[DO NOT PUBLISH]

In the

United States Court of Appeals

For the Eleventh Circuit

No. 23-11102

Non-Argument Calendar

ABDUL JONES,

Plaintiff-Appellant,

versus

GENERAL MOTORS, LLC,
f.k.a. General Motors Company,
MAGNA CORPORATION,
MAGNA INTERNATIONAL, INC.,
MAGNA MIRRORS OF AMERICA, INC.,
MAGNA SERVICES OF AMERICA, INC., et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:21-cv-03460-VMC

Before NEWSOM, LAGOA, and ANDERSON, Circuit Judges.

PER CURIAM:

Abdul Jones appeals from the district court's dismissal of his complaint against General Motors and several entities related to Magna Corporation[1] (collectively, "Defendants") on statute of limitations grounds. Jones contends that the district court erred in its dismissal because it misapplied Georgia's discovery tolling rule. Jones also asks us to decide that Georgia § 9-3-99 tolls the statute of limitations in tort cases where (like here) a related criminal prosecution is possible but has not commenced. For the following reasons, we affirm.

I. FACTUAL AND PROCEDURAL BACKGROUND[2]

In the early morning hours of May 5, 2017, Jones was driving his 2005 Cadillac De Ville home from work in Atlanta, Georgia.

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[1] The defendants below were General Motors, Magna Corporation, Magna International Inc., Magna Mirrors of America Inc., Magna Services of America, Inc., Magna Mirrors Systems Inc., Cosma International of America, Inc., Magna Donnelly Corporation, and ABC, Inc.

[2] Because the procedural posture of this case involves a Federal Rule of Civil Procedure 12(b)(6) motion, we must accept the allegations of the plaintiff's complaint as true. *See Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir.

That car was manufactured and distributed by General Motors. Jones's driver's-side window was rolled down as he drove. When Jones was just about a mile from home, he was struck by another car rounding a curve on Martin Luther King, Jr., Drive. The other driver swerved out of his or her lane and into Jones's lane, sideswiping Jones's car and knocking off his driver's-side rearview mirror. The offending driver then fled the scene. The impact shattered the rearview mirror, sending shards flying through the open window and into Jones's left eye, causing permanent damage to his cornea, pupil, lens, and retina.

More than four years later, on July 17, 2021, Jones sued Defendants in Georgia state court. He alleged that General Motors installed the glass in the rearview mirror knowing that it was dangerously defective because it was "not manufactured, fabricated or treated to substantially prevent the glass shattering and flying when broken." General Motors's decision to install this dangerous glass, Jones alleged, was the sole proximate cause of the injury to his eye. As to the Magna Defendants, Jones alleged that they—as the manufacturers, suppliers, and distributors of the mirror—were likewise liable for Jones's injuries because they knew or should have known that they were putting a dangerously defective product out into the market. As support for his claims, Jones recounted how "[t]he problems with the . . . rear view mirrors were known within the automotive industry for years," yet

2012). The facts set forth in this section of the opinion, therefore, are taken from the complaint and construed in the light most favorable to the plaintiff.

General Motors and the Magna Defendants continued to use subpar glass rather than laminated or tempered options.

A few days after filing in state court, Jones amended his complaint. Defendants then removed the action to federal court and moved to dismiss the amended complaint as untimely and for failure to state a claim. In response, Jones amended his complaint for a second time, and Defendants renewed their motion to dismiss.[3] While the motion to dismiss was pending, Jones moved for leave to file third amended complaint.

The district court resolved the motion to dismiss and the motion for leave to amend together in a single order. In that order, the district court dismissed Jones's complaint with prejudice, denying his requested leave to file a third amended complaint. The court found that Georgia's discovery rule for the tolling of the statute of limitations—here, two years as a case involving personal injuries, *see* O.C.G.A. § 9-3-33—was not applicable, particularly because Jones was aware that he was injured on the date of his accident. The district court also rejected Jones's argument that the limitations period was tolled based on alleged fraud by Defendants in concealing and suppressing material facts, and making material omissions, about the allegedly defect mirrors, noting that Jones had only made conclusory allegations and that, in any event,

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[3] More precisely, General Motors filed the motion to dismiss, and the Magna Defendants moved to join in that motion. The district court granted the motion to join in an omnibus order together with the motion to dismiss and several other matters.

concealment of a cause action must be by a positive affirmative act, not by mere silence.

