NOT FOR PUBLICATION

In the United States Court of Appeals
For the Eleventh Circuit

No. 23-13092
Non-Argument Calendar

LAKERIA MONAE MONTGOMERY,
Officer,

Plaintiff-Appellant,

versus

COY MORGAN,
Assistant District Attorney,

Defendant-Appellee,

MOBILE COUNTY METRO JAIL,

Defendant.

Appeal from the United States District Court
for the Southern District of Alabama
D.C. Docket No. 1:23-cv-00104-JB-B

Before JILL PRYOR, BRANCH, and TJOFLAT, Circuit Judges.

PER CURIAM:

Lakeria Montgomery appeals the District Court's dismissal of her 42 U.S.C. § 1983 complaint against Assistant District Attorney Coy Morgan. We affirm.

I.

Montgomery was a corrections officer at the jail. Her sister, Lacresha,[1] was also a corrections officer there, and their brother, Quinterius Williams, was an inmate.

Morgan prosecuted Williams for multiple felonies. When Williams was an inmate at the jail, he repeatedly called his victim with contraband cellphones to harass and bribe her. Morgan received intelligence that Lacresha was hiding cellphones in pizza boxes and sneaking them into the jail for Williams. Morgan reported the intelligence to the jail.[2] The jail's deputy warden questioned Montgomery in the fall of 2020 for sneaking in the cellphones, and she denied the allegations.

On February 8, 2021, Montgomery informed her lieutenant in command that she had an appointment to be sworn into the United States Navy on February 10 and would need the day off work. The lieutenant originally agreed that Montgomery could

[1] We refer to the appellant as "Montgomery" and her sister as "Lacresha."

[2] Montgomery asserts that Morgan told the jail she, not her sister, was the one sneaking in cellphones. However, in response to a complaint that Montgomery's mother filed with the Alabama Bar, Morgan stated that he told the jail Lacresha was sneaking in cellphones.

have the day off, but she later changed her mind. Montgomery could not move her appointment with the Navy, so she went. When she returned to work on February 11, she received a termination letter. It stated that she was terminated for "display[ing] unfavorable work habits" by reporting late for work multiple times[3] and for engaging in "conduct unbecoming a Corrections Officer."

Montgomery filed suit against the jail and Morgan, alleging violations of her Eighth Amendment rights, defamation, harassment and bullying, and conspiracy to commit fraud. She sought $10 million for emotional distress, $10 million for loss of income, and $80 million for defamation and loss of job opportunities.

In her complaint, she asserted that she was fired because she left work to be sworn into the Navy, because Morgan told the jail she was sneaking in contraband cellphones, and because her lieutenant was pressured to fire her. She stated that "Coy Morgans [sic] motive was to use illegal messages from the cellphone that he got from the victims [sic] phone, in Quinterious Williams [sic] case. He conspired with the messages to commit fraud."

The jail filed a motion to dismiss because Montgomery did not state a claim upon which relief can be granted and because it was not an entity subject to suit. Montgomery then, without leave from the Court or written consent from the defendants, filed an amended complaint removing the jail as a party and asking the

[3] Montgomery had previously been given "verbal counseling" for being late to work.

Court for permission to substitute Mobile County Sheriff's Department in its place. The Court deemed her amended complaint to be a response to the jail's motion to dismiss,[4] and it deemed her removal of the jail from the document as a concession to the jail's motion. It granted the jail's motion to dismiss.

Morgan filed his own motion to dismiss, stating that the Court lacked subject-matter jurisdiction over the case and that Montgomery failed to state a claim upon which relief can be granted as her claims were barred by the statute of limitations and he was entitled to various immunities: absolute prosecutorial immunity, state agent immunity, qualified immunity, absolute sovereign immunity under the Alabama Constitution, and absolute immunity under the United States Constitution. The Court held a hearing on the motion and issued an order granting the motion "for the reasons stated on the record at the hearing." It dismissed the action with prejudice.

Montgomery filed a motion to reconsider her request to substitute Mobile County Sheriff's Department as a defendant in

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[4] The Court stated that if she intended the document to actually amend her initial complaint, it would be barred because she filed it more than 21 days after service of the jail's motion to dismiss. *See* Fed. R. Civ. P. 15(a)(1). Further, the Court had ordered her to respond to the motion to dismiss by May 15, 2023. Montgomery then filed a motion for an extension. The Court granted her motion and gave her until June 6 to respond. Montgomery then filed the amended complaint on May 23. Based on this sequence and timing and the courts' practice of construing pro se pleadings liberally, *see Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 292 (1976), the Court determined that Montgomery intended the document as a response to the jail's motion.

the case, which the Court denied. Montgomery filed a motion for leave to appeal in forma pauperis.[5] The Court denied the motion, stating that Montgomery's claims lacked arguable merit because Morgan was entitled to prosecutorial immunity and other types of immunities. Montgomery timely appeals.

