

NONPRECEDENTIAL DISPOSITION

To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals**For the Seventh Circuit****Chicago, Illinois 60604**

Submitted October 15, 2024*

Decided October 17, 2024

BeforeMICHAEL Y. SCUDDER, *Circuit Judge*JOHN Z. LEE, *Circuit Judge*NANCY L. MALDONADO, *Circuit Judge*

No. 24-1037

JOSEPH M. JAMES

*Plaintiff-Appellant,**v.*

TIMOTHY E. MACE, et al.,

*Defendants-Appellees.*Appeal from the United States District
Court for the Northern District of
Indiana, South Bend Division.

No. 3:22-CV-1012-TLS-MGG

Theresa L. Springmann
*Judge.***ORDER**

Joseph James, a former detainee at LaPorte County Jail, sued local officials under 42 U.S.C. § 1983 more than two years after the relevant events. After James failed to respond to the defendants' motion to dismiss, the district court dismissed the suit as barred by the applicable two-year statute of limitations. On appeal, James argues for the

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(C).

first time that the district court wrongly set his accrual date, failed to toll the statute of limitations, and did not give him a chance to amend. Because the court properly ruled that the statute of limitations bars James's claims, we affirm.

We accept the facts alleged in James's operative complaint as true and review them in the light most favorable to him. *Thomas v. Neenah Joint Sch. Dist.*, 74 F.4th 521, 522 (7th Cir. 2023). James was detained at LaPorte County Jail in Michigan City, Indiana, in July 2020. During that time, he did not receive drinking water or adequate medical care, leading to neuropathy, emotional distress, organ failure, and a foot amputation. He also alleges that defendants used excessive force, retaliated against him, and negligently hired jail officers who fabricated evidence.

He sued in December 2022, about two and a half year after these events. Some defendants moved to dismiss the suit, arguing Indiana's two-year statute of limitations applicable to claims under § 1983 barred his suit. James did not respond to the motions. The district court dismissed the suit, reasoning that the statute of limitations barred it.

On appeal, James raises three arguments that he did not present to the district court: The court incorrectly set his accrual date, his health issues tolled his statute of limitations period, and he should have received a chance to amend his complaint.

We begin by observing that a plaintiff like James who fails to preserve an issue in the district court has abandoned it for appeal. *Braun v. Vill. of Palatine*, 56 F.4th 542, 553 (7th Cir. 2022). The right time to preserve a response to the defense of the statute of limitation is in opposition to the motion in the district court raising that defense. Thus, we have affirmed the dismissal of a suit where the plaintiff raised on appeal an unpreserved argument newly advanced in response to a statute-of-limitations defense. *O'Gorman v. City of Chicago*, 777 F.3d 885, 890 (7th Cir. 2015).

Regardless, we see no error in the district court's decisions. First, the district court correctly ruled that James pleaded his accrual date as "July 2020" and that he therefore sued too late. Federal law determines when a claim accrues. *Wallace v. Kato*, 549 U.S. 384, 388 (2007). It is "when the plaintiff discovers his injury and its cause even if the full extent or severity of the injury is not yet known." *Amin Ijbara Equity Corp. v. Vill. of Oak Lawn*, 860 F.3d 489, 493 (7th Cir. 2017). James was in custody in July 2020, and he states that he discovered his "permanent and persistent organ failure ... while I was in [] custody" He thus knew then that he was injured and needed medical attention. The same is true of his allegations about in-custody excessive force,

retaliation, and other abuses. The district court therefore correctly determined that James pleaded an accrual date of July 2020. The court also correctly ruled that James sued too late. For § 1983 claims, federal courts borrow the statute of limitations for analogous personal-injury claims in the forum state, *Wilson v. Garcia*, 471 U.S. 261, 275 (1985); in Indiana, that period is two years from the accrual date, *Devbrow v. Kalu*, 705 F.3d 765, 767 (7th Cir. 2013); IND. CODE § 34-11-2-4(a)(2022). When James sued in December 2022, he was a half year too late.

Second, James argues for the first time on appeal that his health issues tolled the statute of limitations, but even if we put aside his failure to preserve this argument, it is unavailing. As most relevant here, in borrowing Indiana's limitations and tolling rules, a federal court may toll Indiana's statutes of limitation because of a plaintiff's "legal disability" or "incompetence." IND. CODE. §§ 34-11-4-1 to 8-1. A "legal disability" covers "persons less than eighteen (18) years of age, mentally incompetent, or out of the United States." IND. CODE § 1-1-4-5(24). "Mentally incompetent" means "of unsound mind," IND. CODE § 1-1-4-5(12). But James did not develop in the district court, and does not develop on appeal, an argument that his health conditions rendered him mentally incompetent.

Finally, James argues that the district court should have granted him leave to amend his complaint. Generally, a district court that dismisses a complaint sua sponte without granting a plaintiff leave to amend hazards reversal because the plaintiff has not received an opportunity to contest or cure the complaint's defect. *Luevano v. Wal-Mart Stores, Inc.*, 722 F.3d 1014, 1022-23 (7th Cir. 2013). But the district court did not dismiss this suit sua sponte. Rather, the defendants moved to dismiss, and James had the chance to contest in the district court their limitations defense or seek leave to amend and cure it. But he chose not to do so. And in any case, as discussed above, his arguments on appeal for reviving his suit are unavailing. Thus, no error occurred.

AFFIRMED