No. 18-1868

IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

Troy Lamont Moore, Sr.,

Plaintiff-Appellant,

v.

C.O. Saajida Walton,

Defendant-Appellee.

On Appeal from a Final Judgment of the
United States District Court for the Eastern District of Pennsylvania
Case No. 2:14-cv-03873, Judge Eduardo C. Robreno

REPLY BRIEF FOR PLAINTIFF-APPELLANT TROY MOORE

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Introduction

Some cases require a court to choose between allowing a meritorious claim to proceed and applying the Federal Rules of Civil Procedure as written. This case presents no such dilemma. Honoring the Rules' text requires that Troy Moore's Eighth Amendment claim go forward.

Saajida Walton left Moore covered in human excrement, in inches of standing wastewater, for eight hours. He suffered extreme distress. The exposure caused chest pain, shortness of breath, vomiting, diarrhea, severe headaches, a fungal infection, and a rash, and exacerbated his post-traumatic stress disorder. The record shows that Walton knew what she forced him to endure. When Moore sued, the City of Philadelphia did its best to avoid helping him find its former employee. Accordingly, the district court found good cause for Moore's initial inability to locate her and extended the deadline for service until she received the summons and complaint. The upshot is that Walton violated the Eighth Amendment, and Moore timely filed an amended complaint to hold her accountable. The egregiousness of the facts established by the summary-judgment record and the text of Rules 4 and 15 point in the same direction: This Court should reverse.

Argument

The timeliness of Moore's Eighth Amendment claim relies on a simple logical chain. After Moore filed his amended complaint and served Walton, the district court found that Moore had good cause for not serving her earlier. That finding required the court to extend the period for service under

Rule 4(m). This extension of the period for service under Rule 4(m) also enlarged the period for providing notice of the lawsuit under Rule 15(c)(1)(C). Because Moore served Walton within that extended period and satisfied Rule 15's other requirements, his amended complaint relates back to the original complaint.

Perhaps because this reasoning is clear and inescapable, much of Walton's brief seeks to dissuade the Court from engaging with it. We begin by explaining why Walton's proposed alternative grounds for affirmance fail. We then address her attempts to circumvent Rule 15's text. Finally, we explain that the record refutes Walton's contention that triable issues of fact remain on Moore's Eighth Amendment claim, warranting summary judgment in his favor.

I. No alternative ground for affirmance exists.

Walton begins by urging this Court to avoid reaching the question it appointed counsel to answer. Resp. Br. 17; *see* Order Appointing Counsel, Doc. 78 (Nov. 21, 2022). She argues that Moore's amended complaint was invalid, that the district court abused its discretion in finding that Moore had good cause for not serving Walton earlier, and that she will suffer prejudice from the delay in service. Each argument falls flat.

A. Moore's amended complaint was valid.

A district court "should freely give leave" to file an amended complaint "when justice so requires." Fed. R. Civ. P. 15(a)(2). Walton's first attempt to

stop this Court at the threshold is her contention, new on appeal, that the district court misapplied Rule 15(a) when it accepted Moore's complaint. Resp. Br. 22-28. She argues that the complaint was futile because at the time he filed it, "he would not have been able to satisfy the elements required to relate back." *Id.* at 22.

The contention that Rule 15(a) provides a separate basis for affirmance is perplexing. True, a district court should deny leave to amend if the proposed complaint "would not be able to overcome the statute of limitations." *Cowell v. Palmer Twp.*, 263 F.3d 286, 296 (3d Cir. 2001); Resp. Br. 23. But that inquiry just duplicates the relation-back analysis—if the complaint relates back, it *does* overcome the statute of limitations. *Singletary v. Pa. Dep't of Corr.*, 266 F.3d 186, 189 (3d Cir. 2001). And while we do not dispute Walton's discussion (at 23-28) explaining that Moore did not satisfy Rule 15(c)'s relation-back requirements within Rule 4(m)'s default time period, that's beside the point. Rule 15(c)(1)(C) incorporates extensions of the Rule 4(m) period. *See* Opening Br. 14-16. And Moore satisfied the requirements of Rule 15(c)(1)(C) within the extended timeframe for service. *Id.* at 16-24.

