NOT FOR PUBLICATION

In the

United States Court of Appeals

For the Eleventh Circuit

No. 24-13877
Non-Argument Calendar

JONATHAN HARRINGTON,

Plaintiff-Appellant,

versus

CALVIN GLIDEWELL,
BROWARD HEALTH IMPERIAL POINT,
CENTENE CORPORATION,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Florida
D.C. Docket No. 0:24-cv-61866-MD

Before JORDAN, NEWSOM, and BRASHER, Circuit Judges.

PER CURIAM:

Jonathan Harrington, proceeding pro se, filed a civil complaint against various defendants alleging seven state law claims and two federal claims under 42 U.S.C. § 1983. His claims arise from a six-day commitment at defendant Broward Health Imperial Point's mental health facility in Fort Lauderdale, Florida. In addition to suing Broward Health Imperial Point, he sued Calvin Glidewell, the alleged CEO of the facility, and Centene Corporation, his health insurer.

The sole basis of subject-matter jurisdiction alleged in the complaint was diversity jurisdiction. In response to the defendants' motion to dismiss, Mr. Harrington conceded that the invocation of diversity jurisdiction was a mistake but argued that the district court had federal question jurisdiction. Ultimately, the district court dismissed the complaint with prejudice for lack of subject-matter jurisdiction, failure to comply with pleading requirements, and failure to state a claim.

Mr. Harrington first argues on appeal that the district court erred in concluding that it did not have federal question jurisdiction over his case. We agree with the district court that it lacked subject-matter jurisdiction, and therefore we cannot reach Mr. Harrington's other arguments. But because it did not have jurisdiction, the court erred in dismissing the complaint with prejudice. Accordingly, we vacate the dismissal with prejudice and

remand for the district court to dismiss the complaint without prejudice.

I

"The district court's subject matter jurisdiction is a question of law that we review *de novo*." *Patel v. Hamilton Med. Ctr., Inc.*, 967 F.3d 1190, 1193 (11th Cir. 2020).

District courts have original jurisdiction over "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. When a complaint asserts a claim under federal law, the district court may dismiss the complaint for lack of subject-matter jurisdiction "only if that claim [is] so attenuated and unsubstantial as to be absolutely devoid of merit, or frivolous." *Household Bank v. JFS Grp.*, 320 F.3d 1249, 1254 (11th Cir. 2003) (quoting *Baker v. Carr*, 369 U.S. 186, 199 (1962)) (internal quotation marks omitted).

"In determining whether the district court ha[s] subject matter jurisdiction, we respect the important distinction between the lack of subject matter jurisdiction and the failure to state a claim upon which relief can be granted." *Blue Cross & Blue Shield of Ala. v. Sanders*, 138 F.3d 1347, 1351–52 (11th Cir. 1998). "The test of federal jurisdiction is not whether the cause of action is one on which the claimant can recover. Rather the test is whether the cause of action alleged is so patently without merit as to justify . . . the court's dismissal for want of jurisdiction." *McGinnis v. Ingram Equip. Co., Inc.*, 918 F.2d 1491, 1494 (11th Cir. 1990) (en banc) (internal quotation marks omitted).

A federal claim is meritless "if the claim has no plausible foundation[.]" *Sanders*, 138 F.3d at 1352. To deprive the district court of federal question jurisdiction, a defendant must show that the plaintiff's "factual or legal support for at least one" of the essential elements of his federal claim "lacks plausible foundation, thus rendering the claim wholly insubstantial and frivolous." *Resnick v. KrunchCash, LLC*, 34 F.4th 1028, 1035 (11th Cir. 2022) (internal quotation marks omitted).

II

The federal civil rights statute, 42 U.S.C. § 1983, provides a "federal cause of action for constitutional [and other federal statutory] violations committed under color of state law." *Greater Birmingham Ministries v. Sec'y of State for State of Ala.*, 992 F.3d 1299, 1318 (11th Cir. 2021) (internal quotation marks omitted). The statute only "protects against acts attributable to a State, not those of a private person." *Lindke v. Freed*, 601 U.S. 187, 194 (2024).

