

DEC 16 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

BETTY HARMON,

Plaintiff - Appellant,

v.

COUNTY OF FRESNO; CHIEF
DEPUTY BOB HENSEL; DET. RYAN
GILBERT, CITY OF FRESNO; DAVID
NEWTON; DOUG GOERTZEN; DAVID
BELLUOMINI; and HENRY M.
MONREAL,

Defendants - Appellees.

No. 08-17427

D.C. No. 1:08-cv-01311-LJO-GSA

MEMORANDUM*

Appeal from the United States District Court
for the Eastern District of California
Lawrence J. O'Neill, District Judge, Presiding

Argued and Submitted December 9, 2009*
San Francisco, California

Before: O'SCANNLAIN, RAWLINSON, and BEA, Circuit Judges.

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

Betty Harmon appeals the district court's order dismissing, with prejudice, her complaint alleging federal constitutional and state tort claims based on the City of Fresno and County of Fresno's refusal to investigate her mother's death.

Harmon's federal and state claims are barred by California's two-year statute of limitations for personal injury. *See* Cal. Code Civ. Pro. § 335.1; *TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). Her claims accrued when she had reason to know of her injury, which was no later than when she filed her first tort claims against the City of Fresno and County of Fresno in 2005 and those claims were denied. The defendants' 2007 refusal to investigate was simply a repetition of their decision and was not a new violation. *See RK Ventures, Inc. v. City of Seattle*, 307 F.3d 1045, 1061 (9th Cir. 2002). Her claims should not be equitably tolled; she did not pursue an alternate remedy after filing her state tort claims in 2005, she merely continued to collect evidence to buttress her original claim. *See Daviton v. Columbia/HCA Healthcare Corp.*, 241 F.3d 1131, 1136–37 (9th Cir. 2001) (en banc).

Because Harmon's claims are time-barred, we do not reach the merits of her claims.

AFFIRMED.