This appeal ensued.

II. STANDARD OF REVIEW

"We review de novo the district court's grant of a Rule 12(b)(6) motion to dismiss for failure to state a claim, accepting the complaint's allegations as true and construing them in the light most favorable to the plaintiff." *Chaparro v. Carnival Corp.*, 693 F.3d 1333, 1335 (11th Cir. 2012) (quoting *Cinotto v. Delta Air Lines Inc.*, 674 F.3d 1285, 1291 (11th Cir. 2012)). Dismissal under Federal Rule of Civil Procedure 12(b)(6) on statute of limitations grounds "is appropriate only if it is apparent from the face of the complaint that the claim is time-barred." *Garcia v. Chiquita Brands Int'l, Inc.*, 48 F.4th 1202, 1220 (11th Cir. 2022) (quoting *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)).

Generally, we review a district court's decision to grant or deny leave to amend for abuse of discretion. *Forbus v. Sears Roebuck & Co.*, 30 F.3d 1402, 1404 (11th Cir. 1994). "However, when the district court denies the plaintiff leave to amend due to futility, we review the denial *de novo* because it is concluding that as a matter of law an amended complaint 'would necessarily fail.'" *Fla. Evergreen Foliage v. E.I. DuPont De Nemours & Co.*, 470 F.3d 1036, 1040 (11th Cir. 2006) (quoting *Freeman v. First Union Nat'l*, 329 F.3d 1231, 1234 (11th Cir. 2003)).

III. ANALYSIS

Jones's claims are barred by the applicable statute of limitations. Under Georgia law, "actions for injuries to the person shall be brought within two years after the right of action accrues." O.C.G.A. § 9-3-33. And in an action for personal injuries under Georgia law, "the statute of limitations commences at the time the damage or injury is actually sustained." *Everhart v. Rich's, Inc.*, 194 S.E.2d 425, 428 (Ga. 1972). Thus, because Jones was injured on May 5, 2017, his window to file suit arising from those injuries, absent any tolling, closed on May 5, 2019. But he did not sue Defendants until July 17, 2021. That is simply far too late, and his suit is barred by the statute of limitations.

None of Jones's proffered arguments for tolling can save his case. First, Georgia's discovery rule does not extend to claims alleging injuries like Jones's. As we have previously recognized, "the Georgia Supreme Court has explicitly limited the discovery rule's application 'to cases of bodily injury which develop only over an extended period of time.'" *M.H.D. v. Westminster Sch.*, 172 F.3d 797, 804 (11th Cir. 1999) (quoting *Corp. of Mercer Univ. v. Nat'l Gypsum Co.*, 368 S.E.2d 732, 733 (Ga. 1988)). In other words, in Georgia, "the discovery rule only applies to cases involving 'continuing torts,' where the plaintiff's injury developed from prolonged exposure to the defendant's tortious conduct.'" *Id.* at 804–05 (quoting *Bitterman v. Emory Univ.*, 333 S.E.2d 378, 379 (Ga. Ct. App. 1985)). But when a plaintiff's injury was "occasioned by violent external means," the statute of limitations begins to run "on the day his injury was actually sustained." *Bitterman*, 333 S.E.2d at 379 (quoting *Everhart*, 194 S.E.2d at 801). Here, Jones's injury was

"occasioned by violent external means"—the car accident that shattered the rearview mirror, sending shards into his eye—such that the statute of limitations began to run on the day of the accident. We thus reject this argument.

