FILED
United States Court of Appeals
Tenth Circuit

July 26, 2022

Christopher M. Wolpert
Clerk of Court

PUBLISH

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

WILLIAM FREY,

Plaintiff - Appellant,

v.

THE TOWN OF JACKSON, WYOMING; TETON COUNTY, WYOMING; THE JACKSON HOLE AIRPORT; THE JACKSON HOLE AIRPORT BOARD; NATHAN KARNES, in his individual capacity; JAMES WHALEN, in his individual capacity, and JOHN DOES,

Defendants - Appellees.

INSTITUTE FOR JUSTICE; CATO INSTITUTE; COMPETITIVE ENTERPRISE INSTITUTE; RUTHERFORD INSTITUTE,

Amici Curiae.

Nos. 20-8000 & 20-8021

Appeal from the United States District Court
for the District of Wyoming
(D.C. No. 1:19-CV-00050-NDF)

Marci Anne Crank Bramlet, Robinson Welch Bramlet LLC, Casper, Wyoming, (Seth "Turtle" Johnson, Slow and Steady Law Office, PLLC, Saratoga, Wyoming, and Benjamin N. White, Law Office of Benjamin N. White, LLC, Omaha, Nebraska, on the briefs) for Plaintiff-Appellant William Frey.

Jesse B. Naiman, Senior Assistant Attorney General, Cheyenne, Wyoming, (Theodore R. Racines, Deputy Attorney General, Cheyenne, Wyoming, with him on the brief) for Defendants-Appellees Nathan Karnes and James Whalen in their individual capacities.

J. Kirk McGill, Godfrey Johnson, P.C., Englewood, Colorado, (Brett M. Godfrey, Godfrey Johnson, P.C., Englewood, Colorado, with him on the brief) for Defendants-Appellees the Jackson Hole Airport and the Jackson Hole Airport Board.

John D. Bowers, Bowers Law Firm, PC, Afton, Wyoming, briefed the case for Defendants-Appellees the Town of Jackson, Wyoming, Teton County, Wyoming, and Nathan Karnes and James Whalen in their official capacities.

Jeffrey Redfern, Institute for Justice, Arlington, Virginia, (Clark M. Neily III and Ilya Shapiro, Cato Institute, Washington, District of Columbia, Devin Watkins and Sam Kazman, Competitive Enterprise Institute, Washington, District of Columbia, and John W. Whitehead and Douglas R. McKusick, Rutherford Institute, Charlottesville, Virginia, with him on the brief) for Amici Curiae Institute for Justice, Cato Institute, Competitive Enterprise Institute, and Rutherford Institute.

Before **MATHESON**, **BACHARACH**, and **CARSON**, Circuit Judges.

CARSON, Circuit Judge.

This litigation arose from a contentious encounter at the Jackson Hole Airport in Teton County, Wyoming. As Plaintiff William Frey proceeded through the Transportation Security Administration ("TSA") checkpoint, the body scanner alerted TSA screeners to a potentially suspicious area on Plaintiff's person. When the security screeners informed Plaintiff that they would have to conduct a pat down, Plaintiff became agitated and repeatedly refused to cooperate. So the security screeners summoned a police officer, Defendant Nathan Karnes ("Karnes"), who arrested Plaintiff.

After being transported to the Teton County Jail for booking, Plaintiff continued his noncooperation, refusing to participate in the booking process and demanding that jail officials allow him to have an attorney present. Jail officials detained Plaintiff for about three hours before releasing him. Plaintiff sued under 42 U.S.C. § 1983 and state law, alleging many violations of his rights. The district court dismissed Plaintiff's federal claims under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim, denied leave to file a second amended complaint, declined to exercise supplemental jurisdiction over the remaining state-law claims, awarded attorney's fees to the Municipal Defendants, and sanctioned Plaintiff's attorneys. Plaintiff appealed, arguing that some of his claims should have survived dismissal, that the district court should have permitted him to add some of his new proposed claims in a second amended complaint, and that the district court should not have awarded any attorney's fees. Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

I.

