[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 19-15131
Non-Argument Calendar

D.C. Docket No. 0:19-cv-62260-WPD

ERIC WATKINS,

Plaintiff - Appellant,

versus

ALAIN DUBREUIL,
WARREN JEVAE WRIGHT,
WALMART STORES, INC.,
MICHAEL J. SATZ,
TAYLOR MCGAATH, et al.,

Defendants - Appellees.

Appeal from the United States District Court
for the Southern District of Florida

(July 17, 2020)

Before JORDAN, ROSENBAUM, and NEWSOM, Circuit Judges.

PER CURIAM:

Eric Watkins, proceeding *pro se*, appeals the denial of his motion to proceed *in forma pauperis* ("IFP") and the *sua sponte* dismissal of his 42 U.S.C. § 1983 lawsuit. Watkins complained that, following an altercation at a Walmart, he was falsely arrested, maliciously prosecuted for disorderly conduct and trespass, and falsely imprisoned, all in violation of his Fourth Amendment rights. The district court denied Watkins leave to proceed IFP, dismissed the case, denied leave to amend as futile, and sanctioned him as a vexatious litigant.

On appeal, Watkins contends that the district court erred in dismissing his complaint without leave to amend because he either stated or could state plausible claims to relief. He further argues that the district court abused its discretion when, without holding an evidentiary hearing, it sanctioned him as a vexatious litigant and prevented him from filing any new lawsuit in the Southern District of Florida without prior court approval. We address each argument in turn.

I.

We review *de novo* a dismissal for failure to state a claim, accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016). "Claims of absolute immunity present questions of law that we review *de novo*." *Mikko v. City of Atlanta, Ga.*, 857 F.3d 1136, 1142 (11th Cir. 2017). Likewise, the

denial of leave to amend based on futility is reviewed *de novo*. *SFM Holdings, Ltd. v. Banc of Am. Sec., LLC*, 600 F.3d 1334, 1336 (11th Cir. 2010).

To avoid dismissal for failure to state a claim, the complaint "must include enough facts to state a claim to relief that is plausible on its face." *Hunt*, 814 F.3d at 1221 (quotation marks omitted). A claim is facially plausible when "the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.'" *Id.* (quotation marks omitted). *Pro se* pleadings are liberally construed and held to less stringent standards than those drafted by lawyers but still must suggest some factual basis for a claim. *Jones v. Fla. Parole Comm'n*, 787 F.3d 1105, 1107 (11th Cir. 2015).

In his complaint, Watkins alleged that he was standing in line at a Walmart store singing an "anti-gay" song[1] when a manager was called to help a cashier with a problem at the register. After fixing the register, the manager approached Watkins and asked him to stop singing. Watkins refused and continued singing. The manager then called the police, and a deputy sheriff arrived soon after. Watkins heard the

[1] This same song features in many of Watkins's lawsuits. *See, e.g.*, *Watkins v. Cent. Broward Reg'l Park*, 799 F. App'x 659, 662 (11th Cir. 2020) ("Watkins's claims arise from two incidents where he was removed and subsequently banned from a park after loudly and repeatedly singing a song with lyrics advocating violence against gay people."); *Watkins v. Bigwood*, 797 F. App'x 438, 440 n.1 (11th Cir. 2019) ("Plaintiff says he was singing a published and recorded song, 'Boom Bye,' by reggae artist Buju Banton, the lyrics of which include the terms 'faggot' and 'batty boy.' The song's lyrics also include references to shooting homosexuals and setting them on fire."); *Watkins v. U.S. Postal Emp.*, 611 F. App'x 549, 550 (11th Cir. 2015) ("While waiting in line, Watkins was singing what he describes as 'an antigay song by superstar Reggea [sic] artist Buju Banton.'").

manager tell the deputy that Watkins had previously received a trespass warning and that he wanted Watkins arrested. Watkins objected that this was a "lie" and that "no one had ordered [him] to leave Walmart" either then or in the past. Despite these claims, the deputy arrested Watkins for trespass, and state prosecutors later charged him with trespass and disorderly conduct. At trial, the state declined to prosecute the disorderly conduct charge, and the judge dismissed it. The jury acquitted Watkins of the trespass offense. Watkins was detained for 128 days pretrial, which was eight days longer than the combined maximum punishment for the two offenses.

The district court did not err in dismissing Watkins's complaint for failure to state a plausible claim to relief or in denying leave to amend as futile.

