

NOT RECOMMENDED FOR PUBLICATION

No. 23-1369

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED

Feb 14, 2024

KELLY L. STEPHENS, Clerk

MICHAEL D. CARVER,

Plaintiff-Appellant,

V.

CITY OF KALAMAZOO, et al.,

Defendants-Appellees.

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)
)
)
) ON APPEAL FROM THE UNITED
) STATES DISTRICT COURT FOR
) THE WESTERN DISTRICT OF
) MICHIGAN

O R D E R

Before: COLE, CLAY, and KETHLEDGE, Circuit Judges.

Michael D. Carver, a Michigan resident proceeding pro se, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 complaint. He moves for leave to amend his complaint or brief. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the following reasons, we deny Carver's motion for leave to amend and affirm the district court's judgment.

Carver filed a § 1983 complaint seeking monetary damages against (1) the city of Kalamazoo, Michigan, (2) prosecutor Mike Stein, (3) detective Jennifer Higby, (4) social worker Ruth Westfall, (5) child sexual abuse expert Dr. Collette Gushurst, (6) child protective services employee Cierra Patrick, (7) police officer Brian Veltman, and (8) the Kalamazoo County Sheriff's Department and deputy Adam. Carver alleged that Defendants violated his rights in connection with his arrest and prosecution for first-degree criminal sexual conduct with a child under the age of 13. *See People v. Carver*, No. 328157, 2017 WL 3721988, at *1 (Mich. Ct. App. Aug. 29, 2017) (per curiam).

In support of his claims, Carver alleged that, while conducting an investigation in 2014, Veltman had contact with the victim and her family, who claimed that Carver sexually assaulted the victim. Veltman gave a report to Higby and conducted a recorded interview with Carver. Higby also interviewed Carver and provided a report to the prosecutor's office. Stein charged Carver with first-degree criminal sexual conduct. According to the complaint, Carver did not commit the alleged crime, Higby's incident report did not include facts establishing probable cause, and a reasonable officer would have known that the incident report failed to establish probable cause.

Carver further alleged that Higby sought a warrant for his arrest even though she knew from a doctor's report of "no penetration" and other factors that Carver could not be identified as the person who sexually assaulted the victim. Higby arrested Carver, and Carver was held in a county jail. Patrick, after meeting with Carver at the jail, expressed her belief to Higby that Carver committed the sexual assault.

According to the complaint, the prosecution relied on false testimony and coerced statements at Carver's preliminary examination. Carver was found guilty after a trial and served over four years in prison before the trial and appellate courts vacated his conviction and the charge against him was dismissed. Carver alleged that the defendants knew of his innocence because he denied committing the assault throughout the proceedings. Carver also alleged that Higby made false statements in support of the arrest warrant and criminal complaint and made no effort to correct the false statements.

Upon initial screening, the district court dismissed Carver's complaint because he failed to state a claim on which relief could be granted and sought monetary relief from a defendant who was immune from such relief.

On appeal, Carver argues that the district court erred by dismissing his complaint. We review de novo the dismissal of Carver's complaint. *See Davis v. Prison Health Servs.*, 679 F.3d 433, 437 (6th Cir. 2012). To avoid dismissal, a complaint must allege facts that, accepted as true and construed in the light most favorable to the plaintiff, state a claim to relief that is plausible

on its face. *See Brent v. Wayne Cnty. Dep't of Hum. Servs.*, 901 F.3d 656, 675-76 (6th Cir. 2018); *Davis*, 679 F.3d at 437-38. As Carver proceeds pro se, we construe his pleadings liberally. *Estelle v. Gamble*, 429 U.S. 97, 106 (1976).

The district court properly dismissed Carver's complaint for failure to state a claim. Carver failed to state a claim against Westfall, Gushurst, the Kalamazoo County Sheriff's Department, and deputy Adam because he made no specific factual allegations against them. *See Sampson v. Garrett*, 917 F.3d 880, 882 (6th Cir. 2019). Carver also failed to state a claim against Patrick because his sole allegation against her—that she expressed to Higby her belief that Carver committed the alleged assault—fails to establish a constitutional violation.

