3d 681, 686 (5th Cir. 2017) (finding a potential error under Rule 12(g) harmless because "the [defendant] could have presented th[e] same argument in a Rule 12(c) motion for judgment on the pleadings"). For example, Chevaldina argues that the Center waived its statute of limitations defense by failing to assert it in its initial Rule 12(b)(6) motions, and asserting it only in its motion to dismiss Chevaldina's SAC. If error at all, it is harmless. The substance of the Rule 12(b)(6) motion (and the same statute of limitations defense) could have been made under Rule 12(c). *See* Fed.R.Civ.P. 12(h)(1) and (2).

against Chevaldina in March 2016), she first asserted counterclaims against the Center, which counterclaims are similar or nearly identical to the claims she now brings. *See Silvestrone*, 721 So. 2d at 1175; *Raie*, 336 F.3d at 1280. But Chevaldina did not institute this action until November 2020, long after the two-year statute of limitations expired. Thus, the district court did not err in dismissing Counts One and Two, and we affirm in this respect.[4]

II.

To succeed on a malicious prosecution claim (Count Three of the SAC) under Florida law, a plaintiff must establish, among other things, that there was an original "judicial proceeding against the present plaintiff" and that the original proceeding was instituted with "an absence of probable cause." *Debrincat v. Fischer*, 217 So. 3d 68, 70 (Fla. 2017) (quoting *Alamo Rent-A-Car, Inc. v. Mancusi*, 632 So. 2d 1352, 1355 (Fla. 1994)). A failure to establish any of these elements defeats a claim. *Mancusi*, 632 So. 2d at 1355.

A plaintiff suing for malicious prosecution may establish that the instigator of a prior suit lacked probable cause by proving that the instigator lacked "a reasonable belief, based on facts and circumstances known to him, in the validity of the claim." *Wright v. Yurko*, 446 So. 2d 1162, 1166 (Fla. Dist. Ct. App. 1984). But "[p]robable cause in the context of a civil suit is measured by a lesser

[4] Chevaldina's other arguments challenging the district court's statute of limitations rulings are without merit and need no further discussion. Also, in light of our ruling on the statute of limitations ground, we need not address the Center's several alternative grounds on which to affirm Counts One and Two.

standard than in a criminal suit." *Id.* In bringing an action, "defendants need not be certain of the outcome of the underlying proceeding to have probable cause" to bring a claim. *Endacott v. Int'l Hospitality, Inc.*, 910 So. 2d 915, 922 (Fla. Dist. Ct. App. 2005). Finally, "to prevail on a claim for malicious continuation of prosecution, [a] plaintiff must show that probable cause was lacking at all stages of the underlying proceeding." *Id.* at 923. The Florida Supreme Court has explained that a judgment after trial in a court "of competent jurisdiction" which results in a judgment or verdict "is a sufficient legal determination of the existence of probable cause" even if the judgment is subsequently reversed. *Goldstein v. Sabella*, 88 So. 2d 910, 911-12 (Fla. 1956).

Here, Chevaldina did not show that the Center initiated the prior proceeding against her without probable cause. *See Debrincat*, 217 So. 3d at 70. Chevaldina's malicious prosecution claim is premised on the Center's March 2016 suit against Chevaldina for breach of the attorney-client retainer agreement pursuant to which the Center represented Chevaldina in the earlier *Katz* litigation. Of note, the district court initially granted summary judgment to the Center in the prior case, strongly suggesting that the Center had probable cause to institute the suit. *See Goldstein*, 88 So. 2d at 911-12. And while we ultimately reversed that grant of summary judgment to the Center, we remanded for further proceedings, and our opinion did not suggest the Center's suit was instituted without probable cause. *See Ctr. for Individual Rts. v. Chevaldina*, 829 F. App'x 416, 417-19 (11th Cir. 2020) (unpublished); *Goldstein*, 88 So. 2d at 911-12. Moreover, "[p]robable cause in the context of

a civil suit is measured by a lesser standard than in a criminal suit," *Wright*, 446 So. 2d at 1166, and a plaintiff need not know he will prevail in order to initiate a suit, *Endacott*, 910 So. 2d 915. Thus, here—where the viability of the claim was at least debatable—the district court did not err in finding that her Second Amended Complaint failed to state a claim for malicious prosecution. *See Mancusi*, 632 So. 2d at 1355. Accordingly, we also affirm in this respect.

For these reasons, the district court did not err in dismissing Chevaldina's Second Amended Complaint, and we affirm.

AFFIRMED.