FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-10178

CHASE PEDEN,
MARJORIE PEDEN,

Plaintiffs-Appellants-Cross Appellees,

versus

GLENN STEPHENS,
BUTCH CONWAY,
LOU SOLIS,

Defendants-Appellees-Cross Appellants,

Appeals from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:18-cv-05861-TWT

Before JILL PRYOR, BRANCH, and ED CARNES, Circuit Judges.

ED CARNES, Circuit Judge:

Chase Peden was fired as a deputy with the Gwinnett County Sheriff's Office in Georgia after allegations arose that he was having extramarital affairs during work hours and while on duty as a deputy. Chase and his wife Marjorie sued officials of Gwinnett County and Carole Stephens, the wife of one of those officials, asserting procedural due process, equal protection, and state law defamation claims.[1] The district court granted summary judgment to the county defendants.[2]

We affirm the grant of summary judgment to the defendants on the procedural due process and defamation claims. We vacate the grant of summary judgment on the equal protection claim and remand to the district court with instructions to dismiss that claim for lack of standing.

I. BACKGROUND

Deputy Chase Peden and Carole Stephens had an extramarital affair. When it ended, as virtually all affairs do, so did any tender feelings that Carole ever had for Chase. As Dorothy Parker ventured, "Scratch a lover, find a foe."[3] Carole definitely found a

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[1] Because Chase and Marjorie Peden have the same last name, we will more often than not refer to them by their first names. We will do the same for defendant Glenn Stephens and his wife Carole.

[2] All the claims against Carole have been resolved, and she is not a party to this appeal.

[3] The quoted line is the refrain in Dorothy Parker's *Ballade of a Great Weariness*: "There's little to do but I did before / There's little to learn but the

foe in the form of her former lover. Her feelings for him soured to the point of bitterness. So much so that she wrote a letter to the Sheriff's Office, pseudonymously signed "Michael," accusing Chase of having extramarital affairs while on duty.

In December 2017 the Sheriff's Office received the "Michael" letter and opened an investigation into the allegations that Chase was having extramarital dalliances while on duty as a deputy. Chase agreed to a polygraph test, and in it he was asked if he had sex while on duty, and whether he had sex while in his Sheriff's Office vehicle. He answered no to both questions. The test results indicated "deception" in his responses.

According to Chief Deputy Lou Solis, toward the conclusion of the investigation, he received a phone call from none other than Carole's husband, Gwinnett County Administrator Glenn Stephens. He admitted to Chief Deputy Solis that Carole and Chase had engaged in an extramarital affair with one another and that Carole had written the "Michael" letter.

Based in part on the results of Chase's polygraph test, the Sheriff's Office's investigating unit issued a report in March 2018 charging Chase with violating three Sheriff's Office rules by: engaging in neglect of duty, personal use of county supplies, and conduct unbecoming of an officer. Six of seven reviewing officers sustained those allegations, meaning they found there was sufficient

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things I know / And this is the sum of a lasting lore: / *Scratch a lover, and find a foe*" (emphasis added).

evidence to support the charges. (The seventh reviewing officer made no written comment either way). Sheriff Butch Conway ultimately made the decision to fire Chase.

On March 16, 2018, Chief Deputy Solis and two other officers met with Chase. They informed him of the Sheriff's Office's intent to terminate him, and they provided him with a written Notice of Intent to Terminate (a pretermination notice) based on his violations of the three rules we have mentioned. The notice described allegations that Chase had been using Sheriff's Office property, including his patrol vehicle, "to meet women and have sex" and he had done so while on duty. The notice mentioned the indications of deception during the polygraph test.

The same three officers met with Chase again on March 22 to give him an opportunity to provide them with any additional information he thought was relevant. Initially, Chase had nothing to add. They gave him another day to put something together. He did. On March 23 he submitted a few documents including a memorandum addressed to Sheriff Conway and Chief Deputy Solis in which he denied the allegations.

On March 28 Chase was notified in writing that Sheriff Conway had decided to terminate him. The termination notice was substantially the same as the pre-termination notice. Chase filed an appeal of his termination that same day, and a meeting was scheduled with the Executive Secretary of the Gwinnett County Merit Board for May 16.

