FILED
United States Court of Appeals
Tenth Circuit

September 16, 2026

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

JUDD McCURDY; WESTERN KANSAS AG, INC.,

Plaintiffs - Appellants,

v.

MARSHALL UNRUH; WALLACE COUNTY SHERIFF'S DEPARTMENT; PAUL NIBLOCK,

Defendants - Appellees.

No. 25-3156
(D.C. No. 2:25-CV-02041-HLT-RES)
(D. Kan.)

ORDER AND JUDGMENT[*]

Before **EID**, **KELLY**, and **CARSON**, Circuit Judges.[**]

Plaintiffs-Appellants Judd McCurdy and Western Kansas Ag, Inc. (WKAI) appeal from the district court's dismissal of their amended complaint against Defendants-Appellees Marshall Unruh, Paul Niblock, and the Wallace County Sheriff's Department. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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[*] This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

[**] After examining the briefs and appellate record, this panel has determined unanimously to honor the parties' request for a decision on the briefs without oral argument. *See* Fed. R. App. P. 34(f); 10th Cir. R. 34.1(G). The case is therefore submitted without oral argument.

Background

The parties are familiar with the facts, so we need not restate them at length here. Suffice it to say that Mr. McCurdy and Mr. Niblock were co-owners of WKAI, a company operating in the agricultural industry, until their business relationship deteriorated. Aplt. App. 9. Mr. Niblock became a competitor of Mr. McCurdy and allegedly developed a friendship with Mr. Unruh, the Wallace County Sheriff. Id. Mr. Unruh then "began a campaign to damage [Mr.] McCurdy's reputation and harm his business" by engaging in various acts. Id. at 9–10. Mr. McCurdy sued Defendants for denial of procedural due process and civil conspiracy under 42 U.S.C. § 1983 and related state law claims, seeking damages and injunctive relief. Id. at 10.

The district court dismissed the § 1983 claims for failure to state a claim under Fed. R. Civ. P. 12(b)(6), holding that Plaintiffs failed to plausibly allege their "stigma plus" procedural due process claim. Id. at 12–13, 16. It also identified the following independent reasons warranting dismissal: (1) Mr. Unruh was entitled to qualified immunity, (2) the Wallace County Sheriff's Department lacked the capacity to be sued under Kansas law, and (3) Mr. Niblock could not be held liable for § 1983 violations because he was not acting under color of state law. Id. at 13–14. The court also dismissed the § 1983 conspiracy claim because Plaintiffs failed to plead the existence of any agreement between Mr. Niblock and Mr. Unruh and because there was no underlying claim of wrongdoing. Id. at 11, 14–15. The court then declined to exercise supplemental jurisdiction over the remaining state law claims. Id. at 15–16.

Discussion

Plaintiffs now appeal from the district court's dismissal, arguing that (1) they properly pled their stigma-plus procedural due process claim and (2) Mr. Unruh was not entitled to qualified immunity. Aplt. Br. at 5–6. Plaintiffs do not address the district court's independent grounds for dismissal of their claims against the Wallace County Sheriff's Department or Mr. Niblock, or their § 1983 conspiracy claim, so we consider any such arguments waived and the dismissal of these claims must be affirmed. See, e.g., Platt v. Winnebago Indus., Inc., 960 F.3d 1264, 1271–72 (10th Cir. 2020).

We review dismissals under Rule 12(b)(6) de novo, assuming all well-pled factual allegations in the complaint are true and drawing all reasonable inferences in the plaintiff's favor. Spinelli v. Coherus Biosciences, Inc., 167 F.4th 1274, 1279 (10th Cir. 2026). To survive dismissal, "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) (citation modified). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." Id. Our review is usually limited to the four corners of the complaint. Brown v. City of Tulsa, 124 F.4th 1251, 1263–64 (10th Cir. 2025).

We note that Plaintiffs failed to include the operative complaint in their appendix and instead cite to the district court's description of the complaint in their opening brief. Under the Federal Rules of Appellate Procedure and our local rules, an appellant "must designate a record on appeal or prepare an appendix that is sufficient for considering and deciding the appellate issues." 10th Cir. R. 10.4(A); accord 10th Cir. R. 30.1(B)(1); see Fed. R. App. P. 30(a)(1)(B). The record or appendix "must include . . . the last amended complaint and answer[.]" 10th Cir. R. 10.4(C)(2) (emphasis added). And the appellant's brief must contain "citations to . . . parts of the record on which the appellant relies[.]" Fed. R. App. P. 28(a)(8)(A); accord 10th Cir. R. 28.1(A). We "need not remedy any failure" to provide a sufficient appendix or record for review, and we "may decline to consider" an issue for which there is no such appendix or record. 10th Cir. R. 10.4(B); 10th Cir. R. 30.1(B)(3). Surely the court of appeals must review the complaint when asked to reverse the district court's dismissal based upon the complaint's insufficiency. The failure to include the complaint in the appendix and include references to that complaint in the appendix constitutes an independent ground for affirmance.

