NOT RECOMMENDED FOR PUBLICATION

No. 19-5548

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Jan 04, 2022
DEBORAH S. HUNT, Clerk

ALI AL-MAQABLH, Plaintiff-Appellant, v. CRYSTAL L. HEINZ, Individually, and in her official capacity as the County Attorney of Trimble County, Kentucky, et al., Defendants-Appellees.	)	ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF KENTUCKY

O R D E R

Before: SUTTON, Chief Judge; ROGERS and GRIFFIN, Circuit Judges.

Ali Al-Maqablh, a Kentucky resident represented by counsel, appeals the district court's dismissal of his civil action against various state and county prosecutors and police officers as well as the mother of his minor child. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

Maqablh's suit concerned what he believes to be trumped-up criminal charges filed against him for harassment and falsely reporting an incident after he called the police three times to request welfare checks on the child he has with Lindsey Jo Alley. He asserted a host of claims, including that the defendants: retaliated against him and violated his free-speech rights by filing false criminal charges against him; engaged in abuse of process and malicious prosecution; violated 42 U.S.C. § 1985 by conspiring to deter him from challenging the actions of the state and county defendants and by conspiring to decline to investigate his administrative complaints; violated several federal criminal laws—18 U.S.C. §§ 1341, 1342, and 1349—by impersonating him and intercepting his mail; violated Kentucky Revised Statutes § 600.020 by charging him with falsely

reporting an incident of child abuse; conspired to subject him to three malicious prosecutions; unlawfully used a federal administrative subpoena to harass his alma mater, the University of Louisville, in an attempt to obtain his academic records; and improperly enforced Kentucky Revised Statues §§ 519.040 and 525.080, governing the reporting of child injuries, because the statutes are void for vagueness. He sought an order directing the state bar to investigate and suspend the prosecutor's law license and another order directing various law-enforcement agencies to investigate and prosecute the defendants. Maqablh also sought declaratory judgments that his rights were violated and that the above Kentucky statutes are unconstitutionally vague. He asked for injunctions against the various defendants. And he sought damages, costs, and fees.

The district court screened the complaint because Maqablh had filed suit in forma pauperis, *see* 28 U.S.C. § 1915(e), and the court dismissed several claims: his claims under the federal criminal statutes, because they do not provide a private right of action; his § 1985 claims as untimely and because his allegations were too conclusory; his § 1983 claims against the prosecutors, because they are protected by prosecutorial immunity, and against Alley, because she is not a state actor; his claim alleging the unlawful use of a subpoena against the University of Louisville, because he lacked standing to raise a claim for the school; his claim under Kentucky Revised Statutes § 600.020, because that statute only contains definitions for the State's juvenile code; some of his malicious-prosecution claims, because they are time-barred; his abuse-of-process claims, because they are untimely and because he did not allege that the defendants obtained warrants to gain a collateral advantage outside the criminal proceeding, as required by state law; and his fraud claims, because he did not allege an injury. In all, the district court determined that Maqablh could proceed with his malicious-prosecution claims against Kentucky State Trooper James Phelps and against Alley and his claims that Kentucky Revised Statues §§ 519.040 and 525.080 are void for vagueness. *Maqablh v. Heinz*, No. 3:16-CV-289-JHM, 2016 WL 7192124, at *8 (W.D. Ky. Dec. 12, 2016). On motions by the defendants, the district court then dismissed Maqablh's vagueness claims, *Al Maqablh v. Heinz*, No. 3:16-CV-00289-JHM, 2017 WL 1788666, at *5 (W.D. Ky. May 4, 2017), as well as claims that he presented in his amended complaint, including for racial discrimination and for conspiracy under 42 U.S.C.

§§ 1985 and 1986, *Al Maqablh v. Heinz*, No. 3:16-CV-289-JHM, 2018 WL 4390744, at *4 (W.D. Ky. Sept. 14, 2018). Following discovery, Alley and Phelps moved for summary judgment on Maqablh's remaining claims for malicious prosecution, and the district court granted their motion. *Al Maqablh v. Heinz*, No. 3:16-CV-289-JHM, 2019 WL 1607534, at *3 (W.D. Ky. Apr. 15, 2019).