Because this case comes to us at the Rule 12(b)(6) stage, we take the facts from the amended complaint and assume their veracity. See Brown v. Montoya, 662 F.3d 1152, 1162 (10th Cir. 2011). In addition, when a plaintiff attaches a written document to his complaint as an exhibit, we consider it part of the complaint for all purposes, including in a Rule 12(b)(6) dismissal. Fed. R. Civ. P. 10(c); Hall v. Bellmon, 935 F.2d 1106, 1112 (10th Cir. 1991). Consideration of those documents does not convert a Rule 12(b)(6) motion into one for summary judgment. See Gee v.

Pacheco, 627 F.3d 1178, 1186 (10th Cir. 2010); Wright & Miller, 5B Fed. Prac. & Pro. Civ. 3d § 1357 (Apr. 2021 update). Thus, Plaintiff's exhibits to his amended complaint inform our discussion of the facts, but we continue to view all facts in the light most favorable to Plaintiff. See Brown, 662 F.3d at 1162.

Plaintiff lives in Connecticut but maintains a home near the Town of Jackson in Teton County, Wyoming. He usually makes at least two round trips between Connecticut and Jackson each year via the Jackson Hole Airport ("the Airport"), which the Jackson Hole Airport Board ("the Board") governs. In spring 2018, Plaintiff arrived at the Airport to travel home to Connecticut. He began the security screening process and entered the TSA's body scanner, still wearing his belt. Although screening employees saw that Plaintiff kept his belt on, they did not instruct him to remove it before entering the scanner or inform him that they would require further screening if he kept it on.

The body scanner alerted to Plaintiff's groin, upper-inner thigh, and outer thigh, so a screening employee informed Plaintiff that he would have to submit to a pat down of those areas, even though his belt likely caused the alert. Plaintiff refused to cooperate with a pat down and suggested that the screening employees allow him to remove his belt and try again. Though one screening employee suggested that this was viable, the employees determined that standard operating procedure required Plaintiff to submit to the pat down.[1] Screening employees told Plaintiff he could

[1] According to Plaintiff, these "secret" TSA standard operating procedures would have permitted a re-scan, but the amended complaint admits he has never seen

neither leave the airport nor board his flight unless he agreed. Plaintiff replied that he would not consent and that he believed a pat down without his consent would constitute sexual assault.

Because of Plaintiff's continued noncooperation, Officer Karnes, a Jackson police officer posted to the airport that day, came to the scene and told Plaintiff he must submit to the pat down. Plaintiff again refused and asked Karnes to rescan him or permit him to leave. Karnes denied both requests and informed Plaintiff that he would arrest Plaintiff if he continued to refuse the pat down. Plaintiff refused a final time, stating that he would "file a police complaint and . . . start litigation if they try and do this."[2] Karnes, believing that Plaintiff's actions violated the Jackson Municipal Code, arrested Plaintiff.[3] Incident to the arrest, Karnes searched Plaintiff, finding nothing, and then placed Plaintiff in handcuffs and led him to a holding area.

---

them and that he cannot confirm whether the screening employees followed them during the encounter.

[2] Karnes's police report, which Plaintiff attached to his amended complaint, describes Plaintiff's words and actions as more belligerent than Plaintiff's account does.

[3] A Jackson ordinance provides that "[n]o Person shall tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented at the Airport." Jackson, Wyo., Mun. Code § 12.16.170(A). Further, "[n]o Person shall enter or be present in a Restricted Area without complying with the systems, measures, procedures, screening and/or inspection being applied to control access to or presence in such areas." Id. § 12.16.170(B). A violation is a misdemeanor crime and is punishable by a fine of not more than $750.00, probation of not more than two years, or both. Id. §§ 12.16.180; 1.12.010; 1.12.020.

On the way to the holding area, Karnes injured Plaintiff's wrist by use of a "wristlock."[4] Plaintiff claims he did not provoke the wristlock. But Karnes's police-report narrative, attached to the amended complaint, states that on the way to the holding area, Plaintiff began resisting and twisting away from Karnes and that Karnes used a wristlock to regain control of Plaintiff.

