

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-13685
Non-Argument Calendar

RACHEL ROBLEDO,

Plaintiff-Appellant,

versus

CITY OF TAMPA,
OFFICER SHADAI CUNINGHAM,
OFFICER JOSEPH ESTRADA,
SGT. SHANNON MURPHY,
OFFICER ROBIN SARRASIN, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 8:25-cv-00609-WFJ-SPF

Before NEWSOM, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Rachel Robledo appeals pro se the district court’s dismissal of her complaint under 42 U.S.C. § 1983 alleging illegal detention, failure to intervene in a constitutional violation, denial of her due process rights, and municipal liability. She argues that the district court erred by dismissing her complaint because she alleged facts in her complaint establishing that: (1) she was unreasonably seized by Tampa Police Department (“TPD”) officers responding to her 911 call; (2) the court prematurely determined that the individual defendants were entitled to qualified immunity; (3) failure to intervene claims may be predicated on a failure to prevent other officers from engaging in any constitutional violation; (4) she pleaded facts showing that she was obstructed from seeking redress for officer misconduct; and (5) the city failed to adequately train or supervise police officers, resulting in a pattern of constitutional violations. She also argues that the district court abused its discretion by denying her motion to amend her complaint.

We write only for the parties who are already familiar with the facts. Therefore, we include only so many of the facts as are appropriate to understand our opinion.

I. DISCUSSION

A. Seizure and Unlawful Detention

Robledo's complaint alleges that Officers Estrada, Cunningham, and Sarrasin, and Sergeant Murphy seized and unlawfully detained her, preventing her from taking her dog (Nala) to the veterinarian after it was shot by Officer Cunningham. We review the granting of a motion to dismiss *de novo*. *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1139 (11th Cir. 2005). We accept as true the allegations made by the plaintiff in a complaint and construe them in the light most favorable to the non-movant. *Id.* We "may affirm the judgment of the district court on any ground supported by the record, regardless of whether that ground was relied upon or even considered by the district court." *Kernel Recs. Oy v. Mosley*, 694 F.3d 1294, 1309 (11th Cir. 2012).

We will hold *pro se* pleadings to a less stringent standard and will liberally construe them. *Campbell v. Air Jam., Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). However, the "duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it for [the plaintiff]." *Snow v. DirecTV, Inc.*, 450 F.3d 1314, 1320 (11th Cir. 2006) (alteration in original, quotation marks omitted).

A party may assert a number of defenses in a motion to dismiss, including the failure to state a claim upon which relief may be granted. Fed. R. Civ. P. 12(b)(6). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v.*

Twombly, 550 U.S. 544, 570 (2007)). For a claim to be facially plausible, it must “plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Id.*

A district “court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions, are not entitled to the assumption of truth.” *Id.* at 679. Although “detailed factual allegations” are not required, “[a] pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do.” *Id.* at 678 (quotation marks omitted). “Nor does a complaint suffice if it tenders naked assertion[s] devoid of further factual enhancement.” *Id.* (quotation marks omitted, alteration in original). However, “when a complaint adequately states a claim, it may not be dismissed based on a district court’s assessment that the plaintiff will fail to find evidentiary support for his allegations or prove his claim to the satisfaction of the factfinder.” *Twombly*, 550 U.S. at 563 n.8. Further, courts are not permitted to weigh facts when deciding a Rule 12(b)(6) motion to dismiss. See *Morrison v. Amway Corp.*, 323 F.3d 920, 925 (11th Cir. 2003) (noting that “when a defendant properly challenges subject matter jurisdiction under Rule 12(b)(1) the district court is free to independently weigh facts, and” that it “may proceed as it never could under Rule 12(b)(6)” (quotation marks omitted)).

The Fourth Amendment protects against unreasonable searches and seizures. U.S. Const. amend. IV. In *Terry*, the Supreme Court held “that whenever a police officer accosts an individual and restrains his freedom to walk away, he has ‘seized’ that person.” 392 U.S. at 16. This restraint of liberty may be accomplished “by means of physical force or show of authority.” *Id.* at 19 n.16. In *United States v. Mendenhall*, the Supreme Court clarified “that a person has been ‘seized’ within the meaning of the Fourth Amendment only if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave.” 446 U.S. 544, 554 (1980). The *Mendenhall* Court provided examples of factors “that might indicate a seizure,” including “the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer’s request might be compelled.” *Id.* The test for whether an individual has been seized via a “show of authority” is objective; it asks “not whether the citizen perceived that he was being ordered to restrict his movement, but whether the officer’s words and actions would have conveyed that to a reasonable person.” *California v. Hodari D.*, 499 U.S. 621, 628 (1991).

