

**NONPRECEDENTIAL DISPOSITION**  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 June 25, 2024\*

Decided July 2, 2024

**Before**

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-3392

JEFFREY DEAN FERGUSON,  
*Plaintiff-Appellant,*

*v.*

MOUNT SINAI MEDICAL CENTER,  
*Defendant-Appellee.*

Appeal from the United States District  
Court for the Northern District of  
Illinois, Eastern Division.

No. 22 CV 4940

Lindsay C. Jenkins,  
*Judge.*

## O R D E R

Jeffrey Ferguson sued Mount Sinai Medical Center in 2022, alleging that four years earlier its doctors violated the Emergency Medical Treatment and Active Labor Act, 42 U.S.C. § 1395dd, a law with a two-year statute of limitations. The district court

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\* We have agreed to decide the case without oral argument because the brief and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

granted the defendant's motion to dismiss, reasoning that the statute of limitations barred Ferguson's claim and that Ferguson had alleged facts inconsistent with a grant of equitable tolling. Because the court properly ruled that, based on Ferguson's allegations, he could not receive equitable tolling for his untimely claim, we affirm.

We review dismissals of complaints de novo, *Martin v. Haling*, 94 F.4th 667, 671 (7th Cir. 2024), and we take as true the facts that Ferguson alleges. In January 2018, Ferguson was arrested for arson and brought to Cook County Jail where staff thought that he showed symptoms of mania. He was later released on bond and transferred to a hospital, Mount Sinai Medical Center, for involuntary admission. The jail's transfer documents state that Ferguson likely had bipolar disorder, was currently manic and unable to provide for his basic needs, had minimal insight into his illness, and posed a danger to himself and others. At Mount Sinai, a physician examined him. The physician noted that Ferguson reported having a "biblical vision" but was otherwise "calm and cooperative on exam" and did not report other physical or mental problems. Based on this exam, the physician discharged him in January 2018.

In light of his release on bond, he went home from the hospital. Shortly after, while still under symptoms of mania, Ferguson physically fought with his neighbor. He was arrested and charged with aggravated battery and criminal damage to property, and he returned to Cook County Jail. He remained there until 2021, when he was adjudicated not guilty by reason of insanity to his pending charges and transferred to a mental health center, where he remains.

In the first three years after his release from Mount Sinai in 2018, Ferguson pursued civil litigation on several fronts. First, he sued Mount Sinai (and others) under 42 U.S.C. § 1983 in July 2019, a year and a half after his release, alleging injuries from his arrest and hospitalization in January 2018. *Ferguson v. Cook Cnty. Corr. Facility/Cermak, Mt. Sinai Hospital*, No. 1:19-cv-04607 (N.D. Ill. July 8, 2019). The district court dismissed the suit, and he appealed the following year, but we affirmed. *Ferguson v. Cook Cnty. Corr. Facility/Cermak*, 836 F. App'x 438 (7th Cir. 2020). The next year, he petitioned the Supreme Court for a writ of certiorari, but the Court denied the petition in October 2021. *Ferguson v. Cook Cnty. Corr. Facility/Cermak*, 144 S.Ct. 38 (2021). He also brought two other separate suits against different defendants in 2020. See *Ferguson v. Balawender et. al.*, No. 1:20-cv-00112 (N.D. Ill. Jan. 7, 2020); *Ferguson v. Dart et. al.*, No. 1:20-cv-04851 (N.D. Ill. July 10, 2020).

Ferguson filed this new suit against Mount Sinai in September 2022. With the aid of recruited counsel, he alleged that the medical center violated 42 U.S.C. § 1395dd by failing to assess that he had an emergency medical condition or to stabilize him in January 2018. Mount Sinai moved to dismiss the suit. It correctly argued that § 1395dd is subject to a two-year statute of limitations. *See* § 1395dd(d)(2)(C). And, it continued, because the events occurred in January 2018, the limitations period ended in January 2020, more than two and a half years before Ferguson sued in 2022. Ferguson responded that equitable tolling should apply because his detention in jail and mental incompetency were “extraordinary circumstances” that prevented him from filing this suit earlier and he was otherwise diligent by pursuing his previous § 1983 suit. (Mount Sinai has not raised claim preclusion as a defense, and we need not consider it.)