The remaining allegations in the complaint also failed to state a claim. In causes of action one through five, Carver alleged that Higby, Veltman, and Stein violated his Fourth and Fourteenth Amendment rights. Carver claimed that (1) Higby did so by using false information and omitting material information to obtain the arrest warrant, relying on a warrant application that clearly lacked facts establishing probable cause, and influencing the decision to prosecute Carver even though Higby knew or should have known that Carver was innocent; (2) Veltman did so by obtaining a warrant without establishing probable cause and relying on a warrant application that clearly failed to establish probable cause; and (3) Stein did so by initiating and proceeding with his prosecution even though Stein knew or should have known that Carver was innocent.

The district court properly dismissed these causes of action because Carver supported them with only conclusory factual allegations and legal conclusions that the defendants utilized false information or omitted material information, that the warrant application failed to establish probable cause, and that the defendants knew of his innocence. *See Willman v. Att'y Gen. of United States*, 972 F.3d 819, 823 (6th Cir. 2020) (explaining that conclusory allegations and legal conclusions masquerading as factual allegations are insufficient to state a claim). Even when construed liberally, Carver did not allege specific facts showing (1) what false information the defendants relied on or what material information they omitted, (2) why the warrant

application lacked probable cause, or (3) that the defendants knew he was innocent despite the victim's allegations. Carver raises additional factual allegations in his brief, but in judging the sufficiency of a complaint, we confine our review to the complaint itself. *See Agema v. City of Allegan*, 826 F.3d 326, 332 (6th Cir. 2016).

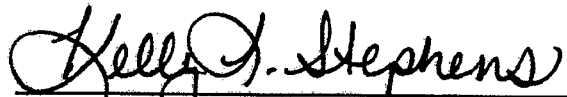
In causes of action six and seven, Carver alleged claims based on supervisory liability and failure to train. The complaint alleged that Higby was not properly trained or supervised, but it did not identify the responsible defendant. The complaint also alleged that Higby did not properly train and supervise her subordinates and that Stein did not properly train and supervise Patrick, Gushurst, and Westfall.

The district court properly dismissed these causes of action because a plaintiff cannot establish a claim of supervisory or municipal liability without establishing an underlying constitutional violation. *See Price v. Montgomery Cnty.*, 72 F.4th 711, 726 (6th Cir. 2023), *petition for cert. filed* (U.S. Dec. 15, 2023) (No. 23-649); *VanPelt v. City of Detroit*, 70 F.4th 338, 341 (6th Cir. 2023).

Finally, Carver seeks leave to amend his complaint or brief to add allegations that the Kalamazoo Police Department and other Kalamazoo government officials discriminated and retaliated against him in connection with events beginning in July 2023. Justice does not require allowing Carver to amend his complaint because (1) his new allegations are largely unrelated to the allegations in his complaint and relate to events occurring long after the events underlying his complaint and after the district court dismissed his complaint; and (2) Carver's motion for leave to amend is untimely because he filed it nearly three months after filing his brief on appeal. *See* Fed. R. Civ. P. 15(a)(2); *Parchman v. SLM Corp.*, 896 F.3d 728, 736 (6th Cir. 2018); *Scott v. Schmidt*, 773 F.2d 160, 163 (7th Cir. 1985). And we need not allow Carver to amend his brief because his additional allegations have no bearing on whether his complaint stated a plausible claim for relief.

Accordingly, we **DENY** Carver's motion for leave to amend and **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Kelly L. Stephens, Clerk

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL D. CARVER,

Plaintiff,

v.

KALAMAZOO, CITY OF, et al.,

Defendants.