II.

We review de novo a Court's grant of a motion to dismiss 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. *Ellis v. Cartoon Network, Inc.*, 803 F.3d 1251, 1255 (11th Cir. 2015); *see also* Fed. R. Civ. P. 12(b)(6). To withstand the motion, a complaint must include "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570, 127 S. Ct. 1955, 1974 (2007). That standard is met "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678, 129 S. Ct. 1937, 1949 (2009).

To state a § 1983 claim, a plaintiff must allege that a person acting under color of state law committed an act that deprived him of some right protected by the Constitution or laws of the United

[5] A court can authorize a person to commence an appeal "without prepayment of fees" if the person is "unable to pay such fees." 28 U.S.C. § 1915(a)(1). However, "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3).

States. 42 U.S.C. § 1983. However, prosecutors are absolutely immune from liability under § 1983 for damages for activities that are "intimately associated with the judicial phase" of the criminal process. *Imbler v. Pachtman*, 424 U.S. 409, 430–31, 96 S. Ct. 984, 995 (1976). Whether an individual is entitled to this immunity is a fact-specific inquiry that examines the "nature of the function performed, not the identity of the actor who performed it." *Kassa v. Fulton Cnty.*, 40 F.4th 1289, 1292 (11th Cir. 2022). The immunity "extends to a prosecutor's acts undertaken . . . in preparing for the initiation of judicial proceedings or for trial, and which occur in the course of his role as an advocate for the State." *Jones v. Cannon*, 174 F.3d 1271, 1281 (11th Cir. 1999). This includes "even wrongful or malicious acts by prosecutors." *Hart v. Hodges*, 587 F.3d 1288, 1298 (11th Cir. 2009).

As an initial matter, we note that the Court granted Morgan's motion to dismiss "for the reasons stated on the record of the hearing." Montgomery failed to include in the record on appeal the transcript of that hearing. *See* Fed. R. App. P. 10(b)(2) ("If the appellant intends to urge on appeal that a finding or conclusion is unsupported by the evidence or is contrary to the evidence, the appellant must include in the record a transcript of all evidence relevant to that finding or conclusion."). This leaves us unable to review whether the Court erred in arriving at its conclusion, meaning we must affirm it. *See id.*; *In re Coady*, 588 F.3d 1312, 1316 n.5 (11th Cir. 2009) ("We will not speculate as to potential errors in the . . . court's findings or conclusions when the appellant has failed to include the relevant evidence in the record."); *Fernandez v. United States*, 941

F.2d 1488, 1493 (11th Cir. 1991) (applying Rule 10(b)(2) to a pro se appellant).[6]

Regardless, in her complaint, Montgomery stated that Morgan's motive for his actions was to "use illegal messages from the cellphone that he got from the victims [sic] phone, in Quinterious Williams [sic] case. He conspired with the messages to commit fraud." She therefore alleged that the actions Morgan took were "in the course of his role as an advocate for the State." *Jones*, 174 F.3d at 1281. She further supported that allegation in her brief on appeal by stating "Morgan maliciously had the phone or 'contraband' entered and used as states [sic] evidence against [Williams], that was said to have been retrieved from Williams while in custody at the mobile county metro jail, and the way he received it was by me." Even if what Morgan did was "wrongful or malicious," he is entitled to absolute prosecutorial immunity. *Hart*, 587 F.3d at 1298.

III.

For the foregoing reasons, we affirm the dismissal of Montgomery's complaint against Morgan with prejudice.[7]

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[6] For the same reason, we reject Montgomery's argument that the Court erred in not allowing her to subpoena the evidence she needed for her case as the argument appears to be based on a statement the District Judge allegedly made in the hearing.

[7] In her initial brief on appeal, Montgomery also argues that the Court erred in not substituting the Mobile County Sheriff's Department as a defendant in her suit in place of the jail. We liberally construe this part of her brief as arguing that the District Court erred by considering her amended complaint as a response to the motion to dismiss instead of as a motion for leave to file an

AFFIRMED.

amended complaint under Federal Rule of Civil Procedure 15(a)(2) and by not allowing leave to amend. Although leave to amend ordinarily shall be "freely given," Fed. R. Civ. P. 15(a)(2), a district court may deny leave to amend when the "amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004) (citation modified). An amendment is futile "when the complaint as amended is still subject to dismissal." *Id.* at 1263 (citation modified). Even if the District Court had construed Montgomery's amended complaint as a motion for leave to amend to substitute the Sheriff's Department as a defendant, the motion was properly denied because the amendment would have been futile. Even if pleaded against the Sheriff's Department, Montgomery's claims would have been meritless.