

UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

Warnick v. Cooley

Warnick v. Cooley, 895 F.3d 746 (10th Cir. 2018) · No. No. 17-4065 · Decided July 9, 2018

SUMMARY

A § 1983 malicious prosecution claim against prosecutors was barred by absolute prosecutorial immunity for the decision to file charges, even if made without probable cause. The Tenth Circuit affirmed dismissal of the plaintiff’s claims because the complaint failed to plead specific factual allegations of evidence fabrication or its use by the prosecutors and investigators, as required under *Iqbal* and *Twombly*, and the § 1985 conspiracy claim failed for lack of class-based discriminatory animus. The district court did not abuse its discretion in denying leave to amend because the plaintiff did not file a proper motion or proposed amended complaint, and had already amended once without curing deficiencies.

CASE DETAILS

COURT	United States Court of Appeals for the Tenth Circuit
WRITING FOR THE COURT	Tymkovich; Hartz; Lucero
JURISDICTION	Federal
DECIDED	July 9, 2018
DOCKET	No. 17-4065
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from the United States District Court for the District of Utah, grant of motion to dismiss with prejudice.
STANDARD OF REVIEW	De novo for dismissal under Rule 12(b)(6); abuse of discretion for denial of leave to amend.
PRECEDENTIAL VALUE	Published
PARTIES	Silvan Warnick v. Bradford Cooley, Robin Wilkins, Ethan Rampton, Mark Knighton, Jeffrey Hall

TOPICS

- civil rights
- qualified immunity
- motions to dismiss
- pleadings
- standard of review
- appellate procedure
- government liability

PRACTICE AREAS

Civil Rights

Appellate Procedure

Government Liability

QUESTIONS PRESENTED

1. Whether the district court erred in dismissing the § 1983 malicious prosecution claim against prosecutors based on absolute immunity.
2. Whether the complaint stated a claim for evidence fabrication against prosecutors and investigators.
3. Whether the § 1985 conspiracy claim was properly dismissed for lack of class-based discrimination.
4. Whether the district court abused its discretion in denying Warnick leave to amend his complaint.

HOLDINGS

1. Prosecutors are entitled to absolute immunity for their decisions to prosecute, including filing charges, regardless of the existence of probable cause.
2. Warnick failed to plead sufficient facts to state a plausible claim for evidence fabrication because he did not specify what false evidence was fabricated or how it was used against him.
3. The § 1985(3) claim fails because Warnick did not allege any racial or class-based discriminatory animus, as required by *Griffin v. Breckenridge*.
4. The district court did not abuse its discretion in denying leave to amend because Warnick failed to file a proper motion, did not provide a proposed amended complaint, and had already amended once without curing deficiencies.

KEY QUOTATIONS

“Prosecutors are entitled to absolute immunity for anything they do in their roles as advocates, including their decisions to prosecute.” (at 8)

“Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements do not count as well-pleaded facts.” (at 7)

“If an officer (or investigating prosecutor) fabricates evidence and puts that fabricated evidence in a drawer, making no further use of it, then the officer has not violated due process.” (at 12)

“Prosecutors are entitled to absolute immunity for the malicious prosecution of someone whom they lacked probable cause to indict.” (at 9)

FACTUAL BACKGROUND

Silvan Warnick served as a constable in Salt Lake County. His deputy, Daniel Herboldsheimer, filed an incident report that Warnick believed did not comply with county policy. Herboldsheimer then contacted the county attorney's office and falsely claimed that Warnick had instructed him to falsify the report. Prosecutors and investigators investigated the complaint and twice brought charges for witness and evidence tampering against Warnick. Both sets of charges were dismissed for lack of probable cause. Warnick lost his position as constable and suffered reputational harm.

PROCEDURAL HISTORY

Warnick sued defendants in federal district court for malicious prosecution under § 1983, conspiracy, and state law claims. Defendants moved to dismiss. Warnick filed an amended complaint without leave of court, which the court allowed to stand. The magistrate judge recommended dismissal, and the district court adopted the recommendation, dismissing all claims with prejudice. Warnick appealed.