First, Watkins's claims against Walmart and the manager are not viable because these defendants were not acting under color of state law. To establish a § 1983 claim, the plaintiff must show that (1) he was deprived of a federal right (2) by a "state actor." *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992); *see also Myers v. Bowman*, 713 F.3d 1319, 1329 (11th Cir. 2013). "Only in rare circumstances can a private party be viewed as a 'state actor' for section 1983 purposes." *Harvey*, 949 F.2d at 1130. To be considered a state actor under § 1983, a private party must have exercised a traditionally exclusive public function, acted in concert with public officials, or engaged in conduct compelled by the state. *See id.* at 1130–31; *see Bendiburg v. Dempsey*, 909 F.2d 463, 468 (11th Cir. 1990).

Here, Walmart and the manager are private parties which cannot plausibly be viewed as state actors. Watkins contends that Walmart and the manager acted in concert with the deputy to carry out his arrest. But the mere fact that the manager may have provided false information to the deputy does not show that they acted in concert. Nothing in the complaint plausibly suggests that the deputy was aware the manager's statements were false or that the deputy and the manager had reached an understanding to deprive Watkins of his Fourth Amendment rights. *See Lowe v. Aldridge*, 958 F.2d 1565, 1573 (11th Cir. 1992) (to show that a private party "acted in concert" with state officials, "a plaintiff must show that the parties reached an understanding to deny the plaintiff his or her rights"). Nor has Watkins shown that he could demonstrate such an understanding through further amendment. So the court properly dismissed this claim and denied leave to amend.

Second, the false arrest and malicious-prosecution claims against the deputy fail because the deputy had probable cause to arrest for trespass. The existence of probable cause to support an arrest defeats claims for both false arrest and malicious prosecution based on that arrest. *Brown v. City of Huntsville, Ala.*, 608 F.3d 724, 734 (11th Cir. 2010) (false arrest); *Grider v. City of Auburn, Ala.*, 618 F.3d 1240, 1256 (11th Cir. 2010) (malicious prosecution). Probable cause exists where reasonably trustworthy information known by the officer would cause a person of reasonable caution to believe that a criminal offense has been committed. *Brown*,

608 F.3d at 734. Under Florida law, a person commits the offense of trespass in a structure or conveyance when he "willfully enters or remains in any structure or conveyance" without having been "authorized, licensed, or invited," or refuses to leave after having been asked to do so by "a person authorized by the owner or lessee." Fla. Stat. § 810.08(1).

Here, the deputy had probable cause to arrest for trespass because he received apparently reliable information from the Walmart manager that Watkins had previously been warned that he was not welcome in the Walmart. In other words, a person with apparent knowledge and authority told the deputy that Watkins had "willfully enter[ed] or remain[ed]" in the Walmart without having been "authorized, licensed, or invited." *See id.*

Watkins claims that the deputy failed to conduct a reasonable investigation by checking whether there was a prior trespass warning on file at Walmart or with the Sheriff's Office. But nothing in the trespass statute requires a prior, *written* warning. *See id.* And "a police officer is not required to explore and eliminate every theoretically plausible claim of innocence before making an arrest," *Kingsland v. City of Miami*, 382 F.3d 1220, 1229 (11th Cir. 2004) (quotation marks omitted), or to "sift through conflicting evidence or resolve issues of credibility, so long as the totality of the circumstances present a sufficient basis for believing that an offense has been committed," *Dahl v. Holley*, 312 F.3d 1228, 1234 (11th Cir. 2002). On this

record, the deputy was entitled to rely on the manager's statement to conclude that the offense of trespass had been committed.

Watkins also responds that, under state law, the deputy was not authorized to conduct a warrantless arrest because he did not see Watkins commit all elements of the misdemeanor offense in his presence. *See* Fla. Stat. § 901.15(1). But "[t]here is no federal right not to be arrested in violation of state law." *Knight v. Jacobson*, 300 F.3d 1272, 1276 (11th Cir. 2002). An arrest supported by probable cause does not violate the Fourth Amendment even if it violates state law. *Id.*; *see United States v. Street*, 472 F.3d 1298, 1308 (11th Cir. 2006). Accordingly, the district court properly dismissed this claim and denied leave to amend.

