NOT FOR PUBLICATION

FILED

MAR 31 2025

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

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ROGER LEISHMAN,

Plaintiff - Appellant,

v.

WASHINGTON OFFICE OF THE ATTORNEY GENERAL; SHANE ESQUIBEL; ELIZABETH CHRISTINA BEUSCH; ALLYSON JANAY FERGUSON; KARI HANSON; Mrs. SUZANNE LIABRAATEN; VALERIE PETRIE; KATHRYN NADINE REYNOLDS; WESTERN WASHINGTON UNIVERSITY; BRUCE SHEPARD; WASHINGTON OFFICE OF THE GOVERNOR; OGDEN MURPHY WALLACE, PLLC; KAREN SUTHERLAND; PATRICK PEARCE,

Defendants - Appellees.

No. 24-2509

D.C. No.
2:20-cv-00861-JNW

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Jamal N. Whitehead, District Judge, Presiding

Submitted March 27, 2025**

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

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

Seattle, Washington

Before: McKEOWN, GOULD, and OWENS, Circuit Judges.

Plaintiff-Appellant, Roger Leishman, appearing *pro se*, appeals from the district court's orders dismissing his claims against the Washington Attorney General's Office and its employees (collectively "State Defendants") and against Ogden, Murphy, Wallace P.L.L.C. and its employees (collectively "OMW Defendants"). Because the parties are familiar with the facts and procedural history of the case, we recite only facts necessary to decide this appeal.

1. Law of the Case and Statute of Limitations: Leishman contends that the district court's review of whether claims in the Third Amended Complaint were barred by the statute of limitations was improper under the law of the case doctrine. The law of the case doctrine states that "a court will generally refuse to reconsider an issue that has already been decided by the same court or a higher court in the same case." *Gonzalez v. Arizona*, 677 F.3d 383, 389 n.4 (9th Cir. 2012). The district court previously declined to dismiss claims in the First Amended Complaint based on a statute of limitations argument. Leishman contends that this decision precludes the court from analyzing any statute of limitations arguments in evaluating the Third Amended Complaint. But Leishman's contention is not supported by precedent. Because the Third Amended Complaint is a different pleading than the First Amended Complaint, a district

court may follow its earlier holding if it "determines the amended complaint is substantially the same as the initial complaint." *Askins v. U.S. Dep't of Homeland Sec.*, 899 F.3d 1035, 1043 (9th Cir. 2018). But "the new complaint is the only operative complaint before the district court" and the court "is not . . . bound by any law of the case." *Id.*

Further, Leishman's claims against State Defendants for negligent misrepresentation, for general negligence or negligent supervision,[1] and for discrimination and retaliation under the Washington Law Against Discrimination are all barred by the statute of limitations. All of these claims have a three-year statute of limitations under Washington state law that begins to accrue when the last alleged injury to the plaintiff occurs. *See Antonius v. King County*, 103 P.3d 729, 732 (Wash. 2004) (en banc); *Sabey v. Howard Johnson & Co.*, 5 P.3d 730, 739 (Wash. Ct. App. 2000). Although the exact nature of Leishman's claims is unclear, the last possible act for which Leishman could allege discrimination was his termination, which became effective on June 1, 2016. Thus, the last possible date for Leishman to file his claims was June 1, 2019. Leishman filed his complaint in this matter on April 24, 2020, about 11 months too late. Although Leishman alleges that he should have been granted equitable tolling based on his

[1] Leishman's complaint appears to allege a claim for negligent supervision, but he now contends that the claim concerns general negligence. Under either theory, the statute of limitations remains the same.

inability to file in court, he provides no specific details about the nature of his alleged disability and how it prevented him from filing in federal court. Further, Leishman was actively filing in state court at the relevant period. The district court did not abuse its discretion by declining to grant equitable tolling in this case. *See Leong v. Potter*, 347 F.3d 1117, 1121 (9th Cir. 2003).

2. Dismissal for Failure to State a Claim: Leishman contends the district court erred by dismissing under Fed. R. Civ. P. 12(b)(6) his claim against State Defendants for conspiracy in violation of 42 U.S.C. § 1985(3). To allege a claim under § 1985(3), a plaintiff must allege

> (1) a conspiracy, (2) to deprive any person or a class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws, (3) an act by one of the conspirators in furtherance of the conspiracy, and (4) a personal injury, property damage or a deprivation of any right or privilege of a citizen of the United States.

Gillespie v. Civiletti, 629 F.2d 637, 641 (9th Cir. 1980). The district court dismissed Leishman's claim because Leishman does not allege any specific facts demonstrating an illegal conspiracy. The district court found that Leishman alleged "his co-workers coordinat[ed] to manage his performance."

A review of the Third Amended Complaint supports the district court's holding. Leishman does not identify any act taken in furtherance of the conspiracy, nor any details about the formation, goal, or planning of the conspiracy. Because a plaintiff must "specific facts to support the existence of the

claimed conspiracy," the district court did not err in dismissing the claim. *Olsen v. Idaho State Bd. of Med.*, 363 F.3d 916, 929–30 (9th Cir. 2004) (citation omitted).

To the extent that Leishman alleges negligence, retaliation, or discrimination "based on injuries caused by conduct occurring after February 2017," Fed. R. Civ. P. 12(b)(6) similarly precludes those claims. Although Leishman makes conclusory statements about conduct occurring after February 2017, he does not identify any specific behavior by State Defendants that would give rise to a legal claim. Because any behavior before that period is precluded by the statute of limitations, *see supra* at 3–4, Leishman has failed to state a claim arising within the statute of limitations period.

3. Res Judicata: "For the doctrine [of res judicata] to apply, a prior judgment must have a concurrence of identity with a subsequent action in (1) subject matter, (2) cause of action, *and* (3) persons and parties, and (4) the quality of the persons for or against whom the claim is made." *Loveridge v. Fred Meyer, Inc.*, 887 P.2d 898, 900 (Wash. 1995) (en banc); *see also MHC Fin. Ltd. P'ship v. City of San Rafael*, 714 F.3d 1118, 1125 (9th Cir. 2013) ("When applying res judicata to a state court decision, we give the same preclusive effect to that judgment as another court of that State would give, meaning that we apply res judicata as adopted by that state." (citation and internal marks omitted)). Leishman raised substantially similar claims against the OMW Defendants in state court

before pursuing this case. We conclude that res judicata applies to bar his current claims. Although Leishman added a § 1985(3) federal claim to this proceeding that did not exist at the state court level, that claim is similarly barred because if "the prior proceeding culminated in a final judgment, a matter may not be relitigated, or even litigated for the first time, if it could have been raised, and in the exercise of reasonable diligence should have been raised, in the prior proceeding." *Kelly-Hanson v. Kelly-Hanson*, 941 P.2d 1108, 1112 (Wash. Ct. App. 1997). Leishman could have raised the claim in state court, and it is barred by res judicata.

AFFIRMED