Case No. 1:22-cv-1024

HON. JANE M. BECKERING

OPINION AND ORDER

This is a prisoner civil rights action filed pursuant to 42 U.S.C. § 1983. On November 16, 2022, the Magistrate Judge issued a Report and Recommendation, recommending that the action be dismissed upon initial screening pursuant to 28 U.S.C. § 1915(e)(2) on grounds that Plaintiff's § 1983 claims fail to state a claim upon which relief may be granted and seek monetary relief against a defendant immune from such relief. The matter is presently before the Court on Plaintiff's objections to the Report and Recommendation (Pl.'s Obj., ECF No. 9; Pl.'s Am. Obj., ECF No. 15). In accordance with 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b)(3), the Court has performed de novo consideration of those portions of the Report and Recommendation to which objections have been made. The Court denies the objections and issues this Opinion and Order.¹

¹ In light of Plaintiff's amended objection (ECF No. 15), his motion for an extension of time is dismissed as moot (ECF No. 14).

Plaintiff's initial objection contains several pages of excerpted quotations from case law (*see* Pl.'s Obj., ECF No. 9); however, Plaintiff does not identify any specific portion of the Report and Recommendation to which Plaintiff objects. *See* W.D. Mich. LCivR 72.3(b) (noting that an objecting party "shall specifically identify the portions of the proposed findings, recommendations or report to which objections are made and the basis for such objections"). As such, Plaintiff's objection does not demonstrate—let alone identify—any factual or legal error in the Magistrate Judge's analysis or ultimate conclusion that his claims are properly dismissed. Accordingly, Plaintiff's objection is properly denied.

In his amended objection, Plaintiff argues that "[t]he Magistrate Judge erred by applying the qualified immunity to this case after Plaintiff alleged Constitutional Rights of fabricated evidence and after the Appellate Court vacated Plaintiff's conviction" (Pl.'s Am. Obj., ECF No. 15). The Magistrate Judge did not apply qualified immunity to this case; rather, Plaintiff's objection represents his misunderstanding of the Magistrate Judge's application and analysis of prosecutorial immunity (*see* R&R, ECF No. 7 at PageID.15–16). Therefore, as noted above, Plaintiff's objection also fails to demonstrate—let alone identify—any factual or legal error in the Magistrate Judge's analysis or ultimate conclusion that his claims are properly dismissed.²

In short, Plaintiff's objections lack merit, and this Court therefore adopts the Magistrate Judge's Report and Recommendation as the Opinion of this Court. A Judgment will be entered consistent with this Opinion and Order. *See* Fed. R. Civ. P. 58. For the above reasons and because this action was filed *in forma pauperis*, this Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this Judgment would not be taken in good faith. *See McGore v. Wrigglesworth*,

² This Court notes, that, like his initial objection, Plaintiff's amended objection also contains a series of excerpts or quotations from case law but does not identify any specific portions of the Report and Recommendation to which Plaintiff objects. *See* W.D. Mich. LCivR 72.3(b).

114 F.3d 601, 610–11 (6th Cir. 1997), overruled on other grounds by *Jones v. Bock*, 549 U.S. 199, 206, 211–12 (2007).

Accordingly:

IT IS HEREBY ORDERED that the Objections (ECF Nos. 9 & 15) are DENIED and the Report and Recommendation of the Magistrate Judge (ECF No. 7) is APPROVED and ADOPTED as the Opinion of the Court.

IT IS FURTHER ORDERED that the motion for an extension of time (ECF No. 14) is DISMISSED as moot.

IT IS FURTHER ORDERED that the Complaint (ECF No. 1) is DISMISSED pursuant to 28 U.S.C. § 1915(e)(2) for the reasons stated in the Report and Recommendation.

IT IS FURTHER ORDERED that this Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that an appeal of this decision would not be taken in good faith.

Dated: April 18, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MICHAEL D. CARVER,

Plaintiff,

v.

KALAMAZOO, CITY OF, et al.,

Defendants.

_____ /

Case No. 1:22-cv-1024

HON. JANE M. BECKERING

JUDGMENT

In accordance with the Opinion and Order entered this date:

IT IS HEREBY ORDERED that the Complaint is DISMISSED.

Dated: April 18, 2023

/s/ Jane M. Beckering
JANE M. BECKERING
United States District Judge

**Additional material
from this filing is
available in the
Clerk's Office.**