In the meantime, the Sheriff's Office kept a copy of its report on the investigation in Chase's personnel file. On April 9 a television reporter requested Chase's personnel file under the Georgia Open Records Act, *see* Ga. Code Ann. § 50-18-71, and a public information officer provided it to him. On April 10 the reporter ran a televised news story about Chase and his alleged misconduct.

On May 16 Chase, accompanied by his attorney, went to the scheduled County Merit Board meeting. Before the meeting started, Chase and the Sheriff's Office reached a settlement. The terms were that in exchange for Chase dropping the appeal of his termination, the Sheriff's Office would acknowledge that he had not been terminated but had instead resigned. During his deposition in this lawsuit, Chase testified that he "was advised by counsel that anything further wasn't really necessary because I got what I was aiming for." By dropping his appeal, Chase gave up the opportunity for an evidentiary hearing before the full Merit Board and a chance to appeal his "non-termination" termination to the Gwinnett County Superior Court.

Chase alleges that he did not learn until after the settlement and after he had dropped his administrative appeal that the Sheriff and his investigators had known pretty much from the beginning of the investigation that he had been having an extramarital affair with Carole Stephens, the wife of Gwinnett County Administrator Glenn Stephens. Yet they did not name her in the pretermination notice, the termination notice, or at any time during the process.

The ill will between the former lovers and their spouses continued and, if anything, only deepened after Chase's departure from the Sheriff's Office. In early June 2018 Chase approached the district attorney for Gwinnett County and asked him to charge Carole with the crimes of stalking and harassing him. After the district attorney discussed those allegations with Carole's husband Glenn, and also interviewed Carole, he decided not to pursue any charges against her.

Chase claims that Sheriff's Office officials deprived him of a fair opportunity to contest his termination by not telling him that his affair with Carole was the true cause of his termination.[4]

Chase does not now dispute the fact that carnal relations happened, but he does deny carnally relating while on duty, and he denies that any of his fornication was facilitated by the use of Sheriff's Office property (the official vehicle).

II. PROCEDURAL HISTORY

On December 21, 2018, Chase and his wife Marjorie filed this lawsuit in federal court, asserting multiple claims against Glenn and Carole Stephens. In their first amended complaint they added as defendants multiple Gwinnett County officials. And they did not deny that Chase and Carole had carnal relations but did deny that

[4] At his deposition, Chief Deputy Solis testified that "the pretty big thing" and "the only thing" relating to Peden's termination "was having to do with Mr. Peden and Ms. Stephens." Sheriff Conway listed multiple reasons Peden was fired, including his "becoming involved with a married woman while he was married."

it happened while he was on duty and denied that any former fornication was facilitated by Sheriff's Office property.

In addition to pleading that he was not *as guilty* of misconduct as he could have been, Chase asserted two of the claims that are before us, and Chase and his wife asserted the third one.

In one of the claims, Chase alleged under 42 U.S.C. § 1983 that County Administrator Glenn Stephens, Sheriff Conway, and Chief Deputy Solis violated his Fourteenth Amendment procedural due process rights by: (a) conspiring to terminate him without telling him the true reason for his termination (his affair with Carole); and (b) arranging for the Sheriff's Office investigation report to be published in the news without providing him the opportunity to defend his reputation.[5]

In another of the claims, Chase alleged that Glenn, Solis, and Conway defamed him under Georgia law by conspiring to leak the Sheriff's Office investigation report to a journalist.

And in a third claim, Chase and his wife Marjorie alleged under 42 U.S.C. § 1983 that Glenn violated their right to "equal

[5] The district court concluded that Chase failed to properly plead that procedural due process claim against one of the defendants, Sheriff Conway. Chase challenges that conclusion, and he argues that the district court abused its discretion by denying his motion to amend his pleadings to more clearly add Conway to the claim. Because it makes no difference to the outcome in this appeal, we assume without deciding that Chase adequately alleged a procedural due process claim against Conway in addition to Solis and Glenn Stephens.

protection of the laws" under the Fourteenth Amendment by improperly influencing the district attorney's decision not to prosecute Carole.

