

DEC 14 2009

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FRANCINE E. BAILEY; et al.,

Plaintiffs - Appellants,

v.

DON KELLY,

Defendant - Appellee

and

SOUTHWEST MONTANA DRUG TASK
FORCE, an Agency of the State of
Montana; et al.,

Defendants.

No. 08-35677

D.C. No. 2:07-cv-00031-RFC-
CSO

MEMORANDUM*

Appeal from the United States District Court
for the District of Montana
Richard F. Cebull, Chief District Judge, Presiding

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Submitted November 17, 2009**

Before: ALARCÓN, TROTT, and TASHIMA, Circuit Judges.

Francine E. Bailey and others appeal from the district court's order dismissing as time-barred their 42 U.S.C. § 1983 against Montana Department of Corrections employee Don Kelly. We have jurisdiction under 28 U.S.C. § 1291. We review de novo the district court's dismissal based on the statute of limitations, *Papa v. United States*, 281 F.3d 1004, 1008-09 (9th Cir. 2002), and we affirm.

The district court properly determined that, because appellants voluntarily discontinued their state court case, they were not allowed an additional year to file a complaint on the same subject matter. *See* Mont. Code Ann. § 27-2-204 (2007) (extending statute of limitations period for timely state court claims "terminated in any other manner than by voluntary discontinuance.").

Appellants remaining contentions are unpersuasive.

All pending motions are denied.

AFFIRMED.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).