To the extent that Walton's futility argument is distinct from her relation-back argument, she seems to suggest that good-cause extensions cannot be granted after the deadline for service has passed. Resp. Br. 22-23 (noting that Moore amended his complaint "prior to any service extensions" (emphasis omitted)). But Rule 4 precludes that interpretation. It provides that "[i]f a defendant is not served within 90 days," the district court "must dismiss the

action … or order that service be made within a specified time." Fed. R. Civ. P. 4(m). And the Rule further states that when "the plaintiff shows good cause for the failure, the court must extend the time for service." *Id.* Thus, the Rule expressly contemplates a situation where, as here, the failure to serve within the time limit has already happened and the court approves an extension afterward. *Cf.* Fed. R. Civ. P. 6(b)(1)(B) (providing that, in general, when a party must act "within a specified time, the court may, for good cause, extend the time … on motion made *after the time has expired*" (emphasis added)).

Because Rule 4 allows for retroactive good-cause extensions, Walton's contention (at 20, 22) that Moore failed to satisfy Rule 15 at the "snapshot in time" when he filed his amended complaint is flawed. If she means to say that the complaint was irredeemably untimely because the district court had not yet found good cause, that argument does not make sense. That would mean that Moore could have filed a new, timely complaint naming Walton before the limitations period ended or a timely amended complaint *later*, after the district court found good cause existed, but that there was no way to bring timely claims in between. Walton offers no authority or rationale for that position, and there is none. This strained reading of Rule 15 would produce a counterintuitive minefield for litigants, which is reason enough not to adopt it. *See* Fed. R. Civ. P. 1 (directing that the Rules "should be construed … to secure the just, speedy, and inexpensive determination of every action and proceeding").

B. The district court properly found that Moore had good cause for not serving Walton earlier.

Next, Walton contends that "there was no 'good cause'" for extending the period for service under Rule 4(m). Resp. Br. 28; *see id.* at 28-34. Out of the gate, her formulation elides the standard of review. Abuse-of-discretion review applies to the district court's holding that Moore established good cause. *MCI Telecomms. Corp. v. Teleconcepts, Inc.*, 71 F.3d 1086, 1096 (3d Cir. 1995).

To misappropriate de novo review, Walton contends that the district court "later reconsidered" its good-cause holding when ruling on her motion for summary judgment. Resp. Br. 31 n.13. That is not accurate. When Walton moved for summary judgment, she did not ask the district court to revisit its good-cause determination. Walton Mot. Summ. J., ECF 65. And the court never did so. The portion of the summary-judgment opinion that Walton cites analyzes equitable tolling, not good cause. *See* Add. 11 (cited in Resp. Br. 31 n.13). To benefit from equitable tolling, a litigant must satisfy a more stringent standard than that required to find good cause, and the court's discussion of the former should not be mistaken for a decision changing its ruling on the latter. *Compare Miller v. N.J. State Dep't of Corr.*, 145 F.3d 616, 618-19 (3d Cir. 1998) (explaining that "[m]ere excusable neglect is not sufficient" to establish entitlement to equitable tolling), *with MCI*, 71 F.3d at 1097 (equating excusable neglect with good cause).

Because the district court's good-cause holding remains intact, abuse-of-discretion review applies. *MCI*, 71 F.3d at 1096. And as our opening brief explains (at 17-19), the court exercised its discretion appropriately. The good-cause standard requires a finding that the plaintiff demonstrated "good faith" and "some reasonable basis for noncompliance within the time specified in the rules." *MCI*, 71 F.3d at 1096-97 (citation omitted). Walton concedes that Moore acted in good faith. Resp. Br. 29. And the district court did not abuse its discretion when it found that Moore had a reasonable justification for failing to comply: he made "a spelling error" that the City "provided no assistance in correcting" until the limitations period passed. J.A. 265-66 (Tr. of Hr'g on Mot. Dismiss).