Second, under Georgia law, a statute of limitations may be tolled "[i]f the defendant or those under whom he claims are guilty of a fraud by which the plaintiff has been debarred or deterred from bringing an action." O.C.G.A. § 9-3-96. A plaintiff who seeks to invoke tolling under section 9-3-96 must make three showings: (1) "the defendant committed actual fraud"; (2) "the fraud concealed the cause of action from the plaintiff, such that the plaintiff was debarred or deterred from bringing an action"; and (3) "the plaintiff exercised reasonable diligence to discover his cause of action despite his failure to do so within the statute of limitation." *Doe v. Saint Joseph's Cath. Church*, 870 S.E.2d 365, (Ga. 2022) (quoting *Daniel v. Amicalola Elec. Membership Corp.*, 711 S.E.2d 709, 716 (Ga. 2011)); *see also Therrell v. Ga. Marble Holdings Corp.*, 960 F.2d 1555, 1562 (11th Cir. 1992) ("Under Georgia law, for fraud to toll the statute of limitations, it must involve moral turpitude and must have been designed to deter or debar the plaintiff from filing suit.").

Jones's failure at the first step is dispositive. Federal Rule of Civil Procedure 9(b) requires the plaintiff to set forth: (1) "precisely what statements were made in what documents or oral representations or what omissions were made"; (2) "the time and place of each such statement and the person responsible for making . . . same"; (3) "the content of such statements and the manner in

which they misled the plaintiff'; and (4) what the defendants obtained as a consequence of the fraud." *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1237 (11th Cir. 2008) (quoting *Tello v. Dean Witter Reynolds, Inc.*, 494 F.3d 956, 972 (11th Cir. 2007)).

But in his complaint, Jones proffers only threadbare allegations of fraudulent concealment—the very type of "recitals of the elements of a cause of action, supported by mere conclusory statements" that *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), prohibits. For example, he alleges that "GM knowingly concealed that the driver's side rear-view mirror, when hit[,] shatters into shards of class and can cause severe and serious injuries," that "GM concealed and suppressed material facts concerning the Defective exterior rear-view mirror," and that Defendants "made material omissions and affirmative misrepresentations regarding [the] exterior rear-view mirror." But these unadorned legal conclusions will not suffice because Jones has failed to allege "the who, what, when, where, and how" that we require to satisfy fraud pleading under Rule 9(b).[4] *See Mizzaro*, 544 F.3d at 1237. Therefore, we reject Jones's argument for tolling under section 9-3-96.

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[4] Jones contends on appeal that "[t]he application of the federal plausibility standard violates the terms of the Rules Enabling Act because it conflicts with the more lenient notice pleading standard in Georgia." Jones did not raise this theory to the district court—nor does he even articulate *how* the Georgia notice pleading standard applies to his case—so we decline to entertain it for the first time on appeal. *See Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 360 (11th Cir. 1984); *Sappupo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681 (11th Cir. 2014) ("We have long held that an appellant abandons a claim when he

Third, Jones raises—for the first time on appeal—the crime victim's tolling provision in O.C.G.A. § 9-3-99. Because Jones did not raise this separate theory in the district court, we will not consider it here. *See Dean Witter Reynolds, Inc. v. Fernandez*, 741 F.2d 355, 360 (11th Cir. 1984) ("Except for questions concerning the power of the court to order relief, an appellate court generally will not consider a legal issue or theory unless it was presented to the trial court." (footnote omitted)). Jones insists that our refusal to consider this tolling provision would "result in a miscarriage of justice," but, even if that were true—which we do not here conclude—it would not be sufficient to make us change course because Jones has not presented us with a pure question of law. *See Roofing & Sheet Metal Servs., Inc. v. La Quinta Motor Inns, Inc.*, 689 F.2d 982, 990 (11th Cir. 1982) ("[W]e will consider an issue not raised in the district court if it involves a pure question of law, *and* if refusal to consider it would result in a miscarriage of justice." (emphasis added)).

For all these reasons, we find no error in the district court's dismissal of Jones's complaint on statute-of-limitations grounds. And, for the same reasons, we affirm the district court's denial of leave to amend. Because Jones's claims are time-barred, any further amendment would indeed be futile. *See Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007) ("Leave to amend a complaint is futile when the complaint as amended would still be properly

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either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."

dismissed or be immediately subject to summary judgment for the defendant."); *Boyd v. Warden, Holman Corr. Facility*, 856 F.3d 853, 874 (11th Cir. 2017) ("We find that Boyd's claims asserted in . . . his proposed second amended complaint are barred by the statute of limitations and, therefore, affirm the district court's determination that amending them would be futile.").

IV. CONCLUSION

For all of these reasons, we affirm.

AFFIRMED.