DISPOSITION

affirmed

CASES CITED

- *Brown v. Montoya*, 662 F.3d 1152 (10th Cir. 2011)
- *Colby v. Herrick*, 849 F.3d 1273 (10th Cir. 2017)
- *Ashcroft v. Iqbal*, 556 U.S. 662 (2009)
- *Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)
- *Conley v. Gibson*, 355 U.S. 41 (1957)
- *Caplinger v. Medtronic, Inc.*, 784 F.3d 1335 (10th Cir. 2015)
- *Nielander v. Bd. of Cty. Comm'rs*, 582 F.3d 1155 (10th Cir. 2009)
- *Snell v. Tunnell*, 920 F.2d 673 (10th Cir. 1990)
- *Buckley v. Fitzsimmons*, 509 U.S. 259 (1993)
- *Broom v. Bogan*, 320 F.3d 1023 (9th Cir. 2003)
- *Hill v. City of New York*, 45 F.3d 653 (2d Cir. 1995)
- *Pierce v. Gilchrist*, 359 F.3d 1279 (10th Cir. 2004)
- *Robbins v. Oklahoma*, 519 F.3d 1242 (10th Cir. 2008)
- *Kan. Penn Gaming, LLC v. Collins*, 656 F.3d 1210 (10th Cir. 2011)
- *Bianchi v. McQueen*, 818 F.3d 309 (7th Cir. 2016)
- *Whitlock v. Brueggermann*, 682 F.3d 567 (7th Cir. 2012)
- *Advantageous Cmty. Servs., LLC v. King*, No. 1:17-CV-00525-LF-KK, 2018 WL 1415184 (D.N.M. Mar. 21, 2018)
- *United States v. Bagley*, 473 U.S. 667 (1985)
- *Becker v. Kroll*, 494 F.3d 904 (10th Cir. 2007)
- *Tilton v. Richardson*, 6 F.3d 683 (10th Cir. 1993)
- *Griffin v. Breckenridge*, 403 U.S. 88 (1971)
- *Adler v. Wal-Mart Stores, Inc.*, 144 F.3d 664 (10th Cir. 1998)
- *United States v. Fisher*, 805 F.3d 982 (10th Cir. 2015)
- *BV Jordanelle, LLC v. Old Republic Nat'l Title Ins. Co.*, 830 F.3d 1195 (10th Cir. 2016)
- *Pallottino v. City of Rio Rancho*, 31 F.3d 1023 (10th Cir. 1994)
- *Minter v. Prime Equip. Co.*, 451 F.3d 1196 (10th Cir. 2006)

- Hardin v. Manitowoc-Forsythe Corp., 691 F.2d 449 (10th Cir. 1982)
- Frank v. U.S. West, Inc., 3 F.3d 1357 (10th Cir. 1993)
- Duncan v. Manager, Dep't of Safety, 397 F.3d 1300 (10th Cir. 2005)
- Garman v. Campbell Cnty. Sch. Dist. No. 1, 630 F.3d 977 (10th Cir. 2010)
- Ledbetter v. City of Topeka, 318 F.3d 1183 (10th Cir. 2003)

CITED IN

- Warnick v. Cooley, Warnick v. Cooley, 895 F.3d 746, 755 (10th Cir. 2018)
- Warnick v. Cooley, Warnick v. Cooley, 895 F.3d 746 (10th Cir. 2018)
- Warnick v. Cooley, Warnick v. Cooley, 895 F.3d 746, 751 (10th Cir. 2018)
- Warnick v. Cooley, Warnick v. Cooley, 895 F.3d 746, 751 (10th Cir. 2018)
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- Warnick v. Cooley, Warnick v. Cooley, 895 F.3d 746, 754-55 (10th Cir. 2018)