On appeal, Maqablh argues that the district court erred in granting summary judgment on his federal and state claims for malicious prosecution, in rejecting his claims that the Kentucky criminal laws he was charged with violating are unconstitutionally vague and overbroad, and in dismissing his federal-civil-rights claims under 42 U.S.C. §§ 1983 and 1985 and his state-law claims for malicious prosecution, abuse of due process, and fraud. By failing to raise other arguments on appeal, Maqablh has forfeited their review. *See Keene Grp., Inc. v. City of Cincinnati*, 998 F.3d 306, 317 (6th Cir. 2021).

We review de novo a district court's dismissal of a claim on screening, *see Small v. Brock*, 963 F.3d 539, 540 (6th Cir. 2020), on a motion to dismiss, *see Daunt v. Benson*, 999 F.3d 299, 307 (6th Cir. 2021), and on summary judgment, *see Johnson v. Ford Motor Co.*, 13 F.4th 493, 502 (6th Cir. 2021). To avoid dismissal at screening or on a motion under Federal Rule of Civil Procedure 12(b)(6), "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) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). Summary judgment is appropriate when "the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). In resolving a summary-judgment motion, we view the evidence in the light most favorable to the non-moving party. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

Maqablh first argues that the district court erroneously granted summary judgment on his federal and state malicious-prosecution claims against Kentucky State Trooper James Phelps and Alley. The district court held that Maqablh's claims failed because he did not satisfy the requirement, under both federal and state law, that the criminal proceedings were resolved in his favor. *See Hartman v. Thompson*, 931 F.3d 471, 485 (6th Cir. 2019); *Martin v. O'Daniel*, 507 S.W.3d 1, 11 (Ky. 2016). The court cited *Ohnemus v. Thompson*, 594 F. App'x 864, 867 (6th Cir.

2014), for the proposition that, "[i]n order for a termination of proceedings to be favorable to the accused, the dismissal must be one-sided and not the result of any settlement or compromise." The district court also cited an analogous rule from a Kentucky case. *See Broaddus v. Campbell*, 911 S.W.2d 281, 284 (Ky. Ct. App. 1995) (holding that the plaintiff had not met the favorable-termination element because "[t]he dismissal was not the unilateral act of the prosecutor; [he] gave up something to secure the dismissal of the charges"). Quoting Maqablh's deposition, the district court noted that he and the prosecutor entered "an informal agreement" under which, if he did "not assault Lindsey Alley for three months . . . the charges will be dismissed." *Al Maqablh*, 2019 WL 1607534, at *2. Because the prosecutor "made a deal with [Maqablh] that she would drop the charges against him if he would not assault Alley for the next three months," the district court held that "[t]his was a two-sided compromise," and therefore that Maqablh could not prove a malicious-prosecution claim. *Id*. at *3.

On appeal, Maqablh argues that the district court's reliance on *Ohnemus* was misplaced because there, unlike in his case, the plaintiff had agreed to pay restitution in exchange for dismissal of the charges. That is a difference, but it is not a material one: Maqablh's criminal prosecution still terminated after he had fulfilled his obligations under an agreement with the prosecutor; he did not "demonstrate that his 'dismissal indicates that [he] may be innocent of the charges,' or that a conviction has become 'improbable.'" *Jones v. Clark County*, 959 F.3d 748, 765 (6th Cir. 2020) (quoting *Ohnemus*, 594 F. App'x at 867; Restatement (Second) of Torts § 660). Maqablh contends that he did not enter a compromise with or make any concession to the prosecution in exchange for dismissing the charges, but his own deposition, as quoted above, belies that contention. Maqablh also cites *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), in which the Supreme Court held that to recover damages under § 1983 for an unconstitutional conviction or imprisonment, a plaintiff "must prove that the conviction or sentence has been reversed on direct appeal, expunged by executive order, declared invalid by a state tribunal authorized to make such determination, or called into question by a federal court's issuance of a writ of habeas corpus." Maqablh noted that the charges against him were expunged within six months of being filed. But as the district court pointed out, *Heck* involved a plaintiff convicted of a crime, not one, like

Maqablh, who was merely charged. Maqablh still had to satisfy the favorable-termination requirement. The fact that the charges were dismissed pursuant to an agreement with the prosecutor confirms that he did not.