The district court granted summary judgment to the Gwinnett County officials on all three of those claims. After a convoluted procedural history, the district court's judgment on those claims is now properly before this Court.[6]

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[6] The procedural convolutions don't affect the result, but if you want to hear about them, here is a summary. The Pedens first filed a notice of appeal after successfully moving for the district court to enter final judgment against Conway, Solis, and Glenn Stephens under Federal Rule of Civil Procedure 54(b). This Court dismissed that appeal, concluding that the Pedens had not properly withdrawn other, still-active claims against those defendants.

Then the Pedens amended their complaint to omit those other claims, and the district court entered a new final judgment as to all claims against Conway, Solis, and Glenn. After doing that, the Pedens filed another notice of appeal. But the parties jointly stipulated to the dismissal of that appeal after this Court entered a jurisdictional question identifying potential issues with the finality of a different claim (one against Carole, not presently before this Court).

Then the Pedens moved in the district court to set aside its latest judgment on the claims against Conway, Solis, and Glenn. The district court granted the motion and entered an order setting aside that judgment under Federal Rule of Civil Procedure 60(b). The court then entered a new judgment, now finally final as to all parties and claims in the case. The Pedens filed a new notice of appeal which brought that judgment to us. The appeal from that judgment is before us now.

But wait, there's more. The Gwinnett County officials filed a cross-appeal challenging the district court's order to set aside the judgment under Rule 60(b). Because we resolve this appeal in the officials' favor, we will

III. DISCUSSION

A. The Procedural Due Process Claim

There is at least a genuine issue of material fact that his carnality with Carole was the real reason Chase lost his job as a deputy. *See supra* at 6 n.4. The basis for Chase's procedural due process claim is his assertion that Gwinnett County officials never informed him of that with sufficient specificity because they did not tell him that the woman he was accused of having sex with was Carole. *See supra* at 6. That means, according to Chase, he was deprived of his property interest in his job without receiving the process he was due: "oral or written notice of the charges against him, an explanation of the employer's evidence, and an opportunity to present his side of the story." *Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 546 (1985).

Chase also contends he was deprived of his liberty interest based on "reputational damage" that he "sustained in connection with a termination of employment" because he never received "a meaningful opportunity for an employee name clearing hearing," which is also a requirement of procedural due process. *See Cotton v. Jackson*, 216 F.3d 1328, 1330 (11th Cir. 2000). Without actual

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dismiss their cross-appeal as moot. *See United States v. City of Hialeah*, 140 F.3d 968, 984–85 (11th Cir. 1998) (dismissing prevailing party's cross-appeal as moot); *Loyola Fed. Sav. Bank v. Fickling*, 58 F.3d 603, 605 (11th Cir. 1995) (dismissing the prevailing party's cross-appeal because "our affirmance of the judgments in his favor ma[de] the[] issues moot").

knowledge of the real and specific reason for his termination, says Chase, any process he received was "a lie" and "a sham."

As we have already explained, both the pretermination notice and the termination notice informed Chase that the misconduct leading to his termination was using Sheriff's Office property, including his patrol vehicle, "to meet women and have sex" and doing so while on duty. But no name of any purported paramour, including Carole, was ever provided to him. Generalities are not enough, Chase argues. He insists he was entitled to be told that he was being fired for having sex with Carole. Although it's undeniable — and undenied — that *he knew* he was having sex with Carole, he apparently believes that if he had known that the *defendants knew*, it might have in some unspecified way helped him show that their stated reason for firing him was pretextual. But we need not tarry long on Chase's argument that procedural due process entitled him to be told that the defendants knew what he himself knew. This side-issue is a non-issue because it does not matter in this case.

It does not matter because there is a big, threshold defect in Chase's procedural due process theory and everything it entails. The defect is that a "terminated employee" may not successfully assert a procedural due process claim "in federal court . . . before the employee utilizes appropriate, available state remedial procedures." *McKinney v. Pate*, 20 F.3d 1550, 1560 (11th Cir. 1994) (en banc), abrogation on unrelated grounds recognized by *Littlejohn v. Sch. Bd. of Leon Cnty.*, 132 F.4th 1232, 1240 (11th Cir. 2025). Even a plaintiff who has "suffered a procedural *deprivation* . . . has not

suffered a *violation* of his procedural due process rights unless and until the State . . . refuses to make available a means to remedy the deprivation." *Id.* at 1563.