A

"Only in rare circumstances can a private party be viewed as a 'state actor' for section 1983 purposes." *Harvey v. Harvey*, 949 F.2d 1127, 1130 (11th Cir. 1992). We have set forth "three distinct tests" to determine whether "the actions of a private entity are properly attributed to the state" for purposes of § 1983 liability. *See Focus on the Fam. v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1277 (11th Cir. 2003).

First, under the public function test, a private actor acts under color of state law when it performs functions that are

traditionally the exclusive prerogative of the state. *See id.* Second, under the state compulsion test, state action occurs where the government has coerced or at least significantly encouraged the action alleged to violate the Constitution. *See id.* And third, the nexus/joint action test applies where the state has so far insinuated itself into a position of interdependence with the private party that it was a joint participant in the enterprise. *See id.*

When a plaintiff asserts a violation of § 1983, he "must plead in detail through reference to material facts, the relationship or nature of the conspiracy between the state actor(s) and the private persons." *Harvey*, 949 F.2d at 1133. In other words, the complaint must specify how the defendants' conduct amounted to action under color of law with reference to specific allegations.

In *Harvey*, 949 F.2d at 1130–31, we held that a private hospital could not be held liable under § 1983 for treating a patient under a state involuntary commitment statute because none of the three tests outlined above characterized the hospital's conduct. For the same reason, the private individual who initiated the commitment proceedings and the doctors who certified that the plaintiff required involuntary treatment were also not liable under § 1983. *See id.* at 1133.

B

We conclude that Mr. Harrington's complaint lacks a plausible foundation for asserting that the defendants acted under color of state law. Because federal question jurisdiction is the only asserted basis for subject-matter jurisdiction, and the federal claims

are patently untenable, the complaint must be dismissed for lack of subject-matter jurisdiction.

Five paragraphs in the complaint refer to § 1983 or color of law. We summarize these paragraphs below.

In Paragraph 2, Mr. Harrington alleges that Broward Health Imperial Point ("BHIP") and Mr. Glidewell "used fraudulent records . . . [to] justify unlawfully confining [him] to BHIP for six days with no due process." D.E. 1 at ¶ 2. Mr. Glidewell and BHIP allegedly "committed multiple batteries and even sexually assaulted" Mr. Harrington. *Id.* They allegedly "forced [Mr. Harrington] to walk to the point of injury when it was obviously that [he] could not." *Id.* And they intentionally inflicted emotional distress on him by "denigrat[ing] [his] mental competency" and his character. *Id.* According to the complaint, "[a]ll of this wrongful conduct effected a deprivation of [Mr. Harrington's] rights under the color of law contrary to 42 U.S.C. § 1983." *Id.*

Paragraph 11 makes allegations regarding the contents of Mr. Harrington's medical records. *See* D.E. 1 at ¶ 11. One sentence of Paragraph 11 states: "They even stated my 'Condition [was] Stable' as soon as I arrived, raising questions as to why they would soon shoot me up with drugs if not in retaliation under color of law." *Id.*

Paragraph 74 alleges:

> DEFEDANTS(S), acting under the color of lawful authority, deprived me of my rights contrary to 42 U.S.C. § 1983. Specifically, DEFENDANT(S) . . . acted

> in retaliation for lawful speech: my promises to utilize lawful self-defense against anyone who harms me—and to escape DEFENDANT(S)'s clutches . . . . For this speech, DEFENDANT(S) held me captive for almost a week and shot me up with drugs . . . . This, DEFENDANT(S) did with no due process and while preparing fraudulent court paperwork. Thus, they acted under the color of lawful authority and deprived me of my clearly established constitutional rights to freedom of speech, freedom from purposeless restraints, bodily autonomy, and due process. DEFENDANT(S) is/are therefore liable under 42 U.S.C. § 1983.

D.E. 1 at ¶ 74 (footnote omitted).

Paragraph 75 describes an altercation with a BHIP security guard. It alleges that the security guard threw Mr. Harrington to the ground and pinned him there because Mr. Harrington attempted to film him with his cell phone. *See* D.E. 1 at ¶ 75. According to the complaint, "DEFENDANT purported to act with lawful authority according to some mysterious Florida Statute permitting violent attack for using a cell phone. Therefore, acting under the color of law, DEFENDANT(S) deprived me of my First Amendment right to freedom of speech and my Fourteenth Amendment right to due process." *Id.*

Finally, Mr. Harrington alleges that Centene Corporation—his insurer—"bankroll[ed] [BHIP]'s human rights abuses" and therefore "deprived him of his rights under color of law contrary to 42 U.S.C. § 1983" too. D.E. 1 at ¶ 81.