Maqablh next argues that the district court erred in dismissing his claims that the two Kentucky criminal laws he was charged with violating are unconstitutionally vague and overbroad: Kentucky Revised Statute § 519.040, which criminalizes falsely reporting an incident; and section 525.080, which criminalizes making harassing communications. "As generally stated, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and in a manner that does not encourage arbitrary and discriminatory enforcement." *Gonzales v. Carhart*, 550 U.S. 124, 148-49 (2007) (quoting *Kolender v. Lawson*, 461 U.S. 352, 357 (1983)). Under the "First Amendment overbreadth doctrine, a statute is facially invalid if it prohibits a substantial amount of protected speech." *United States v. Williams*, 553 U.S. 285, 292 (2008).

On Maqablh's vagueness argument, the district court held that both Kentucky statutes provided "reasonable notice of what conduct is prohibited" because they contain a scienter requirement: a person is guilty of harassing communications only if he has the "intent to intimidate, harass, annoy, or alarm another person"; while "[a] person is guilty of falsely reporting an incident when he . . . [k]nowingly gives false information to any law enforcement officer with intent to implicate another." *Al Maqablh*, 2017 WL 1788666, at *2-3; Ky. Rev. Stat. §§ 525.080(1), 519.040(1)(d). The Supreme "Court has made clear that scienter requirements alleviate vagueness concerns." *Gonzales*, 550 U.S. at 149. The district court also noted that the statutes use common terms, thus further undermining Maqablh's vagueness arguments.

As for Maqablh's overbreadth claim, the district court determined that the statutes did not criminalize protected speech. The district court held that the harassing-communications law regulates not speech but unprotected conduct—"the manner used to convey the communication," *Al Maqablh*, 2017 WL 1788666, at *3 (quoting *Yates v. Commonwealth*, 753 S.W.2d 874, 876 (Ky. Ct. App. 1988))—and noted that the Kentucky Court of Appeals has long held the harassing-communications statute to be constitutional. *See Yates*, 753 S.W.2d at 876. The district court also

held that the Kentucky statute criminalizing knowingly false reporting to law enforcement plainly does not prohibit constitutionally protected speech. *Al Maqablh*, 2017 WL 1788666, at *5.

Maqablh raises several arguments about the district court's ruling on these issues, but none is persuasive. He first claims that section 525.080 is unconstitutional because it criminalizes anonymous speech, citing *McIntyre v. Ohio Elections Commission*, 514 U.S. 334, 342-43 (1995). But that case involved political speech and did not protect anonymity for its own sake. In any event, the harassing-communications statute does not single out anonymity, and Maqablh's argument misses the point that the law criminalizes not constitutional speech but only communications made with the "intent to intimidate, harass, annoy, or alarm another . . . with no purpose of legitimate communication." Ky. Rev. Stat. § 525.080(1).

Maqablh next argues that section 525.080 criminalizes protected conduct and compares the statute to other states' laws that "define harassment with the clarity needed to defeat or at least reduce vagueness and overbreadth concerns." Yet Kentucky defines harassment similarly, *see* Ky. Rev. Stat. § 525.070, and its harassing-communications law also requires that the communication "serves no purpose of legitimate communication," Ky. Rev. Stat. § 525.080; *see also United States v. Dukes*, 779 F. App'x 332, 335 (6th Cir. 2019).