The *McKinney* decision and a couple of the many decisions following and applying it demonstrate why by rushing to file suit in federal court before making use of available Georgia law remedies Chase struck a fatal blow to his procedural due process claims.

In *McKinney* a Florida county building official was terminated after a three-day hearing, and he brought a due process claim in federal district court alleging the decisionmakers had been "biased" against him. 20 F.3d at 1554–55. Sitting en banc, we decided the claim had to be dismissed because the plaintiff had "failed to avail himself of the full procedures provided by state law." *Id.* at 1565 (quotation marks omitted). We explained: "Florida courts . . . have the power to review employment termination cases," and "[i]nherent in that power to review is the power to remedy deficiencies and to cure violations of due process." *Id.* at 1563. "Therefore, the Florida courts have the authority to order the relief to which [the plaintiff] claims to be entitled — a new hearing conducted by a fair tribunal." *Id.* The plaintiff had not suffered a violation of his right to procedural due process because he "could have availed himself of state court procedures that . . . could have provided him with adequate relief," but he "chose not to utilize those procedures." *Id.* at 1567. Judgment for the defendants was affirmed. *Id.*

We reached the same conclusion in *Narey v. Dean*, 32 F.3d 1521 (11th Cir. 1994), where the director of a community mental health center was demoted for what he claimed were pretextual reasons. *Id.* at 1522–23. He appealed the demotion to the State Personnel Board, and a hearing officer upheld the demotion decision. *Id.* at 1523. He appealed to the full Board, which also affirmed. *Id.* Then he filed an appeal in Georgia state court, but he "voluntarily dismissed" that appeal without prejudice. *Id.* Finally he filed procedural due process claims in federal district court. *Id.* The plaintiff's decision to abandon the state court process doomed his constitutional claim that he was demoted based on pretextual reasons. *See id.* at 1527–28. We explained that Georgia allowed a terminated employee to file "an appeal to state courts to review the decision of the [State Personnel] Board for constitutional violations." *Id.* at 1528. Because the plaintiff had "not take[n] advantage of the opportunity for state court review," he could not "claim that the state deprived him of procedural due process." *Id.* Judgment for the plaintiff was reversed. *Id.*

A plaintiff whose procedural due process claim is based on the deprivation of a liberty interest bears the same burden of seeking state remedies as one claiming deprivation of a property interest. In *Cotton*, the director of continuing education for a Georgia college was accused of sexual harassment. 216 F.3d at 1329. The college president terminated the director, rejected the director's request for a hearing, and allegedly placed letters in the director's personnel file stating that the director had created a hostile work environment. *Id.* at 1329–30. The Board of Regents of the University

System of Georgia rejected the director's request to review the termination decision. *Id.* at 1330. The director then sued the president and Board members in federal court based on the alleged deprivation of a liberty interest, claiming the college president "effectively ruined his reputation by labeling him as a sexual harasser and by terminating his employment without giving him an opportunity to be heard." *Id.*

This Court concluded that the college president was entitled to summary judgment because Georgia law provided "adequate procedures" and "adequate remedies" to "protect [the director's] right not to be deprived of his liberty interest in his reputation by state action without the opportunity for a name-clearing hearing." *Id.* at 1331. We explained that the director "would be entitled to seek a writ of mandamus" under Georgia law, *id.* at 1332, which the director could have used to "direct[] Defendants to hold a name-clearing hearing (assuming that the mandamus proceeding was not itself a sufficient name-clearing hearing to satisfy due process)," *id.* at 1333; *see also* Ga. Code Ann. § 9-6-20 ("[W]henever, from any cause, a defect of legal justice would ensue from a failure to perform or from improper performance, the writ of mandamus may issue to compel a due performance if there is no other specific legal remedy for the legal rights . . . ."). We stated: "Because we believe that the writ of mandamus would be available under state law to Plaintiff, and because we believe that mandamus would be an adequate remedy to ensure that Plaintiff was not deprived of his due process rights, we conclude that Plaintiff has failed to show that inadequate state remedies were available to him to remedy

any alleged procedural deprivations." *Cotton*, 216 F.3d at 1333 (citations omitted). Judgment for the defendant. *See id.*