Outside of conclusory allegations that the defendants acted under color of law, the complaint does not make any allegations attributing the defendants' conduct to the state. For example, the complaint does not allege (and could not allege) that the defendants were state actors acting in their official capacity. The complaint does not allege that state officials compelled the defendants to do the tortious acts complained of. And the complaint does not allege that state officials worked in tandem with the defendants to achieve the same unlawful purpose.

As we explained in *Harvey*, 949 F.2d at 1130–31, the Georgia involuntary commitment statutes "neither compel[led] nor encourage[d] involuntary commitment," which precluded the private hospital from "becoming a state actor by state compulsion." Florida's Baker Act also does not compel or encourage involuntary commitment. The Act provides that "[a] person *may* be taken to a receiving facility for involuntary examination" if certain conditions are met. *See* Fla. Stat. § 394.463(1) (emphasis added). And "[a]n involuntary examination *may* be initiated by" a court, law enforcement officer, or physician. *See generally* § 394.463(2)(a) (emphasis added). Mr. Harrington does not allege, nor could he plausibly allege, that Florida enacted the Baker Act to "encourage commitments." *See Harvey*, 949 F.2d at 1131 (quoting *Spencer v. Lee*, 864 F.2d 1376, 1379 (7th Cir. 1989) (en banc)).

"Nor does the statute create a sufficiently close nexus between the state and [BHIP] to mandate [BHIP]'s classification as

a state actor." *Id.* The fact that a statute permits a private party to do an act that it otherwise would be prohibited from doing, without more, does not satisfy the nexus/joint action test. *See Jackson v. Metro. Edison Co.*, 419 U.S. 345, 350 (1974) ("The mere fact that a business is subject to state regulation does not by itself convert its action into that of the State . . . . Nor does the fact that the regulation is extensive and detailed . . . do so."); *Flagg Bros., Inc. v. Brooks*, 436 U.S. 149, 164 (1978) ("[A] State's mere acquiescence in a private action [does not] convert[ ] that action into that of the State.").

Finally, the commitment process does not satisfy the public function test. "That the private party has powers *co-extensive* with the state is irrelevant; the public function test shows state action only when private actors . . . perform functions[ ] that are traditionally the *exclusive* prerogative of the State." *Harvey*, 949 F.2d at 1131 (footnote and internal quotation marks omitted). Involuntary commitment is not "a function so reserved to the state that action under the commitment statute transforms a private actor into a state actor." *Id.* (citing *Spencer*, 864 F.2d at 1380–81).

The complaint does not allege a plausible foundation for the assertion that the defendants acted under color of law, an essential element of the § 1983 claims. Therefore, the § 1983 claims are patently meritless. And because the federal claims are meritless, the district court does not have federal question jurisdiction over Mr. Harrington's case. *See Bell v. Hood*, 327 U.S. 678, 683–84 (1946). Mr. Harrington concedes that there is no other basis of subject-

matter jurisdiction. Accordingly, his complaint must be dismissed for lack of jurisdiction.

III

When a district court lacks subject-matter jurisdiction over a plaintiff's complaint, it has no power to render a judgment on the merits. *See Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1235 (11th Cir. 2008). *Accord* 18A Wright & Miller, Fed. Prac. & Proc. Juris. § 4436 & n.3 (3d ed., Sept. 2025 update) ("The basic rule that dismissal for lack of subject-matter-jurisdiction does not preclude a second action on the same claim[s] is well settled.") (citing cases). Thus, when a district court lacks subject-matter jurisdiction over a plaintiff's complaint, it must dismiss the complaint without prejudice. *See Stalley*, 524 F.3d at 1235.

The district court's dismissal of the complaint with prejudice was incorrect because the court lacked jurisdiction. We therefore vacate and remand for the district court to enter a dismissal of Mr. Harrington's complaint without prejudice.

AFFIRMED IN PART, VACATED IN PART, AND REMANDED.