Walton protests that Moore failed to act diligently because he did not seek discovery concerning her identity or immediately amend his complaint after receiving the repair report referencing "S. Walton." Resp. Br. 29-31. But for four reasons, the district court did not abuse its discretion in rejecting the argument that Moore should have done more to identify her. J.A. 263-66 (Tr. of Hr'g on Mot. Dismiss). First, the good-cause standard does not require a plaintiff to act as diligently as feasibly possible. Second, the City's attorney represented that the City was looking into who was working at the time of the incident so that they could accept service on behalf of that person. Moore thus had good reason to think that any attempt to duplicate those efforts by seeking discovery or filing an amended complaint naming "S. Walton" would not help achieve service. Third, the district court's discovery rulings

led Moore to believe he could not request additional information. And fourth, even if Moore had filed an amended complaint immediately, that would not have hastened service. He needed Walton's first name to serve her, which he did not receive from the City until November 2016.

1. Even if Moore could have taken steps to achieve service more quickly, that would not establish that the district court erred. The good-cause standard does not require a plaintiff to exhibit maximal diligence. As Walton acknowledges (at 29), this Court interprets the good-cause standard coextensively with "excusable neglect" under Federal Rule of Civil Procedure 6(b). *MCI*, 71 F.3d at 1097. By its very moniker, excusable *neglect* tolerates delays in service that a party could have prevented if he had acted more assiduously. *Pioneer Inv. Servs. Co. v. Brunswick Assocs. Ltd. P'ship*, 507 U.S. 380, 388, 391-92 (1993) (defining "neglect" to include "both simple, faultless omissions to act and, more commonly, omissions caused by carelessness"); *Ryder v. Bartholomew*, 715 F. App'x 144, 148 (3d Cir. 2017) (applying *Pioneer* to extensions of time based on excusable neglect under Rule 6(b)). A "complete lack of diligence" cuts against a finding of good cause, but Moore's repeated attempts to identify and serve Walton amounted to at least an earnest effort, not a "complete lack of diligence." *Dominic v. Hess Oil V.I. Corp.*, 841 F.2d 513, 517 (3d Cir. 1988); *see* J.A. 266 (Tr. of Hr'g on Mot. Dismiss). And good cause is an "equitable" standard that "must take account of all relevant circumstances." Wright & Miller, *Federal Practice and Procedure* § 1165 (4th ed.); *see Dominic*, 841 F.2d at 517. Those

circumstances include Moore's lack of resources, his pro se status, and the restrictions he faced due to his incarceration.

2. Further, the "primary focus" of the good-cause inquiry is on the "plaintiff's reasons for not complying with the time limit." *MCI*, 71 F.3d at 1097. Moore had good reason not to seek discovery of Walton's full name or address or amend his complaint immediately. He relied on the City's lawyer's in-court assurances that officials were trying to identify Walton and their apparent inability to do so. In December 2014, after the U.S. Marshals Service was unable to locate defendant "Walden," J.A. 2-3 (Docket Entries), the district court asked Moore what he "kn[ew] … that may be helpful" to the City's efforts to find her, J.A. 108 (Tr. of Dec. 3, 2014).[1] Moore explained that he was trying to sue "an older female" who "works the graveyard shift" and "was actually on duty when the incident happened." *Id.* The City's attorney told the court that officials were "looking through who was working at the time of the incident." J.A. 109. He cautioned that "without any further information" on Walton aside from her last name, the City "probably [would] not be able to accept service for [her]." J.A. 110. But Moore had provided additional identifying details, J.A. 108, and the court concluded by recognizing that while officials might ultimately fail to identify Walton, "we will try to get some more information on that," J.A. 111.

[1] In our opening brief (at 6, 19), we mistakenly referred to this hearing as occurring on December 3, 2015. It occurred on December 3, 2014. J.A. 100.

Thus, the City, which had superior access to its own personnel information (including the repair report referencing "S. Walton"), had pledged that it was trying to track down the person working at the time of the incident in order to accept service on her behalf. Why would Moore have thought that filing an amended complaint containing only information the City already had would have helped locate her? And if the City was unable to identify Walton after an allegedly diligent search of its own records, was Moore really supposed to think he could draft a discovery request that would accomplish what the City could not, without a lawyer and while confined to a state correctional institution?