Karnes then took Plaintiff to Teton County's jail. While in Karnes's vehicle on the way to the jail, Plaintiff requested to speak with an attorney, and Karnes denied that request. Plaintiff remained at the jail for about three hours total. During that time, he made several requests to speak with an attorney, which officers at the jail denied. Plaintiff claims that officers held him at the jail longer because he requested an attorney and that they told Plaintiff's spouse that was the cause for the delay. Officers kept Plaintiff in a "simple cell" for some time before Karnes and two others "conducted an interrogation" during which they "berated [him] about his behavior and his requests for a lawyer." Plaintiff interpreted this as retaliation for requesting an attorney and refusing to answer questions without one present.

Again, Karnes's police report tells a different, but not entirely contradictory, story. According to the report, "[o]nce at the jail, Plaintiff was extremely uncooperative." During the booking process, "he refused to answer questions, slammed his fists on the counter of the booking room, and demanded to speak to his

[4] Neither the record nor the parties' briefs define "wristlock." According to the Merriam-Webster dictionary, a wristlock is a maneuver by which one is "made helpless by a twisting grip on the wrist." Wristlock, Merriam-Webster.com Dictionary, https://www.merriam-webster.com/dictionary/wristlock.

lawyer." So, "[d]eputies then escorted [Plaintiff] to a cell until he was cooperative and agreed to complete the booking process." Karnes tried to explain and issue a citation for the municipal-code violation, but while he was "speaking with [Plaintiff,] [Plaintiff] continued to yell at and threaten litigation against the [d]eputies and [Karnes]." Eventually, Plaintiff calmed down, agreed to complete the booking process, cooperated in that process, and left the jail. Where necessary, we address the discrepancies between these accounts.

Plaintiff sued, asserting claims under 42 U.S.C. § 1983 and state law. He named as defendants Jackson, Teton County, the Airport, the Board, Karnes, Teton County Sheriff James Whalen, and John Does to include airport screening employees and jail deputies.[5] On Defendants' motions, the district court dismissed the complaint, disposing of some claims with prejudice and some without, and granted Plaintiff leave to amend. Relevant to this appeal, the district court dismissed with prejudice Plaintiff's First Amendment retaliation claim against Karnes arising from the arrest, search, and use of force at the airport. Plaintiff filed an amended complaint but omitted any claims that the district court had dismissed with prejudice.

After Defendants again moved to dismiss, the district court dismissed the entire amended complaint with prejudice and denied Plaintiff's motion for leave to

[5] We adopt the parties' convention for reference to the various defendants. Thus, we refer to Karnes and Whalen in their individual capacities as "the Individual Defendants." We refer to Jackson, Teton County, the Airport, and the Board, along with Karnes and Whalen in their official capacities, as "the Municipal Defendants." And we refer to the Airport and the Board together, without the other Municipal Defendants, as "the Airport Defendants."

amend a second time. At issue from the amended complaint are (1) Plaintiff's First Amendment retaliation claim against Karnes related to the detention at the jail; (2) his municipal-liability claims against Jackson, the Airport, and the Board arising from Karnes's arrest, search, and use of force at the airport; and (3) his municipal-liability claim against Jackson and Teton County for First Amendment retaliation arising from the detention at the jail. These claims and the First Amendment retaliation claims against Karnes from the original complaint are the only claims Plaintiff pursues on appeal, so we do not list the other claims Plaintiff brought below.

After the district court entered judgment for Defendants, Plaintiff filed his first notice of appeal, initiating the first of these two consolidated appeals. Meanwhile, the Municipal Defendants moved the district court for an award of attorney's fees under 42 U.S.C. § 1988 and for sanctions under 28 U.S.C. § 1927. Under § 1988, the district court awarded all fees the Municipal Defendants "incurred in having to respond and move to dismiss Plaintiff's filings that post-date[d]" the order dismissing the original complaint. And under § 1927, the district court directed Plaintiff's attorneys to bear personal responsibility for the "fees incurred . . . in preparing responses only to" Plaintiff's motion for leave to amend a second time. After supplemental submissions and a motion for reconsideration, the district court

assessed $44,575.00 in attorney's fees against Plaintiff and $10,765.00 against Plaintiff's counsel. That order prompted Plaintiff's second notice of appeal.[6]

II.

