

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
CALIFORNIA

Dickerson v. Contra Costa County

Dickerson · No. 22-cv-03375-HSG · Decided March 9, 2023

SUMMARY

The United States District Court for the Northern District of California grants Defendants’ motion to dismiss Jermaine Demel Dickerson’s legal malpractice action as untimely. The court holds that the 2009 amendment to California Code of Civil Procedure section 340.6, which provides a limitations period for malpractice claims requiring proof of factual innocence, does not apply retroactively to revive the time-barred claim. The court denies leave to amend, directs entry of judgment for Defendants, and closes the case.

OPINION

1 2 3 4 UNITED STATES DISTRICT COURT 5 NORTHERN DISTRICT OF CALIFORNIA 6 7
JERMAINE DEMEL DICKERSON, Case No. 22-cv-03375-HSG 8 Plaintiff, ORDER
GRANTING MOTION TO DISMISS 9 v. Re: Dkt. No. 13 10 CONTRA COSTA COUNTY, et al.,
11 Defendants. 12 13 Pending before the Court is the motion to dismiss filed by Defendants
Contra Costa 14 County and David E. Goldstein.

Dkt. No. 13. The Court finds this matter appropriate for 15 disposition without oral argument and
the matter is deemed submitted. See Civil L.R. 7-1(b). For 16 the reasons detailed below, the
Court GRANTS the motion to dismiss. 17 I. BACKGROUND 18 Plaintiff Jermaine Demel
Dickerson filed this legal malpractice action in June 2022. Dkt. 19 No. 1 (“Compl.”). According to
the complaint, in December 1998, Plaintiff pled no contest to one 20 count of forcible rape under
California Penal Code § 261(a)(2) with a deadly weapon enhancement 21 under Penal Code §
12022.3(a).

See id. at ¶¶ 1, 6–7, 43, 52–54, 56. Plaintiff was subsequently 22 sentenced to nine years in prison,
with execution suspended, and had to register as a sex offender. 23 Id. at ¶¶ 57–58. Plaintiff
contends that he repeatedly told his attorney in the proceedings, 24 Defendant Goldstein,¹ that he
was not guilty of this offense. See, e.g., id. at ¶¶ 5, 45. Plaintiff 25 further asserts that the only
evidence against him was the alleged victim’s statement, which could 26 have been impeached at
trial, and Defendant Goldstein had substantial other evidence of Plaintiff’s 27 1 innocence but
failed to properly investigate the case.

Id. at ¶¶ 42, 46–51. Over a decade later, in 2 May 2012, the reported victim and sole eyewitness
recanted. Id. at ¶¶ 67, 69. Several years after 3 that a new Contra Costa County Public Defender

represented Plaintiff to vacate his no contest plea 4 and conviction. See *id.* at ¶¶ 74–75.

In September 2021, the Contra Costa County Superior Court 5 granted the motion and declared Plaintiff actually innocent of the charge of forcible rape and 6 vacated his conviction. *Id.* at ¶ 76. Plaintiff sought damages from the County, but the County 7 denied the claim in December 2021 as untimely. See *id.* at ¶¶ 10, 81–82. 8 Defendants now move to dismiss the complaint in its entirety.

Dkt. No. 13. 9 II. LEGAL STANDARD 10 Federal Rule of Civil Procedure 8(a) requires that a complaint contain “a short and plain 11 statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A 12 defendant may move to dismiss a complaint for failing to state a claim upon which relief can be 13 granted under Rule 12(b)(6). “Dismissal under Rule 12(b)(6) is appropriate only where the 14 complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory.” 15 *Mendiondo v. Centinela Hosp.*

Med. Ctr., 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 16 12(b)(6) motion, a plaintiff need only plead “enough facts to state a claim to relief that is plausible 17 on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is facially plausible 18 when a plaintiff pleads “factual content that allows the court to draw the reasonable inference that 19 the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