3. The argument that Moore should have sought discovery is particularly untenable in light of the district court's discovery restrictions. When Moore moved to compel the production of certain documents, the district court denied his motion in part, ordering the City to preserve but not produce the records. Moore Mot. Compel 1, ECF 4; J.A. 102 (Tr. of Dec. 3, 2014); J.A. 36 (Order on Mot. Compel). And before the City turned those documents over, the court ordered that the parties would not proceed to "broader discovery" unless and until it denied the defendants' motion for summary judgment. J.A. 105 (Tr. of Dec. 3, 2014); *see* Resp. Br. 8 n.3. As a result, at all times, Moore had reason to think either that the discovery materials he sought would not be turned over or that any request would be denied outright.

4. Moreover, Walton never explains why an earlier-filed amended complaint would have led to earlier service—which is the issue here. The

timeline indicates no causal relationship between filing and service. The U.S. Marshals did not successfully serve Walton until Moore gave them her full name, "Saajida Walton." J.A. 7-8 (Docket Entries). And Moore did not obtain her full name until November 2016, when the City finally provided it. J.A. 130 (Dist. Ct. Order Nov. 2, 2016); J.A. 262-63 (Tr. of Hr'g on Mot. Dismiss). That happened nine months after Moore filed the amended complaint. J.A. 6-7 (Docket Entries). It was Walton's full name, not the amended complaint, that led to effective service.

Indeed, even if Moore had filed the amended complaint immediately after receiving the repair report, that would not have accelerated service. As noted, in December 2014, the City's attorney told the district court that officials were "looking through who was working at the time of the incident." J.A. 109. The repair report that the court ordered the City to preserve during the same hearing made clear that "S. Walton" was working at the time of the incident. J.A. 102-04; J.A. 49-51 (Moore First Mot. Summ. J. Ex. 1); *see also* Walton Corrected Supp'l App'x 21-28 (Oct. 16, 2018). And if any doubt remained in city officials' minds about who Moore was trying to sue, his motion for summary judgment left "no question" that "S. Walton" was the target of his lawsuit, as Walton now acknowledges. Resp. Br. 30; *see* J.A. 41 (Moore First Mot. Summ. J.). Thus, assuming the City made truthful representations to the district court, officials were trying to figure out who "S. Walton" was but could not identify her until the end of 2016, when they provided her full name to the district court. *See* J.A. 130 (Dist. Ct. Order Nov.

2, 2016). Filing an amended complaint naming "S. Walton" after Moore received the report in April 2015 would have provided the City only with information it already had. That would not have aided or expedited the City's search.

Of course, it is also possible that the City's attorney overstated the degree of diligence with which officials were searching for Walton. Perhaps they turned over Walton's name only because Moore filed the amended complaint, even though the evidence strongly suggests they had known her true name for years. But if that's so, then the district court's holding that Moore had good cause because the City "provided no assistance in correcting" his spelling error, J.A. 266 (Tr. of Hr'g on Mot. Dismiss), dramatically understates the degree of the City's interference. And that would only reinforce the district court's conclusion that Moore had a reasonable basis for failing to serve Walton earlier.

Two last points concerning the district court's extension of the time for service require discussion. First, Walton speculates that the district court might not have realized that its good-cause extension would allow suit after the end of the limitations period and might have denied an extension if it had recognized as much. *See* Resp. Br. 41-42. But the court considered how much time had passed, because Walton's attorney raised the point. J.A. 265 (Tr. of. Hr'g on Mot. Dismiss). And the running of the limitations period could not have affected the district court's good-cause determination because courts must assess good cause without reference to whether a refiled

complaint would be timely. *See Petrucelli v. Bohringer & Ratzinger*, 46 F.3d 1298, 1306 (3d Cir. 1995).