Chase Peden — by failing to pursue state procedures and remedies before the County Merit Board and in state court, *see supra* at 5–6, — has put himself in the same position as the plaintiffs in *McKinney*, *Narey*, and *Cotton*. Peden testified that he understood "there was another process," an appeal to the Full Merit Board, and if he chose to keep going, an appeal to the Superior Court of Georgia. *See* Ga. Code Ann. §§ 5-3-3, 5-3-7. To the extent his termination deprived him of a property interest, he could have continued with that process and could have filed "an appeal to state courts to review" the decision to terminate him. *Narey*, 32 F.3d at 1528. But he did not take advantage of administrative procedures and "did not take advantage of the opportunity for state court review[] and cannot now claim that the state deprived him of procedural due process." *Id.*; *see also McKinney*, 20 F.3d at 1563, 1567. Instead, when asked in his deposition if he chose to accept a settlement agreement because he "got what [he] wanted," he testified, "Yes."

To the extent Chase was deprived of a liberty interest in his reputation, he could have pursued state procedures and could have sought state remedies, including a writ of mandamus to demand a name-clearing hearing, but he failed to do so. *See Cotton*, 216 F.3d at 1331–33; Ga. Code Ann. § 9-6-20. Having failed to make use of state procedures that were adequate to protect his procedural due

process rights, Chase has not suffered a constitutional violation.[7] The district court correctly granted summary judgment to the Gwinnett County officials on that claim. *See* Fed. R. Civ. P. 56(a).

B. The Defamation Claim

Chase asserts a defamation claim against Sheriff Conway, Chief Deputy Solis, and County Administrator Glenn Stephens for "conspiring" to provide a tip about Chase's personnel file to a reporter, prompting the reporter to request the file under Georgia's Open Records Act. Chase claims the defendants "knew that the 'Michael' letter was false on its face," or at least they "made no

[7] Chase protests that he could not make use of state procedures because, at the time they were available, he was unaware of the true reason the Gwinnett County officials had terminated him (his affair with Carole). We disagree. Chase asserts that he did not learn until November 2018 that Gwinnett County officials had decided to terminate him because of his extramarital affair with Carole. That's only six months after the May meeting with the Merit Board, and only nine months after his March termination.

Chase has provided no authority establishing that the remedies available to him in state court, including a mandamus action, were lost to him less than a year after the wrongs he allegedly suffered. *See* Ga. Code Ann. § 9-3-22 ("All actions for the enforcement of rights accruing to individuals . . . by operation of law shall be brought within 20 years after the right of action has accrued . . . ."); *see also id.* § 9-6-20 to § 9-6-28 (not setting a statute of limitations on mandamus actions). The Supreme Court of Georgia has recognized that mandamus is a "quasi-equitable remedy" that "can be barred by gross laches," *Cowen v. Clayton Cnty.*, 832 S.E.2d 819, 822 (Ga. 2019) (quotation marks omitted), but less than a year under these circumstances cannot possibly amount to that. *See id.* ("Mandamus as a remedy may not lie where an applicant is guilty of gross laches or has permitted an unreasonable period of time to elapse.") (alteration adopted) (quotation marks and citation omitted).

attempt to independently investigate whether the claims in the letter were true." And they arranged for the publication of its allegations anyway. The district court concluded that Chase's defamation claim lacked merit for multiple reasons, including insufficient evidence of a causal connection between the defendants and the publication of the allegedly defamatory material.