20 In reviewing the plausibility of a complaint, courts “accept factual allegations in the 21 complaint as true and construe the pleadings in the light most favorable to the nonmoving party.” 22 *Manzarek v. St. Paul Fire & Marine Ins. Co.*, 519 F.3d 1025, 1031 (9th Cir. 2008). Nevertheless, 23 courts do not “accept as true allegations that are merely conclusory, unwarranted deductions of 24 fact, or unreasonable inferences.” *In re Gilead Scis.*

Secs. Litig., 536 F.3d 1049, 1055 (9th Cir. 25 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)). 26 III. DISCUSSION 27 As an initial matter, Defendants move to dismiss the complaint as untimely. Dkt. No. 13 at 1 of Civil Procedure § 340.6. See *id.* Defendants assert—and Plaintiff appears to agree—that the 2 alleged wrongful act in this case was the December 4, 1998 recommendation by Judge Goldstein 3 that Mr. Dickerson plead no contest.

See *id.* at 2; Dkt. No. 17 at 1 (“Defendant Goldstein 4 effectively forced Mr. Dickerson to accept an eleventh-hour plea of no contest the court day before 5 trial....”). At the time, § 340.6 read in relevant part: 6 An action against an attorney for a wrongful act or omission, other 7 than for actual fraud, arising in the performance of professional services shall be commenced within one year after the plaintiff 8 discovers, or through the use of reasonable diligence should have discovered, the facts constituting the wrongful act or omission, or four 9 years from the date of the wrongful act or omission, whichever occurs first.

10 11 Cal. Civ. Proc. Code § 340.6 (effective until December 31, 2009). Thus, Defendants argue that at 12 the latest the statute of limitations expired four years after Judge Goldstein’s plea 13

recommendation, or on December 4, 2002. *Id.* Because Plaintiff did not file this action until June 14 8, 2022, Defendants urge that Plaintiff’s malpractice claim is time-barred.

Id. 15 In response, Plaintiff explains that § 340.6 was amended in 2009, and now squarely 16 extends the statute of limitations in cases such as this where the plaintiff must establish factual 17 innocence as part of his legal malpractice claim. Dkt. No. 17 at 14–20.

The amended statute 18 includes the following additional language: 19 If the plaintiff is required to establish his or her factual innocence for an underlying criminal charge as an element of his or her claim, the 20 action shall be commenced within two years after the plaintiff achieves postconviction exoneration in the form of a final judicial 21 disposition of the criminal case.

Except for a claim for which the plaintiff is required to establish his or her factual innocence, in no 22 event shall the time for commencement of legal action exceed four years.... 23 24 Cal. Civ. Proc. Code § 340.6(a) (effective until January 31, 2019).² Plaintiff argues that this 25 language should apply retroactively to his case, making the deadline to file two years after his 26 conviction was vacated, or October 6, 2023.

See Dkt. No. 1-2, Ex. B (order vacating conviction). 27 1 The critical question, therefore, is whether the amendment to § 340.6(a) is retroactive. 2 Under California law, a statute is generally “presumed to be prospective only and will not 3 be applied retroactively unless such intention clearly appears in the language of the statute itself.” 4 *Krusesky v. Baugh*, 138 Cal. App.

3d 562, 566 (Cal. Ct. App. 1982). This is true even in the 5 context of amendments to statutes of limitations that would revive already time-barred claims. See 6 *Moore v. State Bd. of Control*, 112 Cal. App. 4th 371, 378–79 (Cal. Ct. App. 2003) (“[W]here the 7 application of a new or amended statute of limitations would have the effect of reviving an already 8 time-barred claim, the general rule against retroactive application of the statute is applicable in the 9 absence of a clear indication of legislative intent to the contrary.”). “The reason for this rule is a 10 judicial perception of unfairness in reviving a cause after the prospective defendant has assumed 11 its expiration and has conducted his affairs accordingly.” *Krupnick v. Duke Energy Morro Bay*, 12 115 Cal. App.

4th 1026, 1029 (Cal. Ct. App. 2004) (quotation omitted). As one California Court 13 of Appeal summarized, “when the [California] Legislature intends to revive time-barred claims it 14 does so expressly.” *Moore*, 112 Cal. App. 4th at 379. 15 “Our primary aim in construing any law is to determine the legislative intent.” *Krupnick*, 16 115 Cal. App. 4th at 1028 (quotation omitted). “In doing so we look first to the words of the 17 statute, giving them their usual and ordinary meaning.” *Id.* (quotation omitted).