Finally, it bears repeating that, even absent good cause, this Court could recharacterize the district court's decision enlarging the period for service as an exercise of discretion and uphold the extension. Opening Br. 19-20; *see MCI*, 71 F.3d at 1098. Walton does not dispute that this option remains available to the Court even if the district court abused its discretion regarding good cause. *See* Resp. Br. 42 n.20. Whatever the path, this Court should affirm the district court's extension of the period provided by Rule 4(m).

C. Walton will suffer no prejudice within the meaning of Rule 15.

For his complaint to relate back, Moore must show that when Walton was served, she "received such notice of the action that [she] will not be prejudiced in defending on the merits." Fed. R. Civ. P. 15(c)(1)(C)(i). Our opening brief explains (at 21-23) that Walton will suffer no prejudice attributable to the twenty months that passed between when the limitations period ran and the day she was served. The delay did not lead to the destruction of any evidence or the unavailability of any witnesses. *See* Opening Br. 23. Nor did it interfere with Walton's access to discovery. *Id.* at 22-23. Her "ability to defend" has not been "impaired" in any way. *Boley v. Kaymark*, 123 F.3d 756, 759 (3d Cir. 1997).

Nonetheless, Walton claims prejudice. We agree that Moore bears the burden of satisfying Rule 15(c)(1)(C)'s requirements, *see* Resp. Br. 42 n.21, but the Rule is concerned only with "actual, not hypothetical" prejudice, *Urrutia v. Harrisburg Cnty. Police Dep't*, 91 F.3d 451, 461 (3d Cir. 1996). Moore is not required to dispel every possible way in which the delay might theoretically have disadvantaged Walton.

That all of Walton's attempts to invoke prejudice are abstract and conjectural objections rather than concrete concerns about her actual circumstances demonstrates that no real harm has befallen her. Walton claims that she "would undoubtedly be prejudiced" because "she did not receive any notice until … almost two years after the statute of limitations had run." Resp. Br. 43. But that is not a claim of actual prejudice. The bare fact that the statute of limitations expired does not establish that Walton was "unfairly denied [an] opportunity to present facts or evidence which [she] would have presented had the amendments been timely." *Urrutia*, 91 F.3d at 461 (citing *Bechtel v. Robinson*, 886 F.2d 644, 652 (3d Cir. 1989)). And Rule 15(c)'s history makes clear that the running of the statute of limitations cannot, in and of itself, demonstrate prejudice sufficient to defeat relation back. *See* Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment (explaining Rule 15 was revised to allow for a newly added party to receive notice within the period provided by Rule 4(m), rather than requiring notice within the statute of limitations).

Nor is Walton prejudiced simply because "almost four years" elapsed between the night she left Moore in his cell covered in sewage and when she was served. Resp. Br. 43. The passage of four years might interfere with a party's ability to raise a defense under particular circumstances. But without more, any claim of prejudice is purely speculative, not actual. *See Urrutia*, 91 F.3d at 461.

On this score, Walton misunderstands why we cite other states' lengthier statutes of limitation. Opening Br. 22. That some states authorize personal-injury suits within four years of accrual (and even later) helps show that the length of the delay here was not intrinsically prejudicial. We recognize that "Pennsylvania made a specific policy choice to enact a two-year statute." Resp. Br. 43 n.22. But other states have made different policy choices. That counsels against assuming that witnesses' memories have faded or that evidence was destroyed before Walton was served based solely on the amount of time that passed.

Finally, neither the fact that "the incident in question spanned eight hours or less" nor that Walton left her corrections' job only seven months later, Resp. Br. 44, makes it likely that her memory of these events has faded. Does Walton truly mean that she has forgotten whether she saw an inmate covered in human waste and begging for medical care and responded by ignoring him all night? What happened to Moore was horrifying, something that would be seared into any eyewitness's memory for a lifetime, even though it did not constitute "a more protracted course of conduct." *Id.* And

there is no conceivable reason why the fact that the conduct occurred shortly before Walton left the jail, *see id.*, would make a difference. If anything, it would have been one of the last things she witnessed on the job and thus fresh in her mind when she departed. And if Walton's position is that she never left a person to steep in human waste for eight hours, then the passage of four years' time should not have dimmed her confidence in the truth of that fact. She could have sat for a deposition or submitted an affidavit to contradict Moore's evidence, whether or not she remembered her specific actions on the night of September 16, 2013.