Upon determining that an individual has been seized, courts must then ask whether the seizure was reasonable. *See Terry*, 392 U.S. at 19. In *Terry*, the Supreme Court addressed how to evaluate the reasonableness of a “stop short of something called a ‘technical arrest.’” *Id.* The Court determined that “it is necessary first to focus upon the governmental interest which allegedly justifies

official intrusion upon the constitutionally protected interests of the private citizen,” noting that “there is no ready test for determining reasonableness other than by balancing the need to search (or seize) against the invasion which the search (or seizure) entails.” *Id.* at 20-21 (quotation marks omitted).

In the context of *Terry*, the law enforcement officer “observed Terry, together with” two other men, “acting in a manner he took to be preface to a ‘stick-up.’” *Id.* at 28. The Court held that, under the totality of the circumstances, the officer’s decision to seize Terry based on the suspicion that he was “contemplating a daylight robbery” was reasonable. *Id.*

The Supreme Court has also held that “[t]he reasonableness of official suspicion must be measured by what the officers knew before they conducted their search.” *Florida v. J.L.*, 529 U.S. 266, 271 (2000). In *J.L.*, the Court noted that an anonymous tip that J.L. had a gun “turned out to be correct,” but it held that this fact did “not suggest that the officers, prior to the frisks, had a reasonable basis for suspecting J.L. of engaging in unlawful conduct.” *Id.*

In *Brown*, the Supreme Court addressed “the question [of] whether [Brown] was validly convicted for refusing to comply with a policeman’s demand that he identify himself pursuant to a provision of the Texas Penal Code which makes it a crime to refuse such identification on request.” 443 U.S. at 48. Police officers stopped Brown in an alley “because the situation ‘looked suspicious and [they] had never seen that subject in that area before.’” *Id.* at 49.

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The officers did not argue that they suspected Brown “of any specific misconduct, nor did they have any reason to believe that he was armed.” *Id.*

The Supreme Court held that, “[w]hen the officers detained [Brown] for the purpose of requiring him to identify himself, they performed a seizure of his person subject to the requirements of the Fourth Amendment.” *Id.* at 50. The Court explained that determining whether such a seizure is constitutional “involves a weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Id.* at 50-51. It further held that “the Fourth Amendment requires that a seizure must be based on specific, objective facts indicating that society’s legitimate interests require the seizure of the particular individual, or that the seizure must be carried out pursuant to a plan embodying explicit, neutral limitations on the conduct of individual officers.” *Id.* at 51.

In *Lidster*, the Supreme Court evaluated the constitutionality of “a highway checkpoint where police stopped motorists to ask them for information about a recent hit-and-run accident.” 540 U.S. at 421. The Court noted that the primary purpose of this stop “was *not* to determine whether a vehicle’s occupants were committing a crime, but to ask vehicle occupants, . . . for their help in providing information about a crime in all likelihood committed by others.” *Id.* at 423. As in *Brown*, the Court “look[ed] to the gravity of the public concerns served by the seizure, the degree to

which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Id.* at 427 (quotation marks omitted).

The Court determined that the “public concern was grave” because law enforcement was “investigating a crime that had resulted in a human death” and the objective of the stop “was to help find the perpetrator of a specific and known crime, not of unknown crimes of a general sort.” *Id.* It further determined that this “stop advanced this grave public concern to a significant degree” and “interfered only minimally with liberty.” *Id.* Accordingly, the Court held that the stop was constitutional. *Id.* at 428.