Plaintiff appears 18 to acknowledge—as he must—that § 340.6 does not explicitly state that it applies retroactively. 19 Plaintiff nevertheless suggests that the language of the statute still supports his interpretation. See 20 Dkt. No. 17 at 19. He contends that when the statute references

“a claim for which the plaintiff is 21 required to establish his or her factual innocence,” these “are necessarily those malpractice claims 22 extant at the time of [the statute’s] enactment....” See *id.* Plaintiff argues that this must be true 23 “since factual innocence has been an element of a malpractice claim in the criminal context since 24 before Plaintiff’s conviction.” See *id.* 25 Plaintiff is correct that the California Supreme Court first held that actual innocence is a 26 necessary element of any legal malpractice claim brought by a former criminal defendant in 27 November 1998.

See *Wiley v. Cnty. of San Diego*, 19 Cal. 4th 532, 536–45 (Cal. 1998). The 1 individual convicted of a criminal offense [] obtain reversal of his or her conviction, or other 2 exoneration by postconviction relief....” *Coscia v. McKenna & Cuneo*, 25 Cal. 4th 1194, 1201 3 (Cal. 2001). Prior to the amendment of § 340.6, the California Supreme Court recognized that the 4 need to establish actual innocence created a timing problem: “Because of the time required to 5 complete postconviction proceedings, the statute of limitations in most cases will have run long 6 before the convicted individual has had an opportunity to remove the bar to establishing his or her 7 actual innocence.” *Id.* at 1207.

The Supreme Court in *Coscia* resolved this problem by holding 8 that although “the plaintiff must file a malpractice claim within the one-year or four-year 9 limitations period,” courts “should stay the malpractice action during the period in which such a 10 plaintiff timely and diligently pursues postconviction remedies.” *Id.* at 1210–11. 11 The Court notes that none of this legal backdrop is apparent from the text of the statute.

12 But in any event, the Court finds that this history actually undermines Plaintiff’s proffered 13 interpretation. Because actual innocence has been an element of legal malpractice claims for so 14 long, and because this element created a known timing issue, it is reasonable to conclude that if 15 the California Legislature intended to revive time-barred claims from the past decade, it would 16 have explicitly said so in the amended version of § 340.6.

This is particularly true in the context 17 of the California Code of Civil Procedure, which states: “No part of [this code] is retroactive, 18 unless expressly so declared.” Cal. Civ. Proc. Code § 3. When the Legislature wants to make a 19 statute retroactive, it knows how to do so clearly. See, e.g., Cal. Civ. Code § 1646.5 (“This section 20 applies to contracts, agreements, and undertakings entered into before, on, or after its effective 21 date; it shall be fully retroactive.”); Cal. Penal Code § 1170(d)(12) (“This subdivision shall have 22 retroactive application.”); Cal. Gov’t Code § 9355.8 (“This section shall have retroactive 23 application, as well as prospective application....”).

Section 340.6 on its face simply contains no 24 explicit language indicating such intent. 25 In the absence of such language, Plaintiff next points to the statute’s legislative history. 26 Plaintiff first points to the introductory language of the bill, A.B. 316, in the Legislative Counsel’s 27 Digest. Section 1 states: (a) It is the intent of the Legislature to remedy some of the harm 1 caused to all

factually innocent people who have been wrongfully convicted and served time in state prison in California.

2 (b) A factually innocent person is a person who was convicted of a 3 crime that either was not committed or, if committed, was not committed by him or her. 4 (c) This act would remove some of the obstacles to compensation for 5 the factually innocent and would ease their transition back into society. 6 7 2009 Cal. Legis. Serv. Ch. 432 (A.B. 316) (emphasis added).

Plaintiff urges that by referencing 8 “all factually innocent people,” the Legislature did not intend to limit itself to providing 9 prospective relief. See Dkt. No. 17 at 17–18. 10 However, the meaning of “all factually innocent people who have been wrongfully 11 convicted” is at best ambiguous.