Case No. 20-8000 presents three issues: whether Plaintiff stated any claims against Karnes not barred by qualified immunity; whether Plaintiff stated any claims against the Municipal Defendants; and whether the district court should have granted Plaintiff a second chance to amend his complaint. And No. 20-8021 presents a fourth issue—whether the district court erred in awarding attorney's fees and sanctions.

We review Rule 12(b)(6) dismissals and qualified-immunity rulings de novo. Gee, 627 F.3d at 1183 (Rule 12(b)(6) dismissals); Sanchez v. Hartley, 810 F.3d 750, 753 (10th Cir. 2016) (qualified-immunity rulings). We review for abuse of discretion a denial of leave to amend, an award of attorney's fees under 42 U.S.C. § 1988, and an award of sanctions under 28 U.S.C. § 1927. Miller *ex rel.* S.M. v. Bd. of Educ. of Albuquerque Pub. Schs., 565 F.3d 1232, 1249 (10th Cir. 2009) (leave to amend); D.A. Osguthorpe Fam. P'ship v. ASC Utah, Inc., 705 F.3d 1223, 1236 (10th Cir. 2013) (fees); Steinert v. Wynn Grp., Inc., 440 F.3d 1214, 1221 (10th Cir. 2006) (sanctions).

[6] The Airport Defendants move under Federal Rule of Appellate Procedure 38 and Tenth Circuit Rule 27 to dismiss both appeals as frivolous. We DENY both motions.

III.

Plaintiff identifies two claims against Karnes that he argues should have survived dismissal: his claim for First Amendment retaliation arising from the arrest, search, and use of a wristlock at the airport and his claim for First Amendment retaliation arising from the prolonged detention at the jail. The district court dismissed both claims with prejudice after deciding that Karnes is entitled to qualified immunity because Plaintiff failed to plausibly plead a First Amendment violation.

When a defendant raises qualified immunity in his motion to dismiss, we engage in a two-part analysis. Brown v. Montoya, 662 F.3d 1152, 1164 (10th Cir. 2011). We must decide (1) whether the plaintiff plausibly alleged a violation of a constitutional right, and (2) if so, whether that right was clearly established at the time of the alleged violation. Id. We may address either prong first to achieve "the fair and efficient disposition of each case." Id. (quoting Pearson v. Callahan, 555 U.S. 223, 242 (2009)). Addressing each claim in turn, we agree with the district court that Plaintiff did not adequately plead a First Amendment violation.

To allege a First Amendment retaliation claim, Plaintiff must plead facts showing that: (1) he engaged in activity the First Amendment protects; (2) Karnes's actions injured him in a way that would "chill a person of ordinary firmness from continuing to engage in that activity"; and (3) his protected activity substantially motivated Karnes's responsive actions. Nielander v. Bd. of Cnty. Comm'rs, 582 F.3d 1155, 1165 (10th Cir. 2009). And when pursuing a claim for retaliatory arrest

against a law-enforcement officer, a plaintiff must plead either that the officer lacked probable cause to arrest or that the officer historically has not arrested similarly situated people who were not engaged in the same type of speech. Nieves v. Bartlett, 139 S. Ct. 1715, 1726–27 (2019); Fenn v. City of Truth or Consequences, 983 F.3d 1143, 1149 (10th Cir. 2020).

We use the Iqbal/Twombly standard to determine whether Plaintiff stated a plausible constitutional violation. Brown, 662 F.3d at 1162–63. Thus, we take Plaintiff's well-pleaded facts as true, view them in the light most favorable to him, and draw all reasonable inferences from the facts in his favor. Id. at 1162. A plausible claim must include facts from which we may reasonably infer the defendant's liability. Id. at 1163 (citation omitted). Plaintiff must nudge the claims across the line from conceivable or speculative to plausible. Id. (citation omitted). Allegations that are "'merely consistent with' a defendant's liability" stop short of that line. Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting Bell Atl. Corp. v. Twombly, 550 U.S. 544, 557 (2007)). And labels, conclusions, formulaic recitations of elements, and naked assertions will not suffice. Id.