In *Corbitt v. Vickers*, Vickers, a deputy sheriff, appealed the district court’s denial of his Rule 12(b)(6) motion to dismiss. 929 F.3d 1304, 1308 (11th Cir. 2019). In her complaint, Corbitt alleged that Vickers’s “operation to apprehend a criminal suspect” had “spilled over onto [her] property after [the suspect] wandered into the area.” *Id.* (quotation marks omitted). During this time, one adult and six children were outside in Corbitt’s yard, and “after Vickers and the other officers entered Corbitt’s yard, the officers demanded all persons in the area, including the children, to get down on the ground.” *Id.* While the children were on the ground, Vickers twice discharged his firearm at a family dog, inadvertently striking a child, referred to as “SDC,” in the leg. *Id.*

We first addressed the “threshold question” of “whether SDC was ‘seized’ at any point during his encounter with Vickers.” *Id.* at 1313. We noted that “[w]hat makes this case more difficult

than many excessive force cases is that SDC's role in the incident does not fit neatly into any of the usual analytical categories," because "SDC was not the intended target of an active arrest or investigatory stop . . . , nor was he an arrestee or pretrial detainee." *Id.* We stated that SDC was "best described as an innocent bystander." *Id.* We held that, "[r]easonably construing the allegations in the complaint in Corbitt's favor, . . . SDC was already 'seized' when Vickers fired at the dog because in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave." *Id.* (quotation marks and footnote omitted). We added that "there was without question an initial 'show of authority' to which SDC clearly yielded when he lay face down on the ground pursuant to Vickers's orders." *Id.* We held further "that an innocent bystander who is not suspected of any wrongdoing may be seized—in some cases reasonably and in other cases potentially unreasonably—within the meaning of the Fourth Amendment." *Id.* at 1314.

"Qualified immunity protects government officials performing discretionary functions from suits in their individual capacities unless their conduct violates clearly established statutory or constitutional rights of which a reasonable person would have known." *Andujar v. Rodriguez*, 486 F.3d 1199, 1202 (11th Cir. 2007) (quotation marks omitted). "The immunity protects all but the plainly incompetent or those who knowingly violate the law." *Jordan v. Mosley*, 487 F.3d 1350, 1354 (11th Cir. 2007) (quotation marks omitted). Qualified immunity "is an *immunity from suit* rather than a mere defense to liability; and like an absolute immunity, it is effectively

lost if a case is erroneously permitted to go to trial.” *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) (emphasis in original). And “[b]ecause it is a question of law for the judge, a qualified immunity defense more often can be, and generally should be, decided earlier in the litigation than a good faith defense.” *Tapley v. Collins*, 211 F.3d 1210, 1215 (11th Cir. 2000).

Qualified immunity may be asserted in a motion to dismiss pursuant to Rule 12(b)(6). *Corbitt*, 929 F.3d at 1311. “The motion to dismiss will be granted if the complaint fails to allege the violation of a clearly established constitutional right.” *St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002) (quotation marks omitted).

“If the official was acting within the scope of his discretionary authority . . . the burden shifts to the plaintiff to show that the official is not entitled to qualified immunity.” *Skop v. City of Atlanta, Ga.*, 485 F.3d 1130, 1136-37 (11th Cir. 2007). “To overcome qualified immunity, the plaintiff must satisfy a two prong test; [s]he must show that: (1) the defendant violated a constitutional right, and (2) this right was clearly established at the time of the alleged violation.” *Holloman ex rel. Holloman v. Harland*, 370 F.3d 1252, 1264 (11th Cir. 2004).

A plaintiff may demonstrate that a right was clearly established in a few ways. *See Mercado v. City of Orlando*, 407 F.3d 1152, 1158-59 (11th Cir. 2005). First, she “can show that a materially similar case has already been decided, giving notice to the police.” *Id.* at 1159. She may “also show that a broader, clearly established

principle should control the novel facts in this situation.” *Id.* “Finally, [s]he could show that this case fits within the exception of conduct which so obviously violates that constitution that prior case law is unnecessary.” *Id.* To make such a showing, a plaintiff “must point to law as interpreted by the Supreme Court, the Eleventh Circuit, or the Supreme Court of Florida.” *Id.*

“If there is no case law directly on point, [g]eneral statements of the law contained within the Constitution, statute, or caselaw may sometimes provide ‘fair warning’ of unlawful conduct.” *Id.* (alteration in original). However, “[t]he general principle of law must be specific enough to give the officers notice of the clearly established right.” *Id.* For example, in *Mercado*, we noted that “the principle that officers may not use excessive force to apprehend a suspect is too broad a concept to give officers notice of unacceptable conduct.” *Id.*

In *Corbitt*, after determining that SDC had been seized by law enforcement, we addressed whether Vickers was entitled to qualified immunity “as it relates to Corbitt’s claim that Vickers’s second shot at the dog violated SDC’s clearly established Fourth Amendment rights.” 929 F.3d at 1314. We concluded that Vickers was entitled to qualified immunity because, at the time of the incident, “there was no clearly established law making it apparent to any reasonable officer in Vickers’s shoes that his actions in firing at the dog and accidentally shooting SDC would violate the Fourth Amendment.” *Id.* at 1323.