Third, the prosecutors who charged Watkins are entitled to absolute prosecutorial immunity against his claim of malicious prosecution. "A prosecutor is entitled to absolute immunity for all actions he takes while performing his functions as an advocate for the government" in the judicial phase of the criminal process, including the "initiation and pursuit of criminal prosecution," *Rivera v. Leal*, 359 F.3d 1350, 1353 (11th Cir. 2004), such as the filing of charges, *Hart v. Hodges*, 587 F.3d 1288, 1295 (11th Cir. 2009). Put simply, "[a] prosecutor is immune for malicious prosecution." *Id.* While immunity does not apply when a prosecutor acts as an investigator or complaining witness, there are no allegations in this case of conduct other than initiating and pursuing a baseless prosecution. *See*

Rivera, 359 F.3d at 1353. Because the prosecutors are immune for this conduct, this claim was properly dismissed, and amendment would be futile.

Fourth, the district court did not err in dismissing Watkins's claim of false imprisonment. Watkins claims that the Broward County Sheriff's Office, a state prosecutor, and the current and former sheriffs of Broward County are liable for keeping him in pretrial detention eight days longer than the maximum possible penalties (120 days) for his two charged offenses of trespass after warning and disorderly conduct.

Here, Watkins's complaint and other filings fail to show that any of the defendants, individually, had anything to with the jail keeping him in pretrial detention for 128 days. In his complaint, Watkins indicated that his alleged overdetention resulted from jail personnel's erroneous entering into the jail's system that he had been charged with trespass under Fla. Stat. § 810.08(1)(2)(b), which carried a maximum sentence of one year, instead of Fla. Stat. § 810.08(1)(2)(a), which was the correct charge and carried a maximum sentence of 60 days. There are no factual allegations that the sheriffs or the prosecutor were responsible for this error, however, or otherwise for keeping Watkins in jail longer than authorized. While Watkins suggests that the sheriffs are liable because they are broadly responsible for jail functions, including the release of detainees, supervisory officials like the sheriffs are not liable for the unconstitutional acts of their subordinates

unless they personally participated in, directed, or knowingly acquiesced in the unconstitutional conduct. *See Keating v. City of Miami*, 598 F.3d 753, 762 (11th Cir. 2010). Because Watkins has not alleged any conduct by the sheriffs or the prosecutor that led to the allegedly excessive pretrial detention, we dismiss his individual-capacity claims of false imprisonment.

Nor do Watkins's complaint and related filings provide a basis for a municipal-liability claim against the Sheriff's Office under *Monell v. Department of Social Services*, 436 U.S. 658 (1978).[2] To impose municipal liability under § 1983, the plaintiff must establish that a custom or policy of the municipal entity caused a violation of his constitutional rights. *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004). Alone, "the fact that a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee" is not enough. *Id.* Here, Watkins has not identified any policy or custom of the jail or the Sheriff's Office that caused his injury. *See id.* Nor can we infer such a custom or policy "based upon an isolated incident," which is all that we have here. *Id.* Accordingly, the complaint failed to allege any basis for municipal liability.

[2] It appears that Watkins intended to assert official-capacity claims against the sheriffs, but an official-capacity claim "is simply another way of pleading an action against an entity of which an officer is an agent." *Busby v. City of Orlando*, 931 F.2d 764, 776 (11th Cir. 1991) (quotation marks omitted). Therefore, we construe any official-capacity claims against the sheriffs as simply claims against the Broward County Sheriff's Office.

For these reasons, we affirm the dismissal of Watkins's complaint and the denial of leave to amend.

II.

We review for abuse of discretion the district court's decision to impose a filing injunction. *Miller v. Donald*, 541 F.3d 1091, 1096 (11th Cir. 2008). Likewise, we review for abuse of discretion the denial of an evidentiary hearing. *Menchise v. Akerman Senterfitt*, 532 F.3d 1146, 1149 (11th Cir. 2008). An abuse of discretion occurs if the court bases its decision on findings of fact that are clearly erroneous or "commits a clear error of judgment." *Gray ex rel. Alexander v. Bostic*, 613 F.3d 1035, 1039 (11th Cir. 2010).

"Federal courts have both the inherent power and the constitutional obligation to protect their jurisdiction from conduct which impairs their ability to carry out Article III functions." *Procup v. Strickland*, 792 F.2d 1069, 1073 (11th Cir 1986). In particular, "[t]he court has a responsibility to prevent single litigants from unnecessarily encroaching on the judicial machinery needed by others." *Id.* at 1074. To that end, the court may severely restrict a litigant's filings, but it cannot completely foreclose a litigant from any access to the courts. *Id.*

A.

Watkins first argues that no sanction was appropriate because the district court failed to show, beyond conclusory claims, that any of his prior lawsuits were filed

in bad faith or were frivolous, repetitive, or vexatious. He maintains that litigiousness alone, without a finding that prior cases were vexatious or frivolous, is not sufficient to impose sanctions.