An allegation is conclusory if it states an inference without underlying facts or if it lacks any factual enhancement. Brooks v. Mentor Worldwide LLC, 985 F.3d 1272, 1281 (10th Cir. 2021). Conclusory allegations are "not entitled to the assumption of truth." Khalik v. United Air Lines, 671 F.3d 1188, 1193 (10th Cir. 2012). We disregard conclusory statements and look to the remaining factual allegations to determine whether a plaintiff stated a plausible claim. Waller v. City

& Cnty. of Denver, 932 F.3d 1277, 1282 (10th Cir. 2019). We must draw on our experience and common sense in evaluating the plausibility of a claim. Iqbal, 556 U.S. at 679. The degree of specificity needed to establish plausibility and provide fair notice depends on the context and the type of case. Id.; Robbins v. Oklahoma, 519 F.3d 1242, 1248 (10th Cir. 2008).

A.

We look first to Plaintiff's claim that Karnes retaliated against him in violation of the First Amendment when Karnes arrested, searched, and used a wristlock on him at the airport. The district court dismissed this claim, as alleged in Plaintiff's original complaint, with prejudice for failure to plead facts establishing the third element—that Plaintiff's engagement in protected speech caused Karnes's actions.[7] Because we conclude that Karnes had probable cause to arrest Plaintiff on the facts Plaintiff pleaded, we agree. See Fenn, 983 F.3d at 1149.

Plaintiff's original complaint provides essentially the same narrative—minus the attached police report—as the amended complaint, which supported the factual background in section I of this opinion. In his original complaint, Plaintiff alleged that "Karnes arrested [him] for violation of" Jackson Municipal Code

[7] Thus, we look to the original complaint to evaluate whether Plaintiff properly pleaded this claim. Defendants argue that the district court's order dismissing the original complaint was interlocutory and not appealable. But because a final judgment exists in the case, any interlocutory orders and rulings that produced the final judgment merge into the final judgment. McBride v. CITGO Petroleum Corp., 281 F.3d 1099, 1104 (10th Cir. 2002). An appeal from a final judgment permits us to examine all prior orders that helped bring about that final judgment. Id.

§ 12.16.170(A). That section provides that "[n]o Person shall tamper or interfere with, compromise, modify, or attempt to circumvent any security system, measure, or procedure implemented at the Airport." Jackson Municipal Code § 12.16.170(A). According to Plaintiff's original complaint, he repeatedly refused to comply with a mandatory pat down—a measure that the security staff instructed him was necessary based on the Airport's procedures for when a body scanner alerts to potentially suspicious areas on a person.

Probable cause "requires reasonably trustworthy information that would lead a reasonable officer to believe that the person about to be arrested has committed or is about to commit a crime." Cortez v. McCauley, 478 F.3d 1108, 1116 (10th Cir. 2007). The subjective mindset of the arresting officer does not matter—rather, we ask whether the totality of the circumstances, viewed objectively, justifies the arrest. Hinkle v. Beckham Cnty. Bd. of Cnty. Comm'rs, 962 F.3d 1204, 1220 (10th Cir. 2020). Even a minor crime, when committed in the presence of a police officer, makes an arrest constitutionally reasonable. Virginia v. Moore, 553 U.S. 164, 171 (2008). Based on the facts alleged, Karnes had probable cause to believe that Plaintiff was attempting to circumvent the security measures and procedures applicable to him. In fact, Plaintiff pleaded that Karnes witnessed the conduct. Thus, Karnes had a constitutional basis to arrest Plaintiff.

Even so, Plaintiff argues that his claim should survive for three reasons. First, he argues that his allegations overcome the typical requirement that a retaliatory-arrest plaintiff plead an absence of probable cause. A retaliatory-arrest plaintiff need

not show a lack of probable cause if he can show "that he was arrested when otherwise similarly situated individuals not engaged in the same sort of protected speech had not been." Nieves, 139 S. Ct. at 1727. Of course, at the pleading stage, Plaintiff need not prove his case, and we accept any concrete factual allegation as true. See Brown, 662 F.3d at 1162. But Plaintiff's original complaint lacks such an allegation. Plaintiff alleged only that "Karnes, and other peace officers . . . regularly detained, imprisoned, arrested, and/or cited individuals at the [airport]." Plaintiff never alleged that Karnes declined to arrest other individuals, not engaged in the same type of speech as Plaintiff, who refused to submit to pat downs mandated by airport procedure.