Here, Robledo has alleged facts that do not fall neatly within the category of stops governed by *Terry*. As in *Corbitt*, accepting Robledo's allegations as true, she is "best described as an innocent bystander" because she was not suspected of any crime and was merely a witness to the shooting of both her dog and Officer Estrada. 929 F.3d at 1313.

Accordingly, the district court's reliance on *Terry* to find that no unreasonable seizure had occurred was inappropriate for the given set of facts. But because this Court may affirm dismissal on any legitimate grounds, we must determine whether a clearly-established constitutional violation occurred using the appropriate standards. *See Mosley*, 694 F.3d at 1309.

First, we address whether Robledo was seized by asking whether, under the totality of the circumstances, a reasonable person in Robledo's position "would have believed that [s]he was not free to leave" after the shooting. *Mendenhall*, 446 U.S. at 554. Robledo's complaint alleged the following facts relevant to this inquiry: (1) Robledo sought to leave the scene to obtain veterinary care for her injured dog; (2) Officer Estrada told Robledo, "We need you to stay"; (3) Officer Sarrasin blocked Robledo's vehicle and told Robledo that an ambulance was on the way to treat Nala's injuries; (4) Robledo believed that she was not free to leave; and (5) when a paramedic advised Robledo to take Nala to a veterinarian "immediately," Sarrasin stated, "Sarge said 'no'." Because Robledo did not allege that any of the defendants used physical force to restrain her movements, the appropriate inquiry is whether she was

seized via a “show of authority,” or “whether the [defendants’] words and actions would have conveyed” to a reasonable person that she “was being ordered to restrict [her] movement.” *Hodari D.*, 499 U.S. at 628.

We first consider Robledo’s allegations against Officer Cunningham. As the district court found, Robledo has not alleged facts indicating that Officer Cunningham’s words or actions would have indicated to a reasonable person she was not free to leave. Robledo’s complaint did not detail her interactions with Cunningham after the shooting, so there are no facts giving rise to an inference that Cunningham participated in any alleged detention. *See Iqbal*, 556 U.S. at 678. Robledo argues that the court failed to liberally construe her complaint, but even liberally construed, the facts in the complaint do not give rise to a reasonable inference that Cunningham seized Robledo, as the complaint does not detail Cunningham’s actions after the shooting. *Campbell*, 760 F.3d at 1168. Thus, the district court did not err in holding that Cunningham did not seize Robledo.

To determine whether Officer Estrada participated in any seizure, this Court must evaluate whether the facts alleged suggest that a reasonable person would not have felt free to leave. *See Mendenhall*, 446 U.S. at 554. When Robledo first attempted to leave the scene with Nala in her vehicle, Estrada told her, “We need you to stay,” which Robledo may have subjectively understood to be an order not to leave the scene. But the reasonableness inquiry is

objective, and it does not depend on an individual's subjective perception of a situation. *See Hodari D.*, 499 U.S. at 628; *Mendenhall*, 446 U.S. at 554. Unlike SDC in *Corbitt*, Robledo did not yield to this potential order; rather, she responded, "I'm not staying," then went into her apartment to retrieve her purse. 929 F.3d at 1313. The fact that she was able to do so suggests that a reasonable person would not have felt that they were not free to leave. Liberally construing Robledo's complaint, the facts show that Estrada exerted neither force nor a show of authority to restrict Robledo's movements. *See Campbell*, 760 F.3d at 1168; *Mendenhall*, 446 U.S. 544. The court therefore did not err in finding that Robledo was not seized by Estrada.

