

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
ARKANSAS

Mysch v. Hutchins

Mysch · No. No. 3:25-cv-128-DPM · Decided January 28, 2026

SUMMARY

The United States District Court for the Eastern District of Arkansas granted Officer John Hutchins’s motion to dismiss Melissa Mysch’s claims arising from her arrest and detention. The court held that official-capacity claims lacked allegations of a municipal policy or custom, and that qualified immunity applied because the reconstructed warrant affidavit still established probable cause. The court also rejected Mysch’s retaliation, malicious prosecution, and abuse of process claims and denied as moot her constitutional challenge to Arkansas’s immunity statute.

CASE DETAILS

COURT	United States District Court for the Eastern District of Arkansas
WRITING FOR THE COURT	D.P. Marshall Jr.
JURISDICTION	United States District Court for the Eastern District of Arkansas
DECIDED	January 28, 2026
DOCKET	No. 3:25-cv-128-DPM
DISPOSITION	dismissed
PROCEDURAL POSTURE	Defendant moved to dismiss the plaintiff's federal and state-law claims. Plaintiff also moved for a declaration that Arkansas's governmental-immunity statute was unconstitutional.
STANDARD OF REVIEW	On a motion to dismiss, the court accepted the pleaded facts as true and considered the warrant affidavit because it was embraced by the complaint. The court evaluated whether the complaint plausibly stated claims and whether qualified immunity applied.
PRECEDENTIAL VALUE	Unpublished district-court order; precedential status unknown.
PARTIES	Melissa Mysch v. John Hutchins, in his individual and official capacities as an officer for the City of Cherokee Village, Arkansas

TOPICS

- motions to dismiss
- qualified immunity
- first amendment
- malicious prosecution
- abuse of process

PRACTICE AREAS

civil rights

constitutional law

civil procedure

torts

municipal law

QUESTIONS PRESENTED

1. Whether the complaint plausibly alleged that Hutchins's false statements invalidated the arrest warrant under *Franks v. Delaware*.
2. Whether Hutchins was entitled to qualified immunity on the individual-capacity § 1983 claim based on the reconstructed warrant affidavit.
3. Whether Mysz plausibly alleged a retaliatory arrest or prosecution claim based on her speech under *Nieves v. Bartlett*.
4. Whether Mysz plausibly alleged malicious prosecution under Arkansas law.
5. Whether Mysz plausibly alleged abuse of process under Arkansas law.
6. Whether the official-capacity claims plausibly alleged municipal liability under *Monell*.
7. Whether Mysz's constitutional challenge to Arkansas's immunity statute remained justiciable.

HOLDINGS

1. The official-capacity claims against Hutchins were claims against the City of Cherokee Village, but they failed because Mysz did not plead facts showing that a municipal policy or custom was the moving force behind her arrest.
2. Hutchins was entitled to qualified immunity because, after removing the alleged false bank-record information from the affidavit, the remaining facts still established probable cause to arrest Mysz.
3. Mysz's retaliatory free-speech claim failed because the reconstructed affidavit established probable cause and she alleged no otherwise similarly situated non-speakers.
4. Mysz failed to state a malicious-prosecution claim because lack of probable cause is an essential element and she did not plausibly allege that the reconstructed affidavit lacked probable cause.
5. Mysz failed to state an abuse-of-process claim because the pleaded facts indicated that Hutchins was allegedly punishing her rather than attempting to extort or coerce her.
6. Mysz's motion to declare Arkansas's immunity statute unconstitutional was denied as moot because the court did not need to resolve the challenge to decide Hutchins's motion to dismiss.

FACTUAL BACKGROUND

Mysz was arrested and detained after allegedly interfering with her grandson's custody or visitation arrangement. She alleged that Officer Hutchins knowingly included false statements about bank records and family residence in the warrant affidavit because she had accused him of corruption and he threatened to destroy her life. The affidavit also described her family's missed custody exchange, moves among states, refusal to initiate a missing-person report, sale of her Arkansas home, and changes to her telephone number. After reconstructing the affidavit without the alleged falsehoods, the court concluded that probable cause still existed.