But even if we were to look past Plaintiffs' failure to provide us with the operative complaint and relevant citations, the claims asserted are without merit. Due to appellate waiver, the only claim we would review on appeal is Plaintiffs' § 1983 procedural due process stigma-plus claim against Mr. Unruh.

Under the Fourteenth Amendment, state actors may not deprive parties of constitutionally protected liberty or property interests without sufficient due process. Al-Turki v. Tomsic, 926 F.3d 610, 614 (10th Cir. 2019). A plaintiff may allege a procedural due process claim based on defamatory statements, but showing only stigmatic injuries through loss of reputation is not enough—the plaintiff must plead that he or she suffered a "stigma-plus" injury, meaning that he or she must show "some change in legal status." Id. at 617. In other words, the plaintiff must show that "a right or status previously recognized by [federal or] state law" amounting to a protected liberty or property interest "was distinctly altered or extinguished." Id. (quoting Paul v. Davis, 424 U.S. 693, 711 (1976)).

Though even assuming that Plaintiffs plausibly alleged a deprivation of a constitutionally protected property interest, Plaintiffs cannot overcome Mr. Unruh's qualified immunity. "We must grant qualified immunity unless the plaintiff shows that (1) the official violated a constitutional or statutory right which (2) was clearly established at the time of the official's conduct." Ellis v. Salt Lake City Corp., 147 F.4th 1206, 1219 (10th Cir. 2025). A "clearly established" right is one that "existing precedent [has] placed . . . beyond debate." Id. at 1228 (citation modified). "The dispositive question is whether the violative nature of particular conduct is clearly established. This inquiry must be undertaken in light of the specific context of the case, not as a broad general proposition." Id. at 1229 (citation modified). We may address either of these elements first. Surat v. Klamser, 52 F.4th 1261, 1271 (10th Cir. 2022). Here, we need not address the first element because we conclude that Plaintiffs fail at the second.

Plaintiffs cite cases from this and other circuits to show that Mr. Unruh violated a clearly established right. Aplt. Br. at 13–14. But none of these cases support Plaintiffs' specific theory of a stigma-plus injury—that the loss of private contracts amounts to a violation of a constitutionally protected property interest. See, e.g., Cypress Ins. Co. v. Clark, 144 F.3d 1435, 1437–38 (11th Cir. 1998) (alleged loss of business reputation due to defamatory statements was insufficient for stigma-plus claim); Greenwood v. N.Y., Off. of Mental Health, 163 F.3d 119, 122 (2d Cir. 1998) (plaintiff lost clinical staff privileges at state hospital); Cooper v. Dupnik, 924 F.2d 1520, 1532–34 (9th Cir. 1991), rev'd en banc on other grounds, 963 F.2d 1220 (9th Cir. 1992) (allegations that defamatory statements resulted in loss of plaintiff's employment and residence did not amount to a violation of clearly established rights sufficient to overcome qualified immunity). To the contrary, we and our sibling circuits have rejected the theory that the loss of private business opportunities alone amounts to a violation of a constitutionally protected property interest. See, e.g., Phelps v. Wichita Eagle-Beacon, 886 F.2d 1262, 1269 (10th Cir. 1989) (loss of potential employment opportunities was "too intangible to constitute a deprivation of a liberty or property interest"); URI Student Senate v. Town of Narragansett, 631 F.3d 1, 11 (1st Cir. 2011) (no deprivation of a constitutionally protected right where injuries "derive[d] . . . from private contracts . . . between private parties . . . which entail private obligations").

Plaintiffs' failure to cite to "a single case that has adopted [their] stigma-plus theory tying the 'stigma' (reputational harms) from a state actor's defamation to the 'plus' (tangible injuries) from a private party's actions . . . dooms [their] theory in this qualified-immunity context." Segler v. City of Detroit, No. 23-1897, 2024 WL 5135735, at *4 (6th Cir. Dec. 17, 2024); see Dupnik, 924 F.2d at 1532–34.

AFFIRMED.

Entered for the Court

Paul J. Kelly, Jr.
Circuit Judge