Turning to Sergeant Murphy and Officer Sarrasin, the district court correctly determined that Robledo had alleged facts giving rise to the inference that she was seized by Sergeant Murphy and Officer Sarrasin, because Robledo's complaint stated that Sarrasin physically blocked Robledo's vehicle, Murphy told Sarrasin that Robledo was not free to leave, and Robledo was not permitted to leave for an additional seven minutes. Murphy's and Sarrasin's alleged statements to Robledo could reasonably be understood as an order to stay put, and, like SDC, Robledo yielded to that order. *See Corbitt*, 929 F.3d at 1313.

Next we turn to whether the seizure by Sarrasin and Murphy was reasonable under the circumstances alleged in the complaint. *See Terry*, 392 U.S. at 19. Because Robledo was a witness to a shooting and not suspected of criminal activity, the instant facts

are more akin to those in *Lidster* than those in *Terry*. See *Lidster*, 540 U.S. at 421. Thus, to evaluate the reasonableness of Robledo’s seizure, we “look to the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty.” *Id.* at 427.

The Defendants argue that Robledo’s detention was reasonable because she was a witness to the shooting. But, as Robledo has argued, the TPD had her name, home address, and cell phone number prior to the shooting, demonstrated by the fact that Estrada called Robledo and asked her to exit her apartment after he and Officer Cunningham were called back to investigate the scene. The defendants have not explained what public concern was served by restricting Robledo’s movement. However, we need not decide whether the actions by Sarrasin and Murphy in detaining Robledo were reasonable, because we cannot conclude that Sarrasin and Murphy violated a clearly established right.

Accepting the facts alleged as true, Robledo has not shown that the officers violated a clearly established right. Robledo asserted that she was unlawfully and unreasonably seized, and the right to be free from unreasonable seizures is clearly established in the Constitution. See U.S. Const. amend. IV. But that general principle does not “provide ‘fair warning’” that the specific conduct alleged was unlawful. See *Mercado*, 407 F.3d at 1159. There is no case law showing that it is unlawful to detain a witness to a shoot-

ing for 12 minutes. *See id.* There is no materially similar case decided by the Supreme Court, this Court or the Supreme Court of Florida that put these officers on notice that such actions would violate the Constitution. Nor do these actions so obviously violate the Constitution that case law is unnecessary. Accordingly, even assuming *arguendo* that Sarrasin and Murphy seized Robledo and unreasonably detained her for 12 minutes, her claim does not overcome qualified immunity. *See Holloman*, 370 F.3d at 1264.

Therefore, we affirm the district court's dismissal of Robledo's illegal detention claim as to all of the Defendants alleged to be liable therefor.

B. Failure to Intervene

Robledo asserts a failure to intervene claim against the same four officers—Sergeant Murphy and Officers Cunningham, Estrada, and Sarrasin. “It is not necessary that a police officer actually participate in the use of excessive force in order to be held liable under section 1983.” *Fundiller v. City of Cooper City*, 777 F.2d 1436, 1441 (11th Cir. 1985). “If a police officer, whether supervisory or not, fails or refuses to intervene when a constitutional violation such as an unprovoked beating takes place in his presence, the officer is directly liable under Section 1983.” *Byrd v. Clark*, 783 F.2d 1002, 1007 (11th Cir. 1986); *see also Hadley v. Gutierrez*, 526 F.3d 1324, 1330 (11th Cir. 2008).

“[A]n officer who is present at the scene and who fails to take reasonable steps to protect the victim of another officer’s use of excessive force, can be held liable for his nonfeasance.” *Fundiller*, 777 F.2d at 1442. “This liability, however, only arises when the officer is in a position to intervene and fails to do so.” *Priester v. City of Riviera Beach*, 208 F.3d 919, 924 (11th Cir. 2000); *see also Ensley*, 142 F.3d at 1407 (holding that an officer did not have “a duty to abandon his attempt to arrest one armed attacker in order to protect another armed attacker against whom other officers may be using excessive force”).

Here, again we need not decide whether a failure to intervene violation has occurred because we cannot conclude that a clearly established violation has occurred. Robledo’s claim is not based on the alleged application of excessive force in effectuating her seizure, the only violation we have held that officers are required to intervene in. Therefore, even if it were actionable, qualified immunity would bar this claim because the law is not clearly established. Accordingly, the district court did not err in dismissing Robledo’s failure-to-intervene claim. We therefore affirm as to this issue.