There is no evidence in the record that any of the defendants provided the reporter with a "tip." In their depositions all three of them denied doing so. Chase does not claim to know which one (if any) of the defendants — Conway, Solis, or Glenn — contacted the reporter. He asserts in his brief to this Court that the tip "was clearly intended to set a course of events in motion that would ruin Mr. Peden's reputation," and that whoever provided the tip must have had an "interest in Mr. Peden's reputational harm." In Chase's assessment, "it can further be inferred that one of" the defendant officials must have been responsible: maybe it was Conway, or maybe it was Solis, or maybe it was Glenn, or maybe it was two of the three acting together, or maybe it was all three of them acting together. Chase acknowledges the speculative nature of his claim by stating that "it was at least negligent *if* one or more of them contacted [the reporter] to tell him about the letter." His cause of action depends on the "if." Those two little letters cannot support the weight of speculation that Chase puts on them.

For a plaintiff to establish an inference that a defendant made a defamatory statement under Georgia law, the inference "must be reasonable and must amount to more than mere speculation,

conjecture, or possibility." *HI Tech. Corp. v. Quality Inv. Props. Suwanee, LLC*, 894 S.E.2d 666, 677 (Ga. Ct. App. 2023) (quotation marks omitted); *see Cordoba v. Dillard's, Inc.*, 419 F.3d 1169, 1181 (11th Cir. 2005) (explaining that "[s]peculation does not create a *genuine* issue of fact"). Chase's contention that any of the defendants provided the supposedly defamatory statement to a reporter "is no more than speculation." *HI Tech. Corp.*, 894 S.E.2d at 677 (concluding defendant was entitled to summary judgment on defamation claim); *see also John D. Robinson Corp. v. S. Marine & Indus. Supply Co.*, 395 S.E.2d 837, 842 (Ga. Ct. App. 1990) (reversing judgment on a jury verdict awarded to plaintiffs on a libel claim and stating: "The record contains no probative evidence of any oral communication of the written defamation, but only mere speculation that such communications occurred"). The district court correctly entered summary judgment for the Gwinnett County officials on Chase's speculative defamation claim.

C. The Equal Protection Claim

The Pedens claim that County Administrator Glenn Stephens violated their "constitutional right to access the judicial system by influencing the district attorney's decision not to prosecute his wife Carole Stephens for stalking or harassment." They point to factual allegations in their complaint, asserting that Glenn participated in a "conspiracy" with the district attorney, persuading him not "to prosecute Carole Stephens . . . while failing to provide Mr. and Mrs. Peden the protections of law enforcement and the judicial system." In their view, that action is "quite literally, a failure

of equal protection under the law" in violation of the Fourteenth Amendment.[8] The district court rejected the Pedens' equal protection claim on the merits.

The defendant Gwinnett County officials contend that the Pedens lack standing to assert their equal protection claim. They are correct. "[A] private citizen lacks a judicially cognizable interest in the prosecution or nonprosecution of another." *Linda R.S. v. Richard D.*, 410 U.S. 614, 619 (1973) (affirming dismissal for lack of standing); *see Leeke v. Timmerman*, 454 U.S. 83, 86–87 (1981) (concluding prisoners lacked standing to challenge a decision of correctional officials to oppose a magistrate's issuance of arrest warrants against prison guards who allegedly beat the prisoners, noting that "the decision to prosecute is solely within the discretion of the prosecutor").

We vacate the grant of summary judgment to the Gwinnett County officials on the Pedens' equal protection claim and remand to the district court with instructions to dismiss that claim without prejudice for lack of standing. *See Stalley ex rel. U.S. v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) ("A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice."); *see also TocMail, Inc. v.*

[8] The Pedens asserted the same claim against the district attorney. The district court dismissed that claim, and the Pedens did not appeal that dismissal.

Microsoft Corp., 67 F.4th 1255, 1267 (11th Cir. 2023); Fed. R. Civ. P. 41(b).

IV. CONCLUSION

The district court's grant of summary judgment to the Gwinnett County officials on the procedural due process and defamation claims is **AFFIRMED**. The district court's grant of summary judgment to County Administrator Glenn Stephens on the Pedens' equal protection claim is **VACATED** and **REMANDED** with instructions for the district court to dismiss that claim without prejudice for lack of standing. The Gwinnett County officials' cross-appeal is **DISMISSED AS MOOT**.