Second, Plaintiff argues that he pleaded that (1) the ordinance under which Karnes arrested him is facially overbroad and therefore unenforceable, and (2) Karnes lacked probable cause to arrest him. Overbreadth may work as a defense to prosecution, but it is irrelevant to whether an officer has probable cause to arrest.[8] Mocek v. City of Albuquerque, 813 F.3d 912, 927–28 (10th Cir. 2015) ("[T]he validity of the statute is hardly relevant to the probable cause determination because officers generally may presume that statutes are constitutional until declared otherwise."). And the bare assertion that Karnes lacked probable cause to arrest Plaintiff, without factual development to support it, is a legal conclusion that we

[8] Plaintiff argued below that § 12.16.170(A) is so obviously unconstitutional that Karnes could not have reasonably relied on the presumption of constitutionality. Regardless of the merit of that argument, Plaintiff waived it by not making it before this Court.

disregard. See Khalik, 671 F.3d at 1193; Waller, 932 F.3d at 1282. As discussed above, the allegations in the complaint contradict that legal conclusion, revealing that Karnes had probable cause to arrest Plaintiff.

Finally, Plaintiff says he pleaded that Karnes lacked jurisdiction and authority to arrest him. Plaintiff included an excerpt from the disposition of his criminal case showing that the court dismissed his criminal case because Jackson lacked authority under state law to enforce the ordinance. But this is not an argument that probable cause did not exist. See United States v. Turner, 553 F.3d 1337, 1346 (10th Cir. 2009). As we explained in Turner, whether officers have probable cause to believe a person committed a crime in their presence is the only relevant question for determining the federal constitutionality of an arrest. Id. (citing Moore, 553 U.S. at 178). Whether state law authorizes the arrest is irrelevant to the federal constitutional question because state law does not establish the standard for reasonableness under the Fourth Amendment. Id. Thus, a police officer who arrests someone without jurisdiction under state law does not violate the Constitution if probable cause supports the arrest. Id.

And because Karnes had probable cause to arrest Plaintiff, the law permitted Karnes to search Plaintiff's person incident to that arrest. United States v. Knapp, 917 F.3d 1161, 1165 (10th Cir. 2019). Plaintiff provided no details about the search in his original complaint—he alleged only that the search happened. Plaintiff pleaded that the pat down by the security screeners would have been invasive, but he nowhere described the search Karnes conducted. Even if we inferred that Karnes

conducted a pat down of Plaintiff's groin, searches of an arrestee's person incident to the arrest are categorically reasonable. See id. (citing United States v. Robinson, 414 U.S. 218, 235 (1973)). And without more concrete allegations, the claim that the search was "unnecessarily invasive" is conclusory. See Brooks, 985 F.3d at 1281; Khalik, 671 F.3d at 1193. Plaintiff has not pleaded concrete facts to show that Karnes exceeded the proper scope of a search incident to arrest.

That leaves only Plaintiff's claim that Karnes retaliated against him by applying an unprovoked wristlock. As to that claim, we conclude that Karnes is entitled to qualified immunity because no law clearly establishes that the alleged retaliatory wristlock violated the First Amendment. We use an objective test to determine "whether it would be clear to a reasonable officer that his conduct was unlawful in the situation he confronted." Brown, 662 F.3d at 1164 (quoting Stearns v. Clarkson, 615 F.3d 1278, 1282 (10th Cir. 2010)). Clearly established law can come from a Supreme Court or Tenth Circuit decision "on point," or from the "clearly established weight of authority from other courts." Id. (quoting Stearns, 615 F.3d at 1282). We may not define rights or clearly established law "at a high level of generality." Mglej v. Gardner, 974 F.3d 1151, 1159 (10th Cir. 2020) (quoting Kisela v. Hughes, 138 S. Ct. 1148, 1152 (2018)). Rather, "the clearly established law must be particularized to the facts of the case" so that every reasonable officer would know, beyond debate, that the conduct in question would violate that right. Id. at 1159–60 (internal quotation marks omitted) (quoting Corona

v. Aguilar, 959 F.3d 1278, 1285–86 (10th Cir. 2020)). Plaintiff bears the burden to show the law was clearly established. Id. at 1159. He has not met that burden.[9]