Although it could mean all factually innocent people ever 12 wrongfully convicted regardless of whether their claims are time-barred, it could also mean “all 13 factually innocent people who have been convicted” moving forward and from the effective date 14 of the statute. See *Gutierrez v. De Lara*, 188 Cal. App. 3d 1575, 1580 (Cal. Ct. App. 1987) 15 (explaining that use of present perfect “has obtained a judgment” could mean either “has obtained 16 a judgment after the effective date of the statute” or “has obtained a judgment before or after the 17 effective date of the statute.”).

Again, the Legislative Counsel’s Digest is similarly silent as to 18 retroactivity. 19 Plaintiff’s own authority is instructive. See Dkt. No. 17 at 17. In *Bullard v. Cal. State 20 Auto. Association*, the California Court of Appeal rejected an argument that Cal. Ins. Code 21 § 11580.2 should apply retroactively. 129 Cal. App. 4th 211, 216–19 (Cal. Ct. App. 2005).

The 22 plaintiff cited legislative history, which explained that the bill was “needed to conform the statute 23 of limitations for filing an [uninsured motorist] claim to the new two-year period enacted last 24 year.” *Id.* at 218.

The history indicated that the Legislature was aware “that the inconsistency 25 between the statutes of limitation could lead to serious problems” such as someone losing out on 26 uninsured motorist coverage if they did not learn in time that the negligent driver was in fact 27 uninsured. *Id.* The court found that the language was at best ambiguous, and noted that the 1 to do so.” *Id.* at 219.

The court considered this to support “a strong inference [] that the 2 Legislature did not intend the amendment [] to operative retroactively.” *Id.* So too here. The 3 Legislature could have clearly explained that the 2009 amendment should apply retroactively, but 4 did not. 5 Plaintiff also points out that an organization commenting on a draft of A.B. 316 cautioned 6 that “all criminal defense attorneys, unless the statute of limitations is guaranteed to them, may be 7 subject to

litigation, whether meritorious or not, long after the attorney has ceased the practice of law.” See Dkt.

No. 18-4, Ex. 4. The organization sent a letter to the Senate Committee on Public Safety proposing that the language of the bill make clear that it extends the statute of limitations only for claims “after the effective date of the amendment of this statute.” Id. (emphasis in original).

However, it is not even clear that the legislators who voted on the bill saw this letter. Moreover, it is equally plausible that even if the Legislature received this letter, it believed this language was unnecessary because statutes are presumed to be prospective unless the statute clearly states otherwise. The California Supreme Court has repeatedly explained that “unless there is an express retroactivity provision, a statute will not be applied retroactively unless it is very clear from extrinsic sources that the Legislature... must have intended a retroactive application” *Myers v. Philip Morris Companies, Inc.*, 28 Cal. 4th 828, 841 (Cal.

2002) (quotation omitted) (emphasis in original). The legislative history that Plaintiff identifies is simply not the clear indication of legislative intent that is necessary to conclude that the amendments to § 340.6 apply retroactively. “[A] statute that is ambiguous with respect to retroactive application is construed... to be unambiguously prospective.” Id. The Court therefore finds that the amendment to § 340.6 does not apply retroactively, and Plaintiff’s claims are time-barred.

Accord Soderstrom v. Chen, No. G047048, 2013 WL 1695588, at *2, n.3 (Cal. Ct. App. Apr. 19, 2013). IV. CONCLUSION Accordingly, the Court GRANTS the motion to dismiss. Based on the nature of the deficiencies in Plaintiff’s complaint, the Court finds that granting leave to amend would be futile. 1 F.3d 850, 860 (9th Cir. 2003) (“Leave to amend should be granted unless the pleading could not possibly be cured by the allegation of other facts....”) (quotations omitted).

The Clerk is therefore directed to enter judgment in favor of Defendants and to close the case. 4 IT ISSO ORDERED. 5 || Dated: 3/9/2023 6 □ waywoGn S. GILLIAM, JR. / 7 United States District Judge 8 9 10 11 12 15 16 & = 17 Z 18 19 20 21 22 23 24 25 26 27 28