

NOT FOR PUBLICATION

In the  
United States Court of Appeals  
For the Eleventh Circuit

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No. 26-10205  
Non-Argument Calendar

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RAY EDWARD CUNNINGHAM, JR,

*Plaintiff,*

MARGHERITA CUNNINGHAM,

In her official capacity as Personal Representative of the  
Estate of Ray Cunningham Jr,

*Plaintiff-Appellant,*

*versus*

DEPARTMENT OF CORRECTIONS,

*Defendant,*

CENTURION OF FLORIDA, LLC,

STATE OF FLORIDA DEPARTMENT OF CORRECTIONS,

*Defendants-Appellees.*

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Appeal from the United States District Court  
for the Northern District of Florida  
D.C. Docket No. 4:21-cv-00414-AW-MAF

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Before GRANT, LUCK, and WILSON, Circuit Judges.

PER CURIAM:

Ray Cunningham’s estate appeals the district court’s dismissal of its second amended complaint, which alleged that Centurion of Florida, LLC was deliberately indifferent toward Cunningham’s serious medical needs while he was in Florida state prison. After careful review, we affirm.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

Cunningham filed this 42 U.S.C. section 1983 action in September 2021, alleging that Centurion, the medical provider at his prison, violated the Eighth Amendment because it was deliberately indifferent to his serious medical needs. Centurion, he alleged, ignored his repeated complaints about “breathing issues” and “refused to refer [him] out for diagnostic services or to refer him out for interventional treatment.” After he was discharged from custody, “he was diagnosed with pneumonia,” which caused him to “suffer[] great physical and emotional harm.”

Shortly after filing the lawsuit, Cunningham passed away, causing the district court to stay the case until Cunningham’s estate could appoint a personal representative. After a lengthy delay,

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Margherita Cunningham was named as the estate's personal representative in June 2024, and she continued to pursue this lawsuit on the estate's behalf.

The estate filed an amended complaint in September 2024, again alleging that Centurion was deliberately indifferent to Cunningham's serious medical need by failing to treat his "various respiratory [sic] symptoms." On Centurion's motion, the district court dismissed the amended complaint without prejudice for failure to state a claim.

In May 2025, the estate filed a second amended complaint (misabeled as the third amended complaint). This time, the estate dropped the previous allegations about Cunningham's breathing problems and pneumonia, and instead alleged that Centurion was deliberately indifferent in treating his hepatitis C infection.

According to the second amended complaint, Cunningham was diagnosed with hepatitis C when he first arrived at prison on February 16, 2016. Despite knowing that he had developed advanced liver disease and that his condition "could very likely develop into liver cancer," Centurion did not provide Cunningham with medication to treat his hepatitis C until January 3, 2018.

Shortly after Cunningham was released in September 2018, he was diagnosed with advanced liver cancer, which caused his death three years later. Thus, the estate alleged, despite "Centurion's awareness of the gravity of [his] medical condition, it delayed treatment for 687 days," a "decision . . . heavily influenced by Cen-

turion’s unofficial policy and practice of delaying and denying treatment to save the company money” that “permitted Cunningham’s [h]epatitis C, 1b to progress to liver cancer.”

Centurion filed a motion to dismiss the second amended complaint, which the district court granted “for three independent reasons.” First, the district court explained, the second amended complaint’s deliberate-indifference claim was barred by Florida’s four-year statute of limitations for section 1983 claims. The latest the claim could have accrued was January 2018, when Cunningham received medication to treat his hepatitis C. But the estate didn’t file the second amended complaint until May 2025, over seven years later, and this new claim did not relate back to the original claim because it was based on different conduct.

Second, the estate failed to state a claim for deliberate indifference because he did not “allege facts showing Centurion was subjectively aware that its conduct could put Cunningham at substantial risk of serious harm.” And third, the estate failed to state a claim that Centurion’s policy or custom caused his injuries, as required to establish Centurion’s liability under *Monell v. Department of Social Services of New York*, 436 U.S. 658 (1978).

### STANDARD OF REVIEW

We review de novo an order dismissing a complaint, “accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff.” *Butler v. Sheriff of Palm Beach Cnty.*, 685 F.3d 1261, 1265 (11th Cir. 2012). We also review de novo a district court’s application of a statute of limitations

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and its determination about whether an amendment relates back to the original complaint. *Harrison v. Digit. Health Plan*, 183 F.3d 1235, 1238 (11th Cir. 1999); *Mungin v. Sec’y, Fla. Dep’t of Corr.*, 89 F.4th 1308, 1321–22 (11th Cir. 2024).

