[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 21-12759

Non-Argument Calendar

JAMES ROBERT PITTS,

Plaintiff-Appellant,

versus

MARK A. GRANT,
In his individual capacity,
LEON GATES,
In his individual capacity,
KEVIN HOLDER,
In his individual capacity,

Defendants-Appellees.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:20-cv-03021-JPB

Before GRANT, LUCK, and LAGOA, Circuit Judges.

PER CURIAM:

Under the Fourth Amendment, an arrest warrant must be supported by probable cause. An official may not knowingly pursue a warrant without probable cause and may not base a warrant on intentional misstatements or omissions. Either one would be the makings of a Fourth Amendment claim of unreasonable seizure by malicious prosecution. But neither occurred here. The warrant for James Pitts's arrest was backed by probable cause, so we affirm the dismissal of his claims.

I.

James Pitts was persuaded that the Fulton County probate court had mishandled his mother's estate. He was particularly frustrated with the probate judge who had been handling the case for nearly a decade. After she repeatedly ignored his concerns, at least as he saw it, Pitts contacted a Fulton County Commissioner's office in December 2016 to report his dissatisfaction. According to Pitts, his communications with the court were lawful.

Some weeks later, however, a threatening phone call was made to the court. Officer Gates of the Fulton County Sheriff's Office responded to the situation, and the probate judge informed him that Pitts had called the court and threatened her safety. Because the probate judge had not answered the call herself, Gates also interviewed the court employee who had spoken with Pitts—Kevin Holder. When he did, he learned that this was not Pitts's first call to the court about the probate judge. Holder had previously "received several non-threat[en]ing voice mails on his phone from Mr. James Pitts," messages in which Pitts "seemed to be erratic and upset." But this conversation took a turn for the worse. Holder couldn't quite recall the "exact words," but he remembered that Pitts had said "something to [the] effect of I understand why people shoot elected officials, because of the way they are treated . . . don't worry about it, I'll take care of that black bitch myself."

Building from Officer Gates's police report, Officer Grant requested a warrant for Pitts's arrest. To support his request, Grant drafted a "statement of witness" that explained how Pitts had threatened to shoot the probate judge. "[W]hile speaking with Holder," it read, "[t]he accused made statements about [u]nderstanding why people shoot elected officials because of the way they are treated . . . don't worry about it, I'll take care of that black bitch."[1] (last set of brackets and ellipsis in original). Grant

[1] For the most part, federal courts only consider the complaint when deciding whether to grant a motion to dismiss. *Speaker v. U.S. Dep't of Health & Hum.*

accused Pitts of violating multiple laws: intimating a court officer, sending harassing communications, and making terroristic threats. *See* O.C.G.A. §§ 16-10-97(a)(1), 16-11-39.1, 16-11-37.

The warrant was issued, and Pitts was arrested a few weeks later. As the case progressed, however, the prosecutor failed to produce witnesses or a recording of the threatening call. As a result, the state court dismissed the charges and ordered the "indictment and arrest expunged."

Pitts turned around and sued Holder, Officer Gates, and Officer Grant in state court under 42 U.S.C. § 1983, claiming that they had violated his Fourth Amendment right to be free from unreasonable seizure by malicious prosecution. The defendants removed the case to federal court, and Officers Gates and Grant moved to dismiss the complaint on July 27, 2020. Holder moved for judgment on the pleadings on September 3, 2020. The officials argued that Pitts had failed to state a claim against them and that they were entitled to qualified immunity.

Servs., 623 F.3d 1371, 1379 (11th Cir. 2010). We may, however, "also consider documents attached to the motion to dismiss if they are referred to in the complaint, central to the plaintiff's claim, and of undisputed authenticity." *Hi-Tech Pharms., Inc. v. HBS Int'l Corp.*, 910 F.3d 1186, 1189 (11th Cir. 2018). Holder attached copies of the police report and Officer Grant's affidavit to his motion for judgment on the pleadings, documents which Pitts quotes extensively throughout his complaint. Because Pitts has not disputed their veracity, we will review both documents along with the complaint.