The district court concluded that the statute of limitations barred Ferguson’s claims and granted the defendant’s motion to dismiss. First, it correctly observed that a statute of limitations is an affirmative defense, and “a plaintiff ordinarily need not anticipate and attempt to plead around affirmative defenses.” *Hyson USA, Inc. v. Hyson 2U, Ltd.*, 821 F.3d 935, 939 (7th Cir. 2016). But, it continued, “the statute of limitations may be raised in a motion to dismiss if ‘the allegations of the complaint itself set forth everything necessary to satisfy the affirmative defense.’” *Brooks v. Ross*, 578 F.3d 574, 579 (7th Cir. 2009) (quoting *United States v. Lewis*, 411 F.3d 838, 842 (7th Cir. 2005)). The district court concluded Ferguson had pleaded himself out of court here because his litigation history between 2019 and 2021 showed that his “incarceration” was not an “extraordinary circumstance” that prevented him from timely filing his lawsuit.

On appeal, Ferguson, now pro se, argues that the district court improperly rejected his request for equitable tolling because it did not consider the effect of his adjudicated mental illness on his ability to sue. Equitable tolling is an extraordinary remedy, and to satisfy the high bar, Ferguson must be able to show that (1) he has been pursuing his rights diligently and (2) some extraordinary circumstance prevented his timely filing. *Menominee Indian Tribe of Wis. v. United States*, 577 U.S. 250, 255–56 (2016); *Mayberry v. Dittmann*, 904 F.3d 525, 529 (7th Cir. 2018).

The district court’s decision was proper because Ferguson acknowledges facts that conclusively rebut his contention that his mental illness kept him from suing: He accepts that, despite his mental illness, he filed three lawsuits between 2019 and 2020, including a previous suit against Mount Sinai that he advanced to the Supreme Court. Although mental illness can toll a statute of limitations, *see Miller v. Runyon*, 77 F.3d 189, 191 (7th Cir. 1996), when a litigant’s past filings show a “capacity to engage in the legal

process” despite the mental illness, we have affirmed a district court’s ruling that “extraordinary circumstances” did not justify equitable tolling. *Conroy v. Thompson*, 929 F.3d 818, 821 (7th Cir. 2019); *see also Moreland v. Eplett*, 18 F.4th 261, 271–72 (7th Cir. 2021). Thus, in light of Ferguson’s litigation history during the applicable two-year limitations period of § 1395dd, the district court properly ruled that his mental illness (and incarceration) did not prevent him from timely filing this suit.

We consider two replies to this conclusion, but they are unavailing. First, Ferguson contends that he did not know about 42 U.S.C. § 1395dd until recently. But he does not contend (nor could he do so plausibly) that his mental illness disabled him from learning about § 1395dd during the limitations period, even though it did not stop him from learning about a claim under 42 U.S.C. § 1983. Second, we recognize that we have typically affirmed the denial of equitable tolling in the context of mental illness only after the district court has received evidence on the nature of the illness. *See, e.g., Famous v. Fuchs*, 38 F.4th 625, 635 (7th Cir. 2022); *Miller*, 77 F.3d at 192. But Ferguson has obviated the need for fact development about his illness in light of his acknowledged ability to litigate despite the illness. That ability, which includes the § 1983 suit against Mount Sinai that he began in July 2019, is inconsistent with a contention that his mental illness disabled him from suing Mount Sinai within the two years of the events of January 2018.

Finally, Ferguson argues that the outcome of this case could affect his prior § 1983 suit against Mount Sinai, and he asks us to assess that case. But that suit is not before us on appeal, and therefore we cannot consider it.

AFFIRMED