

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

FILED

AUG 31 2026

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

STEVEN ROSE, as personal representative
of the Estate of Richard Rose,

Plaintiff - Appellant,

v.

STATE OF OREGON, by and through the
Oregon Department of Corrections, an
agency of the State of Oregon; DUSTIN
HERRON,

Defendants - Appellees,

and

SHUREE JEMMETT, HEATHER
CHRISTIAN, CHRISTINA CAMPOS-
HERNANDEZ, CHRISTINA IRVING,
ALEJANDRO PINA, KIERON
CARLSON, STEPHEN TROTT, HAILEY
COLEMAN,

Defendants.

No. 24-6011

D.C. No.

2:22-cv-00923-HL

MEMORANDUM*

STEVEN ROSE, as personal representative
of the Estate of Richard Rose,

Plaintiff - Appellant,

No. 25-2064

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

v.

ALEJANDRO PINA; HEATHER
CHRISTIAN; CHRISTINA IRVING;
STEPHEN TROTT; KIERON CARLSON;
HAILEY COLEMAN; CHRISTINA
CAMPOS-HERNANDEZ; SHUREE
JEMMETT,

Defendants - Appellees.

D.C. No.
2:24-cv-00912-HL

Appeal from the United States District Court
for the District of Oregon
Andrew D. Hallman, Magistrate Judge, Presiding

Argued and Submitted July 8, 2026
Portland, Oregon

Before: GRABER, BERZON, and SUNG, Circuit Judges.

Plaintiff, Steven Rose, representing the estate of his son, Richard Rose (the “Estate”), appeals: (1) in No. 24-6011 (“*Rose I*”), an order dismissing, under Federal Rule of Civil Procedure 4(m), his 42 U.S.C. § 1983 claims against defendants Shuree Jemmett, Heather Christian, Christina Campos-Hernandez, Hailey Coleman, Christina Irving, Alejandro Pina, Kieron Carlson, and Stephen Trott (together, the “Individual Defendants”); and (2) in No. 25-2064 (“*Rose II*”), an order dismissing as time-barred, under Rule 12(b)(6), a second complaint alleging the same claims against the same eight defendants.

1. We affirm the dismissal in *Rose I* of the Individual Defendants under Federal Rule of Civil Procedure 4(m). We need not decide whether the district

court abused its discretion by dismissing the Individual Defendants under Rule 4(m), *see In re Sheehan*, 253 F.3d 507, 511 (9th Cir. 2001), because any error was harmless, *see* 28 U.S.C. § 2111; *Peralta v. Dillard*, 744 F.3d 1076, 1087 (9th Cir. 2014) (en banc).

The jury's verdict that the Individual Defendants' employer, the Oregon Department of Corrections, was not negligent forecloses any likelihood that the jury would have found the Individual Defendants liable under section 1983. The Estate's negligence claim against the state for wrongful death went to trial after the district court dismissed the Individual Defendants. At trial, the parties presented evidence concerning the actions of all eight Individual Defendants, including testimony from seven of them. The jury was asked on a special verdict form to determine whether "the State of Oregon, through the actions or inaction of any of its employees, was negligent" by failing to respond promptly to Richard Rose's medical distress. The jury returned a verdict for the state. Thus, the jury found that no Department of Corrections employee was negligent.

By finding the state not liable for negligence, "the jury essentially resolved the question of [the Individual Defendants'] liability as well." *Peralta*, 744 F.3d at 1088. The wrongful-death and section 1983 claims were "predicated on the same facts and similar legal inquiries." *Bowoto v. Chevron Corp.*, 621 F.3d 1116, 1124 (9th Cir. 2010) (quoting *Tennison v. Circus Circus Enters., Inc.*, 244 F.3d 684, 691

(9th Cir. 2001)). The primary difference is that to prevail on its section 1983 claims, the Estate would have to prove that the Individual Defendants acted with “deliberate indifference” to Richard Rose’s medical needs. *Hutchinson v. United States*, 838 F.2d 390, 394 (9th Cir. 1988) (quoting *Estelle v. Gamble*, 429 U.S. 97, 104 (1976)). Deliberate indifference requires “a showing of something more than mere negligence.” *Id.* The jury’s finding that no Department of Corrections employee was negligent means that it could not have found, consistent with the verdict, that any of the Individual Defendants acted with deliberate indifference. Because “the jury would have found against [the Estate] on [its section 1983] claim[s] in any event,” the Estate was not prejudiced by the Individual Defendants’ dismissal. *Bowoto*, 621 F.3d at 1124.

2. We affirm the dismissal of the claims in *Rose II* as barred by the two-year statute of limitations applicable to section 1983 claims brought in Oregon. *See Bonneau v. Centennial Sch. Dist. No. 28J*, 666 F.3d 577, 579–80 (9th Cir. 2012). We review de novo the district court’s dismissal under Rule 12(b)(6). *St. Clair v. County of Okanogan*, 154 F.4th 1154, 1158 (9th Cir. 2025). The claims were filed in June 2024, nearly four years after Richard Rose died. Accordingly, they were untimely unless the discovery rule or equitable tolling provides otherwise.

a. The discovery rule did not delay accrual of the claims until the Estate obtained the names of the Individual Defendants in November 2022. Under the

discovery rule, “a cause of action accrues when the plaintiff knows or has reason to know of the injury that is the basis of the action and the cause of that injury.”

Gregg v. Haw., Dep’t of Pub. Safety, 870 F.3d 883, 887 (9th Cir. 2017).

“Discovery of the cause of one’s injury, however, does not mean knowing who is responsible for it. The ‘cause’ is known when the immediate physical cause of the injury is discovered.” *Dyniewicz v. United States*, 742 F.2d 484, 486 (9th Cir.

1984); *accord Gibson v. United States*, 781 F.2d 1334, 1344 (9th Cir. 1986). Here, no later than September 2021, the Estate had enough information to suspect that the prison staff who made decisions about Richard Rose’s care had delayed providing medical attention. So under the discovery rule, the section 1983 claims accrued more than two years before the Estate filed *Rose II*.

b. The Estate also argues that the statute of limitations was equitably tolled until it obtained the Individual Defendants’ names. That argument fails. Even assuming that equitable tolling is available under Oregon law, *see Jones v. Blanas*, 393 F.3d 918, 927 (9th Cir. 2004), the party seeking it ordinarily must show “(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way,” *Credit Suisse Secs. (USA) LLC v. Simmonds*, 566 U.S. 221, 227 (2012) (citation modified). Neither element is met here. The Estate initially brought its section 1983 claims against the Individual Defendants in *Rose I*. Those claims would have gone to trial but for the Estate’s

failure timely to serve the Individual Defendants in that action. We do not apply equitable tolling to offset “what is at best a garden variety claim of excusable neglect.” *Irwin v. Dep’t of Veterans Affs.*, 498 U.S. 89, 96 (1990).

AFFIRMED.