Maqablh also claims that the statute improperly focuses on the perception of the recipient of the communication. He cites several cases from other courts striking down statutes involving similar subject matter. But none of those statutes includes the same requirement as Kentucky's that the offending communication must serve no legitimate purpose. Indeed, in one of the cases that Maqablh cites, *State v. Vaughn*, 366 S.W.3d 513, 521 (Mo. 2012), the Missouri Supreme Court struck down the state's harassment statute as overbroad because it criminalized when a person "[k]nowingly makes repeated unwanted communication to another person," *id.* at 519 (quoting Mo. Ann. Stat. § 565.090.1(5)), but the court upheld a related section that criminalized engaging in certain harassment "without good cause," with the court noting that the section was necessarily limited to unprotected matters "because the exercise of constitutionally protected acts clearly constitutes 'good cause.'" *Id.* at 521 (quoting Mo. Ann. Stat. § 565.090.1(6)).

Similarly, Maqablh argues that the Kentucky harassing-communications law unconstitutionally prohibits speech directed at public officials. Yet, as above, because the law is limited to communications that serve no legitimate purpose, it does not apply to protected speech.

Maqablh next claims that the harassing-communications statute's scienter requirement does not by itself save it from vagueness and overbreadth concerns. But the district court did not hold that the scienter element alone made the statute constitutional. As described above, the district court explained several reasons that the law was not vague or overbroad.

Maqablh also argues that the district court's reliance on *Yates* and its emphasis on "the right to be left alone," 753 S.W.2d at 876, contradicts Supreme Court precedent about the privacy interests implicated by the First Amendment. Yet his argument still does not show that Kentucky's harassing-communications statute criminalizes protected speech or conduct.

Next, Maqablh maintains that the district court did not subject the statute to strict scrutiny, as required by *Reed v. Town of Gilbert*, 576 U.S. 155 (2015). But that standard applies only to government regulation of content-based speech. *Id*. at 163-64. Given that section 525.080 does not "draw[] distinctions based on the message a speaker conveys," *id*. at 163, the standard was inapplicable.

Maqablh further argues that the district court ignored his as-applied challenge to section 525.080. He cites paragraph 44 of his original complaint, in which he claimed that he was falsely arrested for violating that statute and released on bail as long as he did not contact the child or her mother. He does not develop this supposed as-applied challenge, however, either in his district-court pleadings or on appeal, and so the district court did not err in failing to discern that he was raising such a claim.

Maqablh likewise claims that the district court failed to address his as-applied challenges to section 519.040, Kentucky's false-reporting statute. He maintains that his "Complaint gives a full account of the claims under that statute that can be easily understood as an as-applied set of challenges." He recounts these putative claims in his appellate brief, but none relates to an as-applied challenge to the statute; instead, Maqablh alleged that various defendants concocted false charges against him "knowing that he had not been a part of any alleged incidents." He maintains

that he was "arbitrarily charged with a crime under KRS 519.040," but his pleadings do not assert that the statute criminalized his constitutionally protected speech in this instance; rather, Maqablh's claim is that the defendants chose to charge him under that statute because they could not charge him under another. Again, Maqablh's pleadings do "not contain any factual allegation sufficient to plausibly suggest" that he was raising an as-applied challenge to the false-reporting statute. *Iqbal*, 556 U.S. at 683.

Maqablh also argues that section 519.040 is unconstitutionally vague because it can be used arbitrarily, citing *City of Chicago v. Morales*, 527 U.S. 41, 56 (1999). But, as explained above, the statute includes a scienter requirement—unlike the law in *Morales*, *see id*. at 55—which alleviates vagueness problems, and Maqablh has not alleged how the statute, which proscribes making knowingly false reports to law enforcement, "encompass[es] harmless conduct," *id*. at 63, or "affords too much discretion to the police and too little notice to citizens," *id*. at 64.