### DISCUSSION

The estate challenges the district court’s conclusion that the second amended complaint’s deliberate-indifference claim was time barred and that the estate did not adequately plead Centurion’s liability under *Monell*. But the estate does not argue that the district court erred in dismissing the second amended complaint for failing to state a deliberate-indifference claim. This is fatal to the estate’s appeal.

By failing to make any argument challenging the district court’s determination that the second amended complaint failed to state a claim for deliberate indifference, the estate has forfeited the issue, which was an independent ground for the district court to dismiss the second amended complaint. *See United States v. Campbell*, 26 F.4th 860, 873 (11th Cir. 2022) (en banc) (“[F]ailure to raise an issue in an initial brief on direct appeal should be treated as a forfeiture of the issue[.]”). And because it “fails to challenge properly on appeal one of the grounds on which the district court based its judgment, . . . it follows that the judgment is due to be affirmed.” *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014).

But even if the estate had properly challenged the district court’s dismissal, the appeal would not succeed because the second

amended complaint's deliberate-indifference claim was time barred. "Section 1983 claims are governed by the forum state's residual personal injury statute of limitations, which in Florida is four years." *Chappell v. Rich*, 340 F.3d 1279, 1283 (11th Cir. 2003). The estate does not dispute that the second amended complaint was filed more than four years after Cunningham's deliberate-indifference claim accrued. Instead, it argues that the second amended complaint related back to the original complaint under Florida's relation-back doctrine. We disagree.

"Relation back is a legal fiction employed to salvage claims that would otherwise be unjustly barred by a limitations provision." *Caron v. NCL (Bah.), Ltd.*, 910 F.3d 1359, 1368 (11th Cir. 2018) (citing *McCurdy v. United States*, 264 U.S. 484, 487 (1924)). Federal Rule of Civil Procedure 15(c)(1)(A) permits relation back when "the law that provides the applicable statute of limitations allows relation back." Fed. R. Civ. P. 15(c)(1)(A). Thus, "if an amendment relates back under the law that provides the applicable statute of limitations, that amendment relates back under [r]ule 15(c)(1) even if the amendment would not relate back under the federal law rules." *Saxton v. ACF Indus., Inc.*, 254 F.3d 959, 963 (11th Cir. 2001) (en banc).

Here, the law that provides the applicable statute of limitations—Florida law—allows relation back "[w]hen the claim or defense asserted in the amended pleading arose out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original pleading." Fla. R. Civ. P. 1.190(c). This rule "is to be

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liberally construed” and will permit relation back of an amended complaint “where the legal theory of recovery has changed or where the original and amended claims require the assertion of different elements” so long as “the initial complaint gives the defendant fair notice of the general factual scenario or factual underpinning of the claim.” *Kopel v. Kopel*, 229 So. 3d 812, 816, 817 (Fla. 2017) (citation modified). This liberal policy, however, does not allow relation back when an amended pleading is “so factually distinct that it does not arise out of the same conduct, transaction, or occurrence as the original.” *Id.* at 816.

Here, the second amended complaint’s deliberate-indifference claim did not relate back because it did not “ar[i]se out of the conduct, transaction, or occurrence set forth or attempted to be set forth in the original [complaint].” *See* Fla. R. Civ. P. 1.190(c). The original complaint alleged that Centurion repeatedly ignored Cunningham’s grievances about “breathing difficulty” and that he was diagnosed with pneumonia after he was released from custody. The second amended complaint alleged that Centurion diagnosed Cunningham with hepatitis C but provided improper treatment for the condition, causing Cunningham to die from liver cancer.

The second amended complaint’s deliberate-indifference claim was therefore based on an entirely different set of facts (hepatitis C, not breathing problems) and an entirely different injury (liver cancer, not pneumonia) than the deliberate-indifference claim in the original complaint. The second amended complaint’s deliberate-indifference claim did not relate back to the original

complaint because the original complaint did not give Centurion “fair notice of the . . . factual underpinning of” the second amended complaint’s deliberate-indifference claim. *See Kopel*, 229 So. 3d at 817; *cf. Fabbiano v. Demings*, 91 So. 3d 893, 894 (Fla. Dist. Ct. App. 2012) (finding “no doubt” that an amended pleading alleged “a claim that arose out of the same occurrence as the original pleading” when it was “based upon [an] identical act, resulting in [an] identical injury”). Accordingly, the district court did not err in determining that the second amended complaint’s deliberate-indifference claim was time barred.

**AFFIRMED.**