PROCEDURAL HISTORY

Mysch sued Officer Hutchins under 42 U.S.C. § 1983 for alleged First and Fourth Amendment violations and asserted analogous Arkansas constitutional claims, Arkansas Civil Rights Act claims, abuse of process, and malicious prosecution. Hutchins moved to dismiss, asserting qualified immunity and other grounds. The court certified Mysch's constitutional challenge to the Arkansas Attorney General, who did not intervene. The court granted the motion to dismiss and denied the constitutional challenge as moot.

DISPOSITION

dismissed

CASES CITED

- Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)
- Enervations, Inc. v. Minnesota Mining & Manufacturing Co., 380 F.3d 1066, 1069 (8th Cir. 2004)
- McCullough v. University of Arkansas for Medical Sciences, 559 F.3d 855, 865 (8th Cir. 2009)
- Glasper v. City of Hughes, 269 F. Supp. 3d 875, 887 (E.D. Ark. 2017)
- Veatch v. Bartels Lutheran Home, 627 F.3d 1254, 1257 (8th Cir. 2010)
- Monell v. New York City Department of Social Services, 436 U.S. 658, 694 (1978)
- Connick v. Thompson, 563 U.S. 51, 62 (2011)
- Hunter v. Namanny, 219 F.3d 825, 829 (8th Cir. 2000)
- D.C. v. Wesby, 583 U.S. 48, 57 (2018)
- Franks v. Delaware, 438 U.S. 154 (1978)
- Nieves v. Bartlett, 587 U.S. 391, 401-08 (2019)
- Wal-Mart Stores, Inc. v. Binns, 341 Ark. 157, 163, 15 S.W.3d 320, 324 (2000)
- South Arkansas Petroleum Co. v. Schiesser, 343 Ark. 492, 501, 36 S.W.3d 317, 323 (2001)

OPINION

IN THE UNITED STATES DISTRICT COURT EASTERN DISTRICT OF ARKANSAS
NORTHERN DIVISION MELISSA MYSCH PLAINTIFF No. 3:25-cv-128-DPM JOHN
HUTCHINS, in his individual and official capacities as an officer for the City of Cherokee Village,
Arkansas DEFENDANT ORDER Melissa Mysch was arrested and detained for interfering with
her grandson's custody arrangement. She says that police officer John Hutchins lied on the warrant
affidavit that led to her arrest.

Mysch says he did so because she accused him of corruption, and he vowed to “destroy [her] life.”
Doc. 7at 2. She has sued Officer Hutchins for violations of the First and Fourth Amendments and
analogous provisions in the Arkansas Constitution, the Arkansas Civil Rights Act, abuse of
process, and malicious prosecution. ARK. CONST. art. IL, 8§ 6 & 15; Ark. Code Ann. § 16-123-
105.

Officer Hutchins moves to dismiss, arguing immunity and other grounds. In response, Mysch questioned the constitutionality of the Arkansas immunity statute, Ark. Code. Ann. § 21-9-301. The Court certified the challenge to the Attorney General of Arkansas. Doc. 18.

The Attorney General has not intervened to defend the statute. In ruling on Officer Hutchins's motion, the Court takes all facts alleged by Mysch as true. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). It will, however, consider the warrant affidavit that Officer Hutchins included with his motion to dismiss. It's embraced by Mysch's complaint. *Enervations, Inc. v. Minnesota Mining & Manufacturing Co.*, 380 F.3d 1066, 1069 (8th Cir.

2004). The Court analyzes Mysch's federal claims in step with her state Constitution and ACRA claims. *McCullough v. University of Arkansas for Medical Sciences*, 559 F.3d 855, 865 (8th Cir. 2009) (freedom of speech); *Glasper v. City of Hughes*, 269 F. Supp. 3d 875, 887 (E.D. Ark. 2017) (freedom from seizure).