In concluding that sanctions were appropriate, the district judge reviewed in detail Watkins's litigation history, which at that time included thirty-six civil lawsuits, arising from twenty-four separate incidents, filed in the Southern District of Florida since September 2012, in addition to nearly forty-five additional cases filed in other federal courts since 2008. The judge also considered his conduct in litigating these cases, many of which, including two trials, were before the judge. Based on this review, the judge found that Watkins had a "history of vexatious, harassing and duplicative lawsuits," and that his pattern of conduct "severely tax[ed] this [c]ourt's resources" and warranted the imposition of sanctions.

The district judge did not abuse his discretion by imposing sanctions. As the judge found, much of Watkins's prior litigation has been without merit. Of the thirty-six cases filed in the Southern District, twenty-two were dismissed for failure to state a claim[3] or as frivolous.[4] While a few have reached summary judgment[5] or

[3] S.D. Fla. Case nos. 13-cv-61641, 13-cv-62448, 14-cv-60257, 14-cv-60354, 14-cv-60380, 14-cv-60941, 14-cv-61205, 14-cv-61856, 14-cv-62095, 15-cv-61592, 15-cv-62515, 16-cv-60030, 16-cv-60437, 17-cv-62547, 18-cv-61055, 18-cv-61131, 18-cv-61330, 18-cv-61843, 18-cv-62335, 18-cv-63165, 19-cv-62260.

[4] S.D. Fla. Case no. 18-cv-62009.

[5] S.D. Fla. Case nos. 17-cv-60009, 13-cv-60564, 18-cv-60980.

trial,[6] Watkins has not prevailed in any of these cases.[7] Moreover, with one exception, where we vacated and remanded for further proceedings,[8] his appeals from these cases—roughly thirty-five in total—have fared no better. Six appeals were dismissed for want of prosecution (two such dismissals came after IFP was denied because the appeal was frivolous)[9], seven were dismissed for lack of jurisdiction[10], and sixteen resulted in affirmance of the judgment.[11] So despite prior courts' rare invocation of "frivolity," we agree with the district judge's assessment that Watkins has not only been hyperlitigious but his lawsuits have been largely, though not entirely, meritless.

Additionally, many of Watkins's lawsuits have been repetitive, if not duplicative. As the district judge observed, "Watkins has a pattern of disobeying requests from authority figures because he perceives them to be unlawful" and then "uses these incidents of non-compliance as a basis for numerous federal lawsuits, often against anyone, even peripherally involved." For example, approximately ten

[6] S.D. Fla. Case nos. 16-cv-60436, 16-cv-63017.

[7] Of the remaining cases, six were dismissed for reasons such as failure to prosecute, failure to perfect service, or law of the case (S.D. Fla. Case nos. 12-cv-61886, 13-cv-62302, 14-cv-61144, 15-cv-60514, 15-cv-61556, 18-cv-60110), and three are still pending in the district court (S.D. Fla. Case nos. 18-cv-63035, 19-cv-60810, 19-cv-61972).

[8] In Appeal no. 19-10456, we concluded that Watkins stated plausible claims to relief, and so we vacated and remanded for further proceedings.

[9] Appeal nos. 14-11794, 14-12257, 15-10458, 15-13096, 15-15373, 17-13938.

[10] Appeal nos. 15-10904, 15-13878, 16-11826, 17-11835, 17-14501, 17-15443, 18-10413.

[11] Appeal nos. 14-12158, 14-14608, 16-11411, 16-11826, 16-12932, 16-15081, 16-16049, 17-14871, 18-10773, 18-12855, 18-13184, 18-13938, 18-14165, 18-14626, 19-10654, 19-12851.

lawsuits arose out of six incidents where Watkins was simply ordered to leave private property and threatened with arrest for trespass. Both the district court and this Court have repeatedly rejected Watkins's claims that such orders violated his constitutional rights. *See, e.g.*, *Watkins v. Elmore*, 589 F. App'x 524, 524–25 (11th Cir. 2015); *Watkins v. Miller*, 782 F. App'x 770, 773–74 (11th Cir. 2019); *Watkins v. Joy*, 782 F. App'x 892, 894–95 (11th Cir. 2019).