C. Due Process

Robledo asserts a due process claim against Captain Smith and Captain Schoolmeesters for failing to investigate her citizen complaint. To state an actionable substantive due process claim, a plaintiff must allege that a constitutional right has been violated.

See *Vinyard v. Wilson*, 311 F.3d 1340, 1356 (11th Cir. 2002) (noting that, “[i]n order to have a substantive due process claim, Vinyard must have a substantive right created by the Constitution”). In *Vinyard*, we held that the plaintiff had no constitutional right to an internal investigation of an excessive force claim. *Id.* We also held that the plaintiff did not state a procedural due process claim “because there [was] no constitutionally protected liberty or property interest at stake.” *Id.* We noted that there was no “federal or state court decision, statute, regulation or other source of law that gives [the plaintiff] an entitlement to an internal investigation by the Sheriff’s Office of her complaints of police brutality.” *Id.*

In *Christopher v. Harbury*, the Supreme Court noted that “the very point of recognizing any access claim is to provide some effective vindication for a separate and distinct right to seek *judicial* relief for some wrong.” 536 U.S. 403, 414-15 (2002) (emphasis added). The Court’s analysis focused only on claims related to “a litigating opportunity yet to be gained or an opportunity already lost” in courts of law. *Id.* at 412-15.

Robledo’s claim that she was denied access to the courts due to the TPD’s alleged failure to investigate her complaints of police misconduct was due to be dismissed because she failed to show that she was denied a constitutional right. The district court thus did not err by dismissing Count Three of Robledo’s complaint. Accordingly, we affirm as to this issue.

D. Municipal Liability

Robledo claims that the City is liable for the actions of the officers who unlawfully detained her and for the actions of Captains Smith and Schoolmeesters in failing to investigate her citizen complaint. Robledo also asserts a failure to train claim against the City. Municipalities and other local government entities are “persons” within the scope of § 1983. *Monell v. Dep’t of Soc. Servs. of City of New York*, 436 U.S. 658, 690 (1978). A “municipality cannot be held liable *solely* because it employs a tortfeasor—or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory.” *Id.* at 691 (emphasis in original). As we have stated, a “county does not incur § 1983 liability for injuries caused solely by its employees. Nor does the fact that a plaintiff has suffered a deprivation of federal rights at the hands of a municipal employee infer municipal culpability and causation.” *McDowell v. Brown*, 392 F.3d 1283, 1289 (11th Cir. 2004) (citation omitted).

“[T]o impose § 1983 liability on a municipality, a plaintiff must show: (1) that h[er] constitutional rights were violated; (2) that the municipality had a custom or policy that constituted deliberate indifference to that constitutional right; and (3) that the policy or custom caused the violation.” *Id.* Moreover, “municipal liability also may be based on a claim of inadequate training where a municipality’s failure to train its employees in a relevant respect evidences a deliberate indifference to the rights of its inhabitants [such that the failure to train] can be properly thought of as a city policy or custom that is actionable under § 1983.” *Sewell v. Town of Lake Hamilton*, 117 F.3d 488, 489 (11th Cir. 1997) (quotation marks omitted, alteration in original).

“A custom is a practice that is so settled and permanent that it takes on the force of law.” *Sewell*, 117 F.3d at 489. Although a “custom need not receive formal approval,” random or isolated “incidents are [normally] insufficient to establish a custom or policy.” *Depew v. City of St. Marys, Ga.*, 787 F.2d 1496, 1499 (11th Cir. 1986). “A municipality can be liable when a series of decisions by a subordinate official manifests a custom or usage of which the supervisor must have been aware.” *Church v. City of Huntsville*, 30 F.3d 1332, 1343 (11th Cir. 1994) (quotation marks omitted, alteration adopted).

“A policy is a decision that is officially adopted by the municipality, or created by an official of such rank that he or she could be said to be acting on behalf of the municipality.” *Sewell*, 117 F.3d at 489. “Municipal liability may be based on, among other things, a practice or custom that is so pervasive, as to be the functional equivalent of a policy adopted by the final policymaker.” *Khoury v. Miami-Dade Cnty. Sch. Bd.*, 4 F.4th 1118, 1131 (11th Cir. 2021) (quotation marks omitted). Under this theory, “a plaintiff may establish a policy or custom exists by showing a persistent and wide-spread practice and the government’s actual or constructive knowledge of that practice.” *Id.* (quotation marks omitted).