First, Mysch's claims against Officer Hutchins in his official capacity fall short. They're really claims against Cherokee Village. *Veatch v. Bartels Lutheran Home*, 627 F.3d 1254, 1257 (8th Cir. 2010). But she has alleged no facts about a policy or custom that was the moving force behind her arrest. *Monell v. New York City Department of Social Services*, 436 U.S. 658, 694 (1978).

She hasn't pleaded facts showing a pattern of Officer Hutchins, or other officers, lying on warrant affidavits, either. *Connick v. Thompson*, 563 U.S. 51, 62 (2011). Next are Mysch's individual capacity claims. She says that Officer Hutchins's arrest warrant was no good, lacking in probable cause, because he lied about bank records in his requesting affidavit.

Officer Hutchins said Mysch allowed her daughter to access her bank -2- accounts, had a duplicate ATM card made for her daughter, and bank records indicated that Mysch, her daughter, and her grandson were residing in Texas—none of which was true. Doc. 7 at 3. Officer Hutchins responds by arguing qualified immunity from § 1983 liability. He's entitled to it so long as the warrant affidavit, reconstructed without the alleged lies, would still provide probable cause to arrest Mysch.

Hunter v. Namanny, 219 F.3d 825, 829 (8th Cir. 2000). "Probable cause is not a high bar." *D.C. v. Wesby*, 583 U.S. 48, 57 (2018) (quotations omitted). Officer Hutchins swore to more than the bank record evidence. His affidavit says: e Mysch had been living with her daughter in Arkansas; e Her daughter missed her custody exchange and hadn't been heard from since; e Mysch set up a forwarding post office box for herself and her daughter in Missouri; e When officers investigated, she told the police that her daughter and grandson had moved to Missouri, but she refused to initiate a missing-persons report; e Mysch sold her home in Arkansas and moved to North Carolina; and e Mysch changed her phone number several times after the missed custody exchange, using friends' phone numbers that weren't registered to her. -3- Doc.

10 at 2-3. Without the false information about bank records, the reconstructed affidavit still establishes probable cause that Mysch interfered with her grandson's visitation. Compare *Hunter*, 219 F.3d at 829; Ark. Code Ann. § 5-26-501(a). Officer Hutchins is therefore entitled to qualified immunity on Mysch's claim under *Franks v. Delaware*, 438 U.S. 154 (1978).

For these same reasons, her retaliatory free-speech claim fails. Again, the Court takes the facts in the light most favorable to Mysch. Officer Hutchins's reconstructed warrant affidavit created probable cause. She alleges no "otherwise similarly situated" non-speakers. All this defeats the plausibility of her *Nieves* claim. *Nieves v. Bartlett*, 587 U.S. 391, 401-08 (2019).

Mysch's malicious prosecution claim also fails. Lack of probable cause is an essential element of this tort. *Wal-Mart Stores, Inc. v. Binns*, 341 Ark. 157, 163, 15 S.W.3d 320, 324 (2000). Mysch hasn't plausibly alleged that Officer Hutchins's reconstructed warrant affidavit provided no probable cause.

Finally, her abuse of process claim fails, too. The parties agree on the elements. *South Arkansas Petroleum Co. v. Schiesser*, 343 Ark. 492, 501, 36 S.W.3d 317, 323 (2001). Extortion or coercion is this tort's core. *Ibid.* When Mysch complained to Officer Hutchins about the quality of his investigation, he threatened to "destroy [her] life." He then called Texas authorities and told them to keep her detained, even after a Texas -4- judge had ordered her released.

Doc. 7 at 2-3. Based on the pleaded facts, Officer Hutchins wasn't trying to extort or coerce Mysch—he was punishing her, following through on his promise to destroy her life. Officer Hutchins's motion to dismiss, Doc. 9, is granted. Mysch's motion to declare Arkansas's immunity _ statute unconstitutional, Doc. 11, is denied as moot.

The Court need not, and does not, resolve that challenge in this case. So Ordered. D.P. Marshall Jr.
United States District Judge — 28 Fowmy 202 -5-