The rest of Maqablh's appellate brief concerns matters that the district court dismissed at the screening stage. He argues that the court erred in dismissing his claims under 42 U.S.C. § 1985, the federal-civil-rights statute concerning conspiracies, because he failed to sufficiently allege that the defendants discriminated against him because of his membership in a protected class. *See Maqablh*, 2016 WL 7192124, at *4. He notes that the district court correctly understood him to be raising a claim under subsection (2) of the statute, which provides a private right of action against people who, among other things, "conspire for the purpose of impeding, hindering, obstructing, or defeating . . . the due course of justice . . . with intent to deny to any citizen the equal protection of the laws." Maqablh maintains that the district court misconstrued the statute to apply to only class- or race-based discrimination. But that is this court's interpretation too, *see Alexander v. Rosen*, 804 F.3d 1203, 1207-08 (6th Cir. 2015), and therefore the district court had to abide by it, as do we, *see Wright v. Spaulding*, 939 F.3d 695, 700 (6th Cir. 2019). Maqablh also argues that the district court erred in holding that his allegations of a conspiracy were conclusory, but his failure to allege class- or race-based discrimination is enough to support the dismissal of his § 1985 claims.

Maqablh next argues that the district court erroneously dismissed his § 1983 claims based on prosecutorial immunity. He claimed that the defendants—Trimble County Attorneys Crystal L. Heinz and Kim Vittitow—were engaged in non-prosecutorial tasks and thus are not shielded by that immunity. Yet the only other task he cites is that they also "administer[] the enforcement of child support." It is unclear how those responsibilities relate to his claims, and, in any event, he does not argue such claims on appeal. Maqablh also maintains that prosecutorial immunity does not apply because he sued the defendants in their individual capacities. But he is mistaken: prosecutorial immunity applies only to individual-capacity claims, while a claim for damages against the defendants in their official capacities would be barred by Eleventh Amendment immunity. *See Cady v. Arenac County*, 574 F.3d 334, 342 (6th Cir. 2009). Maqablh further argues that the defendants had the burden of showing that they were immune and that the district court improperly shifted that burden by dismissing the claims at screening. But the statute authorizing plaintiffs to proceed in forma pauperis required the district court to "dismiss the case at any time if the court determines that . . . the action . . . seeks monetary relief against a defendant who is immune from such relief." 28 U.S.C. § 1915(e)(2)(B)(iii).

Maqablh makes the same individual-capacity argument above about the dismissal of his state malicious-prosecution claim against Heinz. But, as before, Maqablh misunderstands the issue: under Kentucky law, "so long as a prosecutor acts within the scope of the duties imposed by law," prosecutorial immunity applies. *McCollum v. Garrett*, 880 S.W.2d 530, 534 (Ky. 1994).

Maqablh next argues that the district court incorrectly dismissed his state-law abuse-of-process claim because he failed to allege that the defendants used "the process to secure a collateral advantage outside the criminal proceeding." *Maqablh*, 2016 WL 7192124, at *8 (quoting *Sprint Commc'ns Co., L.P. v. Leggett*, 307 S.W.3d 109, 114 (Ky. 2010)). Maqablh maintains that his pleadings alleged that the defendants made "a threat of using due process to hinder action in the court of law," and that they "threatened to use the legal process against Maqablh to accomplish a purpose for which that process is not designated, [which] satisfies the element of alleging an act of accomplishing a 'collateral advantage.'" But Maqablh offers no authority to support that latter argument, nor does he show that the former argument meets the collateral-advantage requirement.

As the district court put it, despite his reference to "'ulterior motives,' in reality, [Maqablh] is complaining that Defendants 'obtained a criminal summons without a probable cause and is [sic] an abuse of due process,'" *id.*, and "obtaining an indictment alone, even with an ulterior purpose, is not abuse of process," *id*. (quoting *Leggett*, 307 S.W.3d at 114).

Finally, Maqablh argues that the district court erred by dismissing his state-law fraud claim, which alleged that Vittitow and Heinz changed his address and phone number in order to intercept his communications with the government. The district court held that he did not allege an injury, such as a missed deadline or adverse decision. *Id*. Maqablh asserts that he alleged that their actions rendered "moot" his "report to the Kentucky cabinet of health and human services." But that bald statement is insufficient; Maqablh does not explain, either in his pleadings or on appeal, how the defendants' alleged actions "moot[ed]" the proceeding and how he suffered damages from it.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk