

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13892
Non-Argument Calendar

DARSHON CRUDUP,

Plaintiff-Appellant,

versus

CITY OF ATLANTA,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:24-cv-04497-JPB

Before JORDAN, ABUDU, and ANDERSON, Circuit Judges.

PER CURIAM:

Darshon Crudup sued the City of Atlanta, alleging various race- and age-related violations of Title VII of the Civil Rights Act

of 1964, the Age Discrimination in Employment Act, and the Fourteenth Amendment to the United States Constitution under 42 U.S.C. § 1983. *See* D.E. 4 at 4–6. The district court dismissed the complaint with prejudice, concluding that Mr. Crudup’s claims were time-barred. *See* D.E. 62 at 8–20.

Mr. Crudup now appeals.

I

Mr. Crudup is a 48-year-old African American man who worked for the City of Atlanta as an “Office Support Assistant” and “Cultural Affairs Project Coordinator” at the Chastain Arts Center. *See* D.E. 4 at 1–2. He alleges that he began to experience discriminatory treatment from one of his colleagues in 2019. *See id.* at 2. He further alleges that he was consistently “passed over for performance evaluations and denied pay increases,” and that he failed to receive “promotion[s]” and “recognition” from his employer. *See id.* at 3. As a result of this hostile work environment, his “constructive resignation” was forced in September of 2022. *See id.* at 4.

Mr. Crudup filed a charge with the Equal Employment Opportunity Commission on July 27, 2022. *See* D.E. 4-5 at 2. The EEOC issued Mr. Crudup a notice of his right to sue on June 5, 2024. *See id.* at 4. The notice advised Mr. Crudup that he had 90 days from the date of receipt of the notice. *See id.* He filed suit against the City of Atlanta on October 3, 2024, which was beyond the 90-day period. *See* D.E. 1.

The City of Atlanta moved to dismiss Mr. Crudup's complaint for failure to state a claim and because his claims were untimely. *See generally* D.E. 20. The district court referred the motion to a magistrate judge, who issued a report recommending granting the City's motion to dismiss because Mr. Crudup's claims were untimely. *See* D.E. 42 at 5–10. The magistrate judge concluded that Mr. Crudup's Title VII and ADEA claims were time-barred because he did not sue within the 90-day window from the time he received his right-to-sue notice from the EEOC and that he was not entitled to equitable tolling. *See id.* at 5–7. Similarly, the magistrate judge determined that Mr. Crudup's § 1983 claim was time-barred because he failed to bring his claims within the applicable two-year statute of limitations period. *See id.* at 9. The district court adopted the report and recommendation and dismissed Mr. Crudup's claims as untimely. *See* D.E. 62 at 7–20.

For the reasons that follow, we affirm the district court's dismissal of Mr. Crudup's complaint.

II

Our review of the district court's Rule 12(b)(6) dismissal is plenary. *See, e.g., Lane v. Philbin*, 835 F.3d 1302, 1305 (11th Cir. 2016). “While a complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations, . . . a formulaic recitation of the elements of a cause of action will not do. Factual allegations must be enough to raise a right to relief above the speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007).

Because Mr. Crudup filed his complaint *pro se*, we construe it liberally. See *Bingham v. Thomas*, 654 F.3d 1171, 1175 (11th Cir. 2011). That said, we do not have “license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–69 (11th Cir. 2014) (citation omitted).

III

The magistrate judge and the district court correctly determined that Mr. Crudup’s claims were time-barred.

A

Title VII and ADEA claims require filing a charge of discrimination with the EEOC. See *Gregory v. Ga. Dep’t of Hum. Res.*, 355 F.3d 1277, 1279 (11th Cir. 2004); *Riccard v. Prudential Ins. Co.*, 307 F.3d 1277, 1291 (11th Cir. 2002). If the EEOC does not file suit or obtain a conciliation agreement, then the EEOC notifies the claimant and advises him that he has 90 days after receiving his notice of a right to sue to file a civil action. See 42 U.S.C. § 2000e–5(f)(1); 29 U.S.C. § 626(e). Mr. Crudup received notice of his right to sue on June 5, 2024 but filed his complaint more than 90 days later on October 3, 2024. See D.E. 1, 4-5 at 2. He does not dispute that his complaint was filed more than 90 days after receiving his EEOC notice but argues that he is entitled to equitable tolling due to extraordinary circumstances related to his mental incapacity. We disagree.

In his response to the City’s motion to dismiss, Mr. Crudup argued that he was entitled to equitable tolling because his “severe

anxiety, major depressive disorder, and PTSD . . . justify tolling.” D.E. 22 at 2. The district court rejected this argument because he failed to establish “a causal connection” between his alleged mental incapacity and his ability to file a timely petition. *See* D.E. 62 at 20.¹

On appeal, Mr. Crudup argues that the district court erred in ruling that equitable tolling was not warranted because it (1) “imposed a medically impossible standard” that required “day-specific proof of incapacity . . . rather than applying a functional ‘causal connection’ analysis,” (2) failed to consider a “pattern of the City of Atlanta’s bad-faith obstruction of the EEOC process and retaliatory administrative sabotage,” and (3) failed to address “the comprehensive record of institutional misconduct.” Appellant’s Br. at 10.