Plaintiff must show that clearly established First Amendment law prohibits the force applied against him under the circumstances. In other words, Plaintiff must show that it was clearly established at the time of the incident that the force Karnes used would "chill a person of ordinary firmness" from engaging in protected speech. In his attempt to do so, Plaintiff cited in his opening brief only one case about retaliatory use of force—Youngblood v. Quails, 308 F. Supp. 3d 1184 (D. Kan. 2018). A single case from a district court does not show the "weight of authority" required to clearly establish law. See Brown, 662 F.3d at 1164.

The authorities cited in Plaintiff's reply brief are similarly unhelpful. In Buck v. City of Albuquerque, 549 F.3d 1269, 1289–91 (10th Cir. 2008), we examined far greater force. In that case, officers deployed teargas and pepper ball rounds; hit suspects with batons; kneed a suspect, pushed him into the pavement, hit his face against a car, and exposed him to teargas while handcuffed; and used their horses as weapons. And Buck dealt with Fourth Amendment claims. Id. We did not have jurisdiction to address whether the use of force could also support a First Amendment retaliation claim. Id. at 1292. Because of the distinguishable facts and different context, Buck did not clearly establish law relevant to the facts here.

[9] We will not reach out to construct an argument on Plaintiff's behalf, as we are under no "obligation to perform that work for [him]" or to "search[] out theories and authorities [he] has not presented for [him]self." Caplinger v. Medtronic, Inc., 784 F.3d 1335, 1342 (10th Cir. 2015).

Similarly, in Mglej, we reviewed whether overtightening a plaintiff's handcuffs was excessive in violation of the Fourth Amendment. 974 F.3d at 1165–70. Like Buck, Mglej did not consider whether the amount of force would chill an ordinary person's exercise of his First Amendment rights—a distinct question. See id. Thus, Plaintiff failed to show that the law clearly establishes that using a wristlock to escort a validly arrested individual violates the First Amendment by chilling the exercise of one's free-speech rights.

B.

Plaintiff also alleged that Karnes retaliated against him in violation of the First Amendment by prolonging his detention in response to Plaintiff's requests to speak to an attorney. The district court similarly dismissed this claim because Plaintiff did not sufficiently plead causation—the third element of a First Amendment retaliation claim. Having reviewed the amended complaint and attached exhibits, we agree with the district court.

Completing an arrest includes taking necessary administrative steps incident to arrest—such as booking the arrestee at the jail. See Maryland v. King, 569 U.S. 435, 449 (2013). Because Plaintiff alleges that his detention during booking—part of his arrest—was retaliatory, he must satisfy the pleading standard for retaliatory-arrest claims. As explained above, pleading the causation element of a retaliatory-arrest claim requires allegations that officers either lacked probable cause or treated Plaintiff differently than similarly situated people who did not engage in the same

speech. See Nieves, 139 S. Ct. at 1726–27. Plaintiff's amended complaint contained sufficient allegations of neither.

Because making an arrest includes briefly detaining the arrestee to book him at the jail, the probable cause supporting the arrest also supports the brief detention. See King, 569 U.S. at 449. Thus, to plead that probable cause did not support his detention at the jail, Plaintiff must allege that the detention no longer constituted "a brief period of detention to take the administrative steps incident to arrest." Id. (quoting Gerstein v. Pugh, 420 U.S. 103, 113–14 (1975)). Plaintiff alleged in his amended complaint that his detention at the jail lasted about three hours. Plaintiff also alleged the following facts about what happened while at the jail:

- Karnes refused Plaintiff's request to speak to an attorney in the car on the way to the jail.
- At the jail, Plaintiff made several requests to speak to an attorney, and jail officials denied those requests.
- Plaintiff refused to answer questions during the booking process.
- Officers told Plaintiff's spouse that they were holding him longer because of his "uncooperative requests for counsel."
- Karnes and other officers put Plaintiff in a cell and berated him for requesting an attorney.
- Karnes and other officers said or implied that Plaintiff's requests for an attorney would lead to prolonged detention.