“[T]here are only limited circumstances in which an allegation of a failure to train or supervise can be the basis for [municipal] liability under § 1983.” *Gold v. City of Miami*, 151 F.3d 1346, 1350 (11th Cir. 1998) (quotation marks omitted). “[T]hese limited circumstances occur only where the municipality inadequately trains

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or supervises its employees, this failure to train or supervise is a city policy, and that city policy causes the employees to violate a citizen's constitutional rights.” *Id.* (quotation marks omitted). The Supreme Court has held that “the inadequacy of police training may serve as the basis for § 1983 liability only where the failure to train amounts to deliberate indifference to the rights of persons with whom the police come into contact.” *City of Canton, Ohio v. Harris*, 489 U.S. 378, 388 (1989).

Here, the district court did not err in dismissing Robledo’s municipal liability claim because she did not plead facts giving rise to a reasonable inference that the City had any customs or policies constituting a deliberate indifference to the Fourth Amendment right to be free from unreasonable seizures. *See McDowell*, 392 F.3d at 1289. In her complaint, Robledo alleged that the TPD had negligently trained officers and listed examples “of low professional standards that have led to constitutional violations,” but she did not supply facts showing that the City was deliberately indifferent to the constitutional rights of citizens. She also did not identify a pervasive practice or custom of Fourth Amendment violations, only isolated incidents of alleged misconduct. *Khoury*, 4 F.4th at 1131. Additionally, because Robledo did not establish a violation of her procedural or substantive due process rights, she could not establish municipal liability for the TPD’s alleged failure to investigate her complaints. *See McDowell*, 392 F.3d at 1289. Accordingly, we affirm as to this issue.

E. Leave to Amend

“Grant of leave to amend is within the trial court’s discretion and denial is reviewed for abuse of discretion.” *Burger King Corp. v. Weaver*, 169 F.3d 1310, 1319 (11th Cir. 1999).

Parties may amend pleadings “once as a matter of course no later than . . . 21 days after” service, or “if the pleading is one to which a responsive pleading is required, 21 days after service of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e), or (f), whichever is earlier.” Fed. R. Civ. P. 15(a)(1). “In all other cases, a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely give leave when justice so requires.” Fed. R. Civ. P. 15(a)(2).

A district court may deny leave to file an amended complaint “where there is substantial ground for doing so,” including “undue delay, bad faith or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, [and] futility of amendment.” *Reese v. Herbert*, 527 F.3d 1253, 1263 (11th Cir. 2008) (alteration in original, quotation marks omitted). However, “a [pro se] plaintiff must be given at least one chance to amend the complaint before the district court dismisses the action with prejudice—at least, that is, where a more carefully drafted complaint might state a claim.” *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1132 (11th Cir. 2019) (quotation marks and italics omitted, alteration in original).

The Supreme Court has held that the filing of a notice of appeal “confers jurisdiction on the court of appeals and divests the district court of its control over those aspects of the case involved in the appeal.” *Griggs v. Provident Consumer Disc. Co.*, 459 U.S. 56, 58 (1982).

The Federal Rules of Civil Procedure provide that “[u]nless the dismissal order states otherwise, a dismissal . . . —except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). We have held that a dismissal for failure to state a claim pursuant to Rule 12(b)(6) “generally signals a judgment on the merits.” *Beach Blitz Co. v. City of Miami Beach, Fla.*, 13 F.4th 1289, 1299-1300 (11th Cir. 2021).

Here, because the court’s order dismissing Robledo’s complaint pursuant to Rule 12(b)(6) was silent as to whether its dismissal was with or without prejudice, we may assume that it was an adjudication on the merits. The district court abused its discretion by dismissing Robledo’s pro se complaint with prejudice, thereby denying her the ability to amend her claims and attempt to cure their deficiencies. We thus vacate and remand the dismissal with prejudice so that Robledo may attempt to cure these deficiencies via amendment of her initial complaint.

AFFIRMED IN PART, VACATED AND REMANDED IN PART.