Moreover, the district judge, who had previously handled many of Watkins's cases, was in the best position to assess Watkins's activities and their effect on the Southern District of Florida's resources. The judge observed, and we agree based on a review of the underlying cases, that "Watkins does not take 'no' for an answer" and "multiplies the litigation by filing frivolous motions for reconsideration and frivolous interlocutory appeals." The judge also noted that, in the view of a psychiatrist who testified at one of Watkins's trials, Watkins was seemingly impressed by the fact that he had filed 400 complaints during his federal prison incarceration. *Cf. Cofield v. Ala. Pub. Serv. Comm'n*, 936 F.2d 512, 516 (11th Cir. 1991) (upholding a filing injunction against a litigant who "proudly boasted that he was the 'most litigious inmate in the system'").

In reviewing for an abuse of discretion, we consider whether the judge based his decision on findings of fact that are clearly erroneous or "commit[ed] a clear error of judgment" by arriving at a decision outside the range of reasonable

outcomes. *Gray*, 613 F.3d at 1039. Although Watkins objected to many of the facts cited by the district judge, the judge explained that, even if Watkins's objections were valid, his overall impression of Watkins's litigation history and his reasons for imposing sanctions would remain unchanged. And based on our review of Watkins's litigation history, and for the reasons discussed above, we conclude that the district judge did not commit a clear error of judgment in finding that Watkins had a history of filing meritless and vexatious lawsuits that warranted the imposition of sanctions.

B.

Nor did the district court's choice of sanction amount to an abuse of discretion. The court entered an order enjoining Watkins from filing any new lawsuits in the Southern District of Florida without prior court approval. Watkins would be required to file a motion for leave to file, attaching a copy of his proposed lawsuit and a reference to the sanctions order, at which point the court would review the lawsuit and decide whether it should be accepted by the clerk and filed. Unaccepted cases would be kept by the clerk for possible review on appeal. If Watkins failed to submit a motion for leave to file, "the Clerk of Court would be directed to close the case upon filing," and the defendants would not be required to make any response.

We have upheld injunctions with pre-filing screening restrictions on vexatious plaintiffs. *Martin-Trigona v. Shaw*, 986 F.2d 1384, 1387 (11th Cir. 1993); *Cofield*,

936 F.2d at 518. In *Martin-Trigona*, for example, we upheld as reasonable a broad filing injunction that prohibited the plaintiff "from filing or attempting to initiate any new lawsuit in any federal court in the United States . . . without first obtaining leave of that federal court." 986 F.3d at 1387. Likewise, in *Cofield*, we upheld an injunction requiring the plaintiff "to send all pleadings to a judge for prefiling approval" because the plaintiff would still be able to have colorable claims filed in federal court. 936 F.2d at 518.

The pre-approval filing injunction in this case is comparable to the filing injunctions in both *Martin-Trigona* and *Cofield*. Like the injunctions in those cases, the injunction here does not completely foreclose Watkins's access to the courts, *see Procup*, 792 F.2d at 1073, so long as the court merely "screen[s] out the frivolous and malicious claims and allow[s] the arguable claims to go forward." *Cofield*, 936 F.2d at 518. Watkins will be in a position not significantly "different from other in forma pauperis litigants." *Id.* "Should [Watkins] have a colorable claim he will be able to file his claim in federal court." *Id.* With this understanding, we conclude that the district court imposed a reasonable injunction that does not impermissibly foreclose Watkins's access to federal court. *See Procup*, 792 F.2d at 1074.

C.

Finally, the district court did not abuse its discretion by refusing to hold an evidentiary hearing before imposing sanctions. Watkins was given notice and an

opportunity to contest the court's rationale for imposing sanctions, and the decision did not depend on the resolution of material factual disputes or credibility determinations. *See McDonald's Corp. v. Robertson*, 147 F.3d 1301, 1312–13 (11th Cir. 1998) (explaining when evidentiary hearings are appropriate). The decision was based primarily on prior court records, which are not reasonably subject to dispute and which are available for our review. And Watkins primarily challenges the inferences the court drew from those records. *See, e.g.*, Br. of Appellant at 43 (indicating that his request was for a hearing "for *the court* to produce evidence to support its claims" (emphasis added)). Moreover, the court indicated that its decision would remain the same "even if all of Watkins' objections were valid," which suggests that any factual disputes were not material. In these circumstances, no evidentiary hearing was required before sanctions were imposed.

III.

In sum, we affirm the dismissal of Watkins's complaint and the denial of his motion for leave to proceed IFP. We also affirm the district court's order enjoining Watkins from filing new cases in the Southern District of Florida without prior court approval.

AFFIRMED.