Five months later, on February 2, 2021, the district court granted the motion to dismiss; five months after that, on July 26, 2021, it granted the motion for judgment on the pleadings. Between the two orders, the district court dismissed the malicious prosecution claim with prejudice. It rejected the allegations that the officers "intentionally and knowingly provided false information" as conclusory and held that the warrant was supported by probable cause. Pitts appeals.

II.

We review de novo a district court's order granting a motion to dismiss for failure to state a claim or granting a motion for judgment on the pleadings. *Hunt v. Aimco Props., L.P.*, 814 F.3d 1213, 1221 (11th Cir. 2016); *Jones v. NordicTrack, Inc.*, 236 F.3d 658, 660 (11th Cir. 2000). Both motions are governed by the same standard. *Carbone v. Cable News Network, Inc.*, 910 F.3d 1345, 1350 (11th Cir. 2018). When we assess the complaint, we reject any conclusory allegations—any "formulaic recitation of the elements of a cause of action"—and assess only the "remaining factual allegations." *McCullough v. Finley*, 907 F.3d 1324, 1333 (11th Cir. 2018) (quotation omitted). We view those facts in the light most favorable to the nonmoving party, and dismissal is appropriate when the movant is entitled to judgment as a matter of law. *Jones*, 236 F.3d at 660.

III.

Pitts raises two issues, one procedural and one substantive. He argues that the district court wrongfully prevented him from amending his complaint. He also argues that the officials violated the Fourth Amendment when they knowingly sought an arrest warrant without probable cause; he claims that they fabricated the threatening statement themselves.

First, Pitts says that he was denied the "opportunity to request leave to amend" his complaint. The district court, he says, precluded him from amending his complaint by dismissing his complaint with prejudice. But that's not true. Under Federal Rule of Civil Procedure 15(a)(1)(B), Pitts had an unchecked opportunity to amend his complaint in response to the officials' motions. But he didn't take it. Pitts also had six months after Grant and Gates filed their motion to dismiss to ask to for permission to amend his complaint. *See* Fed. R. Civ. P. 15(a)(2). And after Holder requested a judgment on the pleadings, Pitts had ten months to ask to amend. But he never did.

Nor was the district court required to propose the idea itself. On this point we have been clear. "A district court is not required to grant a plaintiff leave to amend his complaint sua sponte when the plaintiff, who is represented by counsel, never filed a motion to amend nor requested leave to amend before the district court." *Wagner v. Daewoo Heavy Indus. Am. Corp.*, 314 F.3d 541, 542 (11th Cir. 2002) (en banc). It's true that we have, in one instance, required a district court "to sua sponte allow a litigant" to amend

its complaint: when it sua sponte strikes a complaint "on shotgun pleading grounds." *Vibe Micro, Inc. v. Shabanets*, 878 F.3d 1291, 1295 (11th Cir. 2018). But that is the exception, not the rule. *Id.* And the run-of-the-mill dismissal here fits squarely within *Wagner*. The district court therefore was free to dismiss the complaint with prejudice despite Pitts's failure to amend it.

Second, Pitts claims that the three officials violated his Fourth Amendment right to be free from unreasonable seizure by malicious prosecution. To be more specific, he claims that his arrest warrant was not supported by probable cause because the officials knowingly produced or relied on false statements.

To succeed on his claim, Pitts must prove both a violation of his "Fourth Amendment right to be free of unreasonable seizures and the elements of the common law tort of malicious prosecution." *Williams v. Aguirre*, 965 F.3d 1147, 1157 (11th Cir. 2020) (quotation omitted). At common law, a malicious prosecution occurred when officials "instituted or continued a criminal prosecution" with "malice and without probable cause" that terminated in the defendant's favor and caused him damages. *Id.* (quotation omitted). As for the Fourth Amendment, to decide whether a warrant-based seizure is unreasonable we ask "whether the judicial officer issuing such a warrant" was "supplied with sufficient information to support an independent judgment that probable cause exist[ed] for the warrant." *Id.* at 1162 (quotation omitted). Where probable cause exists, a malicious prosecution

claim will fail. *Washington v. Howard*, 25 F.4th 891, 898 (11th Cir. 2022).