The district court did not impose a “medically impossible standard” that “supplanted” our precedent’s “causal connection” test. *See* Appellant’s Br. at 17. Rather than supplanting the “causal connection” test, the court correctly applied it. *See* D.E. 62 at 10 (quoting *Stamper v. Duval Cnty. Sch. Bd.*, 863 F.3d 1336, 1342 (11th Cir. 2017)). The “causal connection” test requires a plaintiff to establish that there was a connection between his mental incapacity and his failure to timely file. *See Lawrence v. Florida*, 421 F.3d 1221, 1226 (11th Cir. 2005). Mr. Crudup bears the burden of proof for

¹ The district court also noted that “Plaintiff’s equitable tolling argument fails on the basis that Plaintiff did not allege equitable tolling in his Amended Complaint, and consequently waived the argument.” D.E. 62 at 10. This is incorrect; a plaintiff need not allege equitable tolling in his complaint. *See Villarreal v. R.J. Reynolds Tobacco Co.*, 839 F.3d 958, 971 (11th Cir. 2016) (citing *La Grasta v. First Union Sec., Inc.*, 358 F.3d 840, 845 (11th Cir. 2004)).

establishing entitlement to equitable tolling, which is an “extraordinary remedy which should be extended only sparingly.” *See Arce v. Garcia*, 434 F.3d 1254, 1261 (11th Cir. 2006).

Mr. Crudup provided the district court with only a single conclusory assertion in his response that he was entitled to equitable tolling because he suffers from several mental conditions. *See* D.E. 22 at 1. But Mr. Crudup never explained how these issues impacted his ability to file his complaint within the statutorily required time period. Our caselaw is clear that mere assertions of a pre-existing mental incapacity without connecting that infirmity to the late filing is insufficient for equitable tolling to apply. *See Lawrence*, 421 F.3d at 1226–27 (collecting cases finding that assertions of a mental condition without more is insufficient to establish that equitable tolling applies).

B

Mr. Crudup also argues that the district court erred by failing to consider a pattern of bad faith by the City and a comprehensive record of institutional misconduct. *See* Appellant’s Br. at 16–30. In response, the City argues that Mr. Crudup waived these arguments by failing to make them below. *See* Appellee’s Br. at 20–24. The City is mistaken.

Contrary to the City’s argument, issues can be waived on appeal but that is not true of individual arguments in support of a position. *See, e.g., Sec’y, U.S. Dep’t of Labor v. Preston*, 873 F.3d 877, 883 n.5 (11th Cir. 2017) (citation omitted) (explaining that once a claim is properly presented, “a party can make any argument in

support of that claim; parties are not limited to the precise arguments they made below”). Mr. Crudup properly raised an equitable tolling argument below, which the district court addressed. *See* D.E. 22 at 1; D.E. 62 at 8–21. He also raised issues with the City’s conduct to the district court. *See* D.E. 22 at 4–5 (highlighting issues with defective notice, irregularities with the EEOC’s investigation, and the City’s non-cooperation). Mr. Crudup has therefore not waived or forfeited these arguments on appeal.²

Though Mr. Crudup has not waived or forfeited these arguments, they fail. He argues that the City’s misconduct triggered his mental incapacity, which left him “neurologically and cognitively consumed by the survival threats the City manufactured” and that he was therefore unable to timely file his complaint. *See* Reply Br. at 7. At the same time, Mr. Crudup also asserts that he showed diligence by making attempts to secure legal representation, appeal fraudulent unemployment determinations, and seek medical documentation. *See id.* at 10. He maintains that his “persistent advocacy forced the [Georgia Department of Labor] to admit in writing that the City’s data is fraudulent.” *Id.* Further, Mr. Crudup says that “[t]o argue that an individual capable of navigating this complex, multi-year administrative fraud to extract such a concession lacked the ‘diligence’ to mail a complaint is not only illogical—it is an insult to the Court’s intelligence.” *Id.* It cannot be that Mr.

² *See also* *ECB USA, Inc. v. Chubb Ins. Co. of N.J.*, 113 F.4th 1312, 1320 (11th Cir. 2024) (“Litigants can waive or forfeit positions or issues . . . but not authorities or arguments.”).

Crudup was both “neurologically and cognitively consumed” such that he had a mental incapacity that rendered him unable to timely file his complaint, and at the same time, that he was able to navigate a “complex multi-year administrative fraud.” Accordingly, Mr. Crudup has not established that he is entitled to the extraordinary remedy of equitable tolling.

C

The district court also correctly determined that Mr. Crudup’s § 1983 claim was time-barred. Claims under § 1983 claims are subject to the statute of limitations period applicable to personal-injury torts in the state in which they are brought. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). “[T]he proper limitations period for all [§] 1983 actions in Georgia is the two-year limitations period set forth in O.C.G.A. § 9-3-33.” *Mullinax v. McElhenney*, 817 F.2d 711, 716 n.2 (11th Cir. 1987). The statute of limitations for Mr. Crudup’s § 1983 claim would have begun to run (at the latest) in September of 2022 when he resigned from his position with the City of Atlanta. *See* D.E. 4 at 4. His complaint was not filed until October 3, 2024, which is beyond the two-year statute of limitations period prescribed by Georgia law. Accordingly, the district court properly dismissed this claim as time-barred.

IV

The district court’s order granting the City of Atlanta’s motion to dismiss Mr. Crudup’s complaint is affirmed.

AFFIRMED.