II. Moore timely filed his amended complaint.

Sweeping Walton's alternative arguments off the table reveals how little she has to say on this case's central question. She does not argue that Rule 15 adopts only Rule 4(m)'s ninety-day default period without any extensions. Instead, she says that Rule 15 should incorporate some—but not all—extensions of the Rule 4(m) period. Resp. Br. 34-42. Rule 15 provides no basis, textual or otherwise, for drawing any such distinction.

A. Rule 15 incorporates the entire Rule 4(m) period.

Straightforward reasoning establishes that Rule 15(c)(1)(C) incorporates any extensions of the Rule 4(m) period. As our opening brief explains (at 13-14), Rule 15 requires a defendant to receive notice of a lawsuit "within the period provided by Rule 4(m) for serving the summons and complaint." Fed. R. Civ. P. 15(c)(1)(C). Rule 4(m) provides that the district court must dismiss

a complaint unless the defendant is served within ninety days or the court extends the period for service. Fed. R. Civ. P. 4(m). Thus, the "period provided by Rule 4(m)" consists of the default ninety days plus any extensions the district court grants. It follows that when Rule 15 refers to the "period provided by Rule 4(m)," it incorporates any extensions.

Walton never refutes this logic. Instead, she argues that even though Rule 15's time limit plainly tracks the time limit in Rule 4(m), the Court should read it to do something else. She posits that "this Court should reserve the benefit of an expanded notice period only for plaintiffs who can demonstrate a delay beyond their control." Resp. Br. 34. This is an odd pitch for her to make, because, even under the limitation she proposes, Moore can take advantage of the extension. As explained (at 8-9), the delay was ascribable to the district court's discovery restrictions and Moore's reliance on the City's assurances that it was searching for Walton. Moore was not at fault.

And in any event, Walton's proposal is baseless. To adopt it, this Court would have to rewrite Rule 15. The Rule's text does not distinguish between various types of extensions of the deadline for service. It does not differentiate based on whether the delay was within a plaintiff's control (or, for that matter, based on whether the court granted the extension for good cause or as an exercise of discretion, *see* Resp. Br. 42 n.20). Rule 15 refers only to the "period provided by Rule 4(m)," Fed. R. Civ. P. 15(c)(1)(C), and thus, as the Advisory Committee put it, includes "any additional time resulting from *any* extension ordered by the court pursuant to [Rule 4(m)]," Fed. R.

Civ. P. 15 advisory committee's note to 1991 amendment (emphasis added). It contains "no allowance" for "equitable considerations" such as "a party's delay in moving for leave to amend." *Arthur v. Maersk, Inc.*, 434 F.3d 196, 203 (3d Cir. 2006).

Walton identifies no authority that supports her proposed revision. The best she can do is argue that existing caselaw is not to the contrary. Resp. Br. 36-40. That proves nothing. The observation that past cases incorporating the entire Rule 4(m) period into Rule 15 have involved delay outside a plaintiff's control does not establish that unavoidable delay is a prerequisite.

And besides, the reasoning of the caselaw favors Moore's position. Other courts have concluded that Rule 15 incorporates the entire Rule 4(m) period by simply relying on Rule 15's text and the Advisory Committee's notes. *Robinson v. Clipse*, 602 F.3d 605, 608 (4th Cir. 2010); *McGuire v. Turnbo*, 137 F.3d 321, 325 (5th Cir. 1998); *Jackson v. Herrington*, 393 F. App'x 348, 353 (6th Cir. 2010); *see also Lee v. Airgas Mid-S., Inc.*, 793 F.3d 894, 897-98, 897 n.3 (8th Cir. 2015). Although some discuss whether the delays in service were attributable to the plaintiff or outside forces, they do so in the context of assessing whether good cause exists. *E.g.*, *Robinson*, 602 F.3d at 608 ("Because the delay caused by the court's failure to authorize the issuance and service of process is beyond the control of an *in forma pauperis* plaintiff, such failure constitutes good cause requiring the [Rule 4(m)] period to be extended."); *Jackson*, 393 F. App'x at 353-54 ("The district court finished screening Jackson's complaint and issued summonses on December 21, 2006, so