An official has probable cause to seek an arrest warrant when "a reasonable officer could conclude" that there is "a substantial chance of criminal activity." *Washington*, 25 F.4th at 902 (quoting *District of Columbia v. Wesby*, 138 S. Ct. 577, 588 (2018)). "Probable cause is not a high bar," requiring "only a probability or substantial chance of criminal activity, not an actual showing of such activity." *Paez v. Mulvey*, 915 F.3d 1276, 1286 (11th Cir. 2019) (quotation omitted). And officials are not required to "resolve conflicting evidence in a manner favorable to the suspect." *Washington*, 25 F.4th at 902. When reviewing for probable cause, we assess "the totality of the circumstances to determine the reasonableness of the officer's belief that a crime has been committed." *Paez*, 915 F.3d at 1286.

A person may prove that no probable cause existed by showing that "the officer who applied for the warrant should have known that his application failed to establish probable cause" or that "an official, including an individual who did not apply for the warrant, intentionally or recklessly made misstatements or omissions necessary to support the warrant." *Williams*, 965 F.3d at 1165. It's not enough, however, to prove that some of the facts "recited in the warrant affidavit" were incorrect. *Paez*, 915 F.3d at 1286–87 (quotation omitted). "Negligent misstatements or omissions" do not violate the Fourth Amendment. *Id.*

Pitts claims that Holder intentionally gave a false statement when he reported that Pitts called and made violent threats against a probate judge. But Pitts merely labels Holder's statement as intentionally false—and we reject such conclusory allegations. *See McCullough*, 907 F.3d at 1333. Pitts levels the same accusation against Officers Grant and Gates—saying they "intentionally" provided "false information"—and we reject that conclusory allegation as well.

Beyond the labels, Pitts provides no supporting facts for his accusations. For example, the facts show neither that Holder knew the caller wasn't Pitts, nor that the call never happened. If anything, the facts Pitts provides refute his claim: He does not dispute that he called the court on several occasions or that Holder was familiar with his voice from "several voice messages" he had left—messages in which he had "seemed to be erratic and upset." Pitts fails to show that the officials were privy to any fact that contradicted their conclusion that Pitts had made the call. Pitts thus cannot establish that Holder knowingly—or even recklessly—made a false statement.

Pitts also claims that Holder and Grant reworded the threatening statement to match the elements of the crimes, and he argues that this proves they conjured up the illegal threats themselves. But both paraphrases of the statement contained the same unlawful threats. Pitts was charged with, among other things, violating section 16-10-97 of the Georgia Code, which prohibits "any threatening action, letter, or communication" that

seeks to "intimidate or impede" a court officer. Pitts violated the statute whether he said "I understand why people shoot elected officials, because of the way they are treated . . . don't worry about it, I'll take care of that black bitch myself" or said "I see why government officials and law enforcement officers are being killed . . . I am going to take care of that black bitch . . ."—because both were threats directed at the judge. The existence of equivalent paraphrased statements is not evidence that either is false, let alone knowingly false.

Pitts argues nevertheless that Holder's statement alone was not enough to establish probable cause—that the officials needed to gather more evidence before pursuing a warrant. But we have held that a single witness's statement is sufficient to establish probable cause. *Knight v. Jacobson*, 300 F.3d 1272, 1275 (11th Cir. 2002). And considering Holder's statement, the voicemails, Holder's familiarity with Pitts's voice, and Pitts's admitted frustration with the probate judge who had handled his mother's estate, the officials could have reasonably concluded that there was a substantial chance that Pitts had unlawfully threatened the judge. The officials therefore had probable cause to seek an arrest warrant, so Pitts's malicious prosecution claim fails.

* * *

"The Constitution does not guarantee that only the guilty will be arrested. If it did, § 1983 would provide a cause of action for every defendant acquitted—indeed, for every suspect released." *Baker v. McCollan*, 443 U.S. 137, 145 (1979). Pitts decries the

warrant for his arrest, accusing the officials of intentionally making false statements against him. But the facts show otherwise—the officials had probable cause to conclude that Pitts had threatened the probate judge. Even though the state court eventually dismissed the charges against him, Pitts did not suffer an unlawful seizure pursuant to legal process.

AFFIRMED.