

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO

Belinda Robertson v. Theodore Markowski and Stephen Eaton

Robertson · No. No. 2:25-cv-01043-SMD-KRS · Decided December 29, 2025

SUMMARY

The United States District Court for the District of New Mexico dismissed without prejudice a pro se plaintiff’s claims against her private attorney and guardian ad litem. The court held that the complaint and amended complaint failed to state a claim under 42 U.S.C. § 1983 because the defendants were not alleged to have acted under color of state law, dismissed claims based on federal criminal statutes for lack of a private right of action, declined supplemental jurisdiction over state-law claims, and denied the plaintiff’s jury-trial motion.

CASE DETAILS

COURT	United States District Court for the District of New Mexico
JURISDICTION	United States District Court for the District of New Mexico
DECIDED	December 29, 2025
DOCKET	No. 2:25-cv-01043-SMD-KRS
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se plaintiff brought claims under 42 U.S.C. § 1983 and asserted related federal and state-law claims. After allowing plaintiff to amend and ordering her to show cause why the action should not be dismissed, the court dismissed the case without prejudice for failure to state a claim and declined supplemental jurisdiction over the state-law claims.
STANDARD OF REVIEW	Failure to state a claim; the court evaluated whether the pleadings alleged the elements of a § 1983 claim and a private civil cause of action under the asserted federal criminal statutes.
PRECEDENTIAL VALUE	unknown
PARTIES	Belinda Robertson v. Theodore Markowski, Stephen Eaton

TOPICS

- section 1983
- civil rights
- pleadings
- motions to dismiss
- civil procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff stated a claim under 42 U.S.C. § 1983 against a private attorney and a guardian ad litem without alleging that either defendant acted under color of state law.
2. Whether plaintiff could maintain civil claims based on alleged violations of federal criminal statutes.
3. Whether the court should exercise supplemental jurisdiction over plaintiff's state-law claims after dismissing all federal claims.
4. Whether plaintiff was entitled to a jury trial after the action was dismissed.

HOLDINGS

1. Plaintiff failed to state a § 1983 claim because the amended complaint did not allege that Markowski or Eaton acted under color of state law.
2. Plaintiff's claims based on alleged violations of federal criminal statutes failed to state a claim because criminal statutes do not provide private civil causes of action.
3. The court declined to exercise supplemental jurisdiction over plaintiff's state-law claims after dismissing all claims over which it had original jurisdiction.
4. Plaintiff's motion requesting a jury trial was denied because the court was dismissing the case.

KEY QUOTATIONS

“The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law.” (Opinion text)

“a lawyer representing a client is not, by virtue of being an officer of the court, a state actor ‘under color of state law’ within the meaning of § 1983.” (Opinion text)

“criminal statutes do not provide for private civil causes of action” (Opinion text)

FACTUAL BACKGROUND

Plaintiff was involved in state-court proceedings in which Markowski represented her as a private attorney and Eaton served as a guardian ad litem. She alleged that defendants violated her civil rights and the Code of Conduct of Attorneys, and she later asserted constitutional, New Mexico statutory, and purported federal criminal-law violations involving tax fraud and money laundering. The complaint forms indicated that plaintiff did not believe defendants were acting under color of state law.

PROCEDURAL HISTORY

Plaintiff filed a § 1983 complaint against a private attorney and a guardian ad litem involved in her state-court proceedings. A magistrate judge ordered plaintiff to show cause and file an amended complaint because the pleading did not allege action under color of state law and did not clearly identify the rights allegedly violated. Plaintiff filed an amended complaint but no separate response to the show-cause order. The district court

dismissed the federal claims, declined supplemental jurisdiction over the state claims, denied plaintiff's jury-trial motion, and dismissed the action without prejudice.

DISPOSITION

dismissed

CASES CITED

- Schaffer v. Salt Lake City Corp., 814 F.3d 1151, 1155 (10th Cir.)
- DiCesare v. McAnally, 657 Fed. Appx. 800, 802 (10th Cir.)
- Polk County v. Dodson, 454 U.S. 312, 318 (1981)
- Kelly v. Rockefeller, 69 Fed. Appx. 414, 415-416 (10th Cir.)
- Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C., 956 F.3d 1228, 1238 (10th Cir.)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF NEW MEXICO
BELINDA ROBERTSON, Plaintiff, v. No. 2:25-cv-01043-SMD-KRS THEODORE MARKOWSKI and STEPHEN EATON, Defendants. MEMORANDUM OPINION AND ORDER OF DISMISSAL Pro se Plaintiff filed her Complaint using the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983." See Civil Rights Complaint Pursuant to 42 U.S.C. § 1983, Doc.