Jackson had 'good cause' for failing to serve the defendants within 120 days of filing his complaint."). None of the other courts has conducted a second, freestanding analysis of whether a plaintiff acted diligently enough to enjoy the benefit of incorporating a good-cause extension into Rule 15. And that's not surprising because the Rule's text does not permit such an inquiry. After a district court finds good cause, the court must extend the period for service under Rule 4(m) and, commensurately, the period for notice under Rule 15.

B. Walton's objections to applying Rule 15's text are policy disagreements that lack force.

Without text or authority to back her up, Walton resorts to policy arguments. She contends that Rule 4(m)'s good-cause standard is not a "sufficient limiting principle" for Rule 15(c)(1)(C) because it is too "lenient." Resp. Br. 41. She emphasizes that incorporating Rule 4(m) into Rule 15 "would permit federal courts to expand a state-created statute of limitations" and "benefit dilatory plaintiffs." *Id.* at 34. But those submissions just take issue with the Rules Committee's choices. They do not engage with Rule 15's text.

Even on their own terms, Walton's policy concerns provide no reason to deviate from the Rule's language. Rule 15 does authorize a plaintiff to put a defendant on notice after a limitations period expires, but that is by design. The Rule was amended specifically to achieve that result. *See* Fed. R. Civ. P. 15 advisory committee's note to 1991 amendment. And it contains other safeguards that promote the same interests as statutes of limitation. For

example, the amended complaint must arise from the same "conduct, transaction, or occurrence" as the original, and the newly added party must receive "such notice of the action that it will not be prejudiced in defending on the merits." Fed. R. Civ. P. 15(c)(1)(B), (C)(i).

Nor is there reason to worry that our interpretation of Rule 15 creates a windfall for dilatory plaintiffs. Courts retain tools to account for unreasonable delay. The good-cause standard allows courts to consider a party's diligence and good faith. *Dominic v. Hess Oil V.I. Corp.*, 841 F.2d 513, 516-17 (3d Cir. 1988). When, for example, a party "wait[s] until the eve of the … deadline" to mail a summons, fails to serve the defendants before the cutoff, and does not "present facts that would justify" the belated service attempt, this Court has affirmed the conclusion that good cause does not exist. *Green v. Humphrey Elevator & Truck Co.*, 816 F.2d 877, 884 (3d Cir. 1987).

In the end, Walton's atextual attempts to escape Rule 15 fail. This Court should affirm the district court's extension of the period for service under Rule 4(m), apply Rule 15's text, and hold that Moore's amended complaint relates back to the original.

III. Moore is entitled to summary judgment on his Eighth Amendment claim.

Walton's entire argument on Moore's Eighth Amendment claim is that a genuine dispute of fact remains regarding whether her state of mind was sufficiently culpable to violate the Eighth Amendment. Resp. Br. 45-47.

By focusing so narrowly, Walton wordlessly concedes a great deal. She implicitly recognizes that the summary-judgment record establishes that she left Moore covered in sewage for eight hours after the water in the toilet in his cell exploded violently, spreading solid human waste four feet high on the walls, covering him with raw sewage, and flooding the cell with an inch of wastewater. Opening Br. 3-4. She does not take issue with the evidence indicating that Moore's eyes and mouth were contaminated with human waste. *Id.* She does not contest that, as a result of his exposure, Moore suffered chest pain, shortness of breath, vomiting, diarrhea, severe headaches, a fungal infection, a rash, and episodes of post-traumatic stress disorder. *Id.* at 4-5. She does not challenge his testimony establishing that he pounded on his cell door begging for help, that she looked at him and acknowledged him, and that she then turned her head and proceeded with her rounds. *Id.* at. 29-30. She does not dispute that she allowed other inmates to evacuate and let another inmate out of his cell to mop the floor outside Moore's door but failed to help Moore. *Id.* at 30. She has not identified any evidence that she had some penological purpose for ignoring Moore. *Id.* at 38-40. And she abandons the arguments she made to the district court that Moore's exposure did not last long enough to violate the Eighth Amendment and that she is entitled to qualified immunity. Walton Mot. Summ. J. 8-11, ECF 65.

Walton does say, briefly and generically, that she contested Moore's facts. Resp. Br. 45. She points to a boilerplate footnote she dropped in her motion

for summary judgment announcing that she "hereby opposes [Moore's] motion for summary judgment based on the arguments set forth in this motion" and asserting in a conclusory fashion that Moore "adduced no evidence of record" of an Eighth Amendment violation. *Id.* at 45 n.23 (quoting Walton Mot. Summ. J. 2 n.1, ECF 65). But her motion argued only that even accepting Moore's evidence, she was entitled to judgment as a matter of law. Walton Mot. Summ. J. 8-11, ECF 65. She did not "cit[e] to particular parts of materials in the record" or "show[] that the materials cited do not establish the absence … of a genuine dispute." Fed. R. Civ. P. 56(c)(1). Accordingly, the district court correctly concluded that she "has not disputed the basic facts of this case." Add. 12.

Young v. Quinlan does not allow Walton to escape the consequences of her concessions. 960 F.2d 351 (3d Cir. 1992), *superseded by statute on other grounds as recognized in Nyhuis v. Reno*, 204 F.3d 65, 71 n.7 (3d Cir. 2000). True, *Young* stated that the plaintiff's "uncontested factual allegations of the conditions in his cell and of the knowledge of such conditions by … officials raise triable issues with respect to the violation of his Eighth Amendment rights" and remanded for further proceedings. *Id.* at 365-66. But the plaintiff in *Young* did not seek summary judgment (as Moore did below here); the only motion for summary judgment before this Court in *Young* was the defendants'. *See id.* at 357. *Young* is not "on all fours" with this case. Resp. Br. 46.

Walton's only specific attempt to establish that a question of fact remains is her assertion that a jury must decide whether "she knew [Moore] had

come into direct contact with the toilet's contents for a prolonged period." Resp. Br. 46 (emphasis omitted). But in arguing that point, she gives away the game, acknowledging that if a jury answered that question in the affirmative, that would equate to a conclusion that she "appreciated a serious risk of substantial harm." *Id.*

The historical facts are undisputed, and on this record any reasonable jury would conclude that Walton knew Moore was covered in human waste overnight. Because Walton has produced no contrary evidence, she has conceded Moore's testimony that she looked at him after the water in the toilet violently overflowed, that she "acknowledged" him, that he begged for help, that she ignored him, and that she recognized the situation was dire enough to evacuate his neighbors and require an inmate to clean up the sewage seeping out of Moore's cell into the hallway. J.A. 242 (Moore Decl.); J.A. 176-78 (Moore Dep.); J.A. 247 (Johnson Decl.); J.A. 249 (Rodriguez Decl.). He banged on his door for a full hour, but she "continued to walk by and act like she couldn't hear" him. J.A. 176-77 (Moore Dep.). His cellmate took up the project of pounding on the door after Moore's chest pain forced him to lie down. J.A. 177.

And it's not as though Walton might have thought that the situation could resolve itself without her intervention. Moore was a prisoner, locked in his cell. And no one else could have helped him. Walton was the only staff member on that unit during the graveyard shift. J.A. 176, 178 (Moore Dep.). And she knew that unsanitary conditions persisted all night—she left an

inmate with a mop outside Moore's door until morning. J.A. 176. All the while, Moore suffered, covered in human waste.

It would be impossible for a jury to review this record and find that Walton failed to recognize that Moore was directly exposed to human waste for hours on end. Because no genuine dispute remains regarding whether Walton violated the Eighth Amendment, the district court should have granted Moore's motion for summary judgment.

Conclusion

This Court should reverse the district court's denial of Moore's motion for summary judgment and reverse the district court's grant of Walton's motion for summary judgment.

Respectfully submitted,

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June 21, 2023