1, filed October 20, 2025 ("Complaint"). Plaintiff is a party in a state-court case. See Complaint at 3. Defendant Markowski is a private attorney representing Plaintiff and Defendant Eaton is a guardian ad litem appointed to represent Plaintiff. See Complaint at 3, 9. Plaintiff alleged Defendants violated her civil rights and violated "the Code of Conduct of Attorneys." Complaint at 3, 7.

Plaintiff seeks monetary damages. See Complaint at 5. United States Magistrate Judge Kevin R. Sweazea notified Plaintiff: The Complaint fails to state a claim pursuant to 42 U.S.C. § 1983. "The two elements of a Section 1983 claim are (1) deprivation of a federally protected right by (2) an actor acting under color of state law." Schaffer v. Salt Lake City Corp., 814 F.3d 1151, 1155 (10th Cir.

2016). There are no allegations showing that Defendants Markowski and Eaton were acting under color of state law. See DiCesare v. McAnally, 657 Fed.Appx. 800, 802 (10th Cir. 2016) ("a lawyer representing a client is not, by virtue of being an officer of the court, a state actor 'under color of state law' within the meaning of § 1983.") (quoting Polk Cnty. v. Dodson, 454 U.S. 312, 318 (1981)).

Where the form "Civil Rights Complaint Pursuant to 42 U.S.C. § 1983" asks "was this defendant acting under color of state law," Plaintiff checked the "No" boxes. Complaint at 1-2. The

Complaint contains conclusory allegations that Defendants violated Plaintiff's rights but does not clearly explain which rights Plaintiff believes they violated. See Complaint at 3 Order to Show Cause at 3, Doc.

5, filed October 27, 2025. Judge Sweazea ordered Plaintiff to show cause why the Court should not dismiss Plaintiff's claims pursuant to 42 U.S.C. § 1983 and to file an amended complaint. See Order to Show Cause at 3, 5. Plaintiff filed an Amended Complaint but did not file a separate response showing why the Court should not dismiss Plaintiff's claims pursuant to 42 U.S.C. § 1983.

See Amedment Order Granting Application to Proceed In Forma Pauperis and Order to Show Cause, [sic] Doc. 6, filed November 14, 2025 ("Amended Complaint"). The Amended Complaint contains statements regarding Defendants' alleged misconduct in the state-court proceedings and asserts violations of the United States Constitution, the New Mexico Civil Rights Act, and the New Mexico Family Violence Protection Act.

See Amended Complaint at 11-12. It appears Plaintiff may be asserting claims for "Violation of the Law of the United States in Activity Criminal" based on Defendants' alleged "Fraud to IRS Taxes Reported" and "Laundering Money." Amended Complaint at 12.

The Court dismisses Plaintiff's claims pursuant to 42 U.S.C. § 1983 for failure to state a claim. There are no allegations in the Amended Complaint showing that Defendants were acting under color of state law and Plaintiff has not filed a response showing that the Court should not dismiss her claims pursuant to 42 U.S.C. § 1983.

The Court dismisses Plaintiff's claims based on Defendants' alleged violation of federal criminal statutes for failure to state a claim. See *Kelly v. Rockefeller*, 69 Fed.Appx.414, 415-416 (10th Cir. 2003) ("[C]riminal statutes do not provide for private civil causes of action").

The Court, having dismissed Plaintiff's federal law claims, declines to exercise supplemental jurisdiction over Plaintiff's state law claims and dismisses this case. See 28 U.S.C. § 1367(c)(3) ("The district courts may decline to exercise supplemental jurisdiction over a claim... if... the district court has dismissed all claims over which it has original jurisdiction"); *Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.*, 956 F.3d 1228, 1238 (10th Cir.

2020) ("The Supreme Court has encouraged the practice of dismissing state claims or remanding them to state court when the federal claims to which they are supplemental have dropped out before trial"). Plaintiff has filed a Motion requesting a jury trial. See Plaintiff's Motion to Requesting a Trial with Jury after Defendants Will Continued Harrased and Violated the Civil Rights of Plaintiff, [sic] Doc.

7, filed December 1, 2025. The Court denies the Motion for a jury trial because the Court is dismissing this case. IT IS ORDERED that: (1) This case is DISMISSED without prejudice. (ii) Plaintiff's Motion to Requesting a Trial with Jury after Defendants Will Continued Harrased and Violated the Civil Rights of Plaintiff, [sic] Doc. 7, filed December 1, 2025, is DENIED.

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