These allegations reveal that Plaintiff failed to cooperate with the booking process at the jail by refusing to answer jail officials' booking questions. And Plaintiff's allegations on that point are consistent with Officer Karnes's police report, which Plaintiff attached to and made part of his amended complaint. Karnes's police report recounted the following:

- Plaintiff was uncooperative at the jail.

- Plaintiff refused to answer booking questions.
- Plaintiff slammed his fists on the booking-room counter.
- Plaintiff demanded to speak to his lawyer.
- Officers put Plaintiff in a cell until he cooperated.
- Karnes tried to explain and issue a citation, but Plaintiff yelled at Karnes and others.
- Eventually, Plaintiff calmed down and completed the booking process, so jail officials released him.

According to Plaintiff's amended complaint, Plaintiff refused to answer booking questions because he did not have an attorney with him. But the Sixth Amendment right to counsel first attaches after the prosecution initiates formal charges, so it did not apply to Plaintiff during the booking process. Moran v. Burbine, 475 U.S. 412, 431 (1986); United States v. Calhoun, 796 F.3d 1251, 1254 (10th Cir. 2015) (explaining that the right attaches at the transition from investigation to prosecution—in other words, at the time of the "preliminary hearing, indictment, information, or arraignment"). Likewise, the Fifth Amendment right to counsel during custodial interrogations does not extend to "routine booking questions to secure the biographical data necessary to complete booking or pretrial services." See Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990) (plurality opinion); see also Clayton v. Gibson, 199 F.3d 1162, 1172–73 (10th Cir. 1999) (explaining that the booking process and booking questions do not constitute interrogation and therefore do not implicate the Fifth Amendment right to counsel). And while Plaintiff's amended complaint includes a legal conclusion that Officer Karnes "interrogated" him, it offers no specific facts to support that their interaction amounted to a custodial interrogation, such as a description of the nature or content of the

questioning. Plaintiff thus alleged no lawful basis for his refusal to participate in the booking process, and his refusal warranted a brief extension of his detention so officers could complete the process.[10]

Because Plaintiff's allegations reveal that he refused to participate in the booking process, jail officials had an objectively reasonable basis to briefly prolong the process to attempt to secure his compliance.[11] Plaintiff's allegations that officers' retaliatory animus against his speech caused his prolonged detention are by themselves insufficient to state a First Amendment retaliation claim. Even accepting Plaintiff's allegations as true that retaliatory animus motivated officers in whole or in part when they prolonged Plaintiff's detention, probable cause still supported the detention. The probable cause that justified Plaintiff's arrest also supported a brief

[10] We do not suggest that an arrestee's noncooperation with the booking process authorizes jail officials to detain the arrestee indefinitely until he cooperates. See Hallstrom v. Garden City, 991 F.2d 1473, 1481 (9th Cir. 1993) (holding that an arrestee's noncooperation with the booking process did not warrant detaining her for four days with no arraignment by a magistrate). But we are aware of no case in which a court has held that jail officials must give up on booking an arrestee at the first moment an arrestee indicates noncooperation. See id. (distinguishing between a four-day detention without arraignment and "a short delay to allow tempers to cool"). Here, Plaintiff alleged that he was detained for three hours after refusing to participate in the booking process. Even if Plaintiff's detention lasted longer than it would have if Plaintiff had cooperated, we conclude that the minor delay still constituted "a brief period of detention to take the administrative steps incident to arrest." King, 569 U.S. at 449 (quotation omitted).

[11] We do not suggest that a three-hour detention during the booking process is necessarily reasonable in all cases. The appropriateness of the length of detention during booking depends on the circumstances. Here, Plaintiff's allegations reveal that he refused to participate in the booking process, so officers reasonably detained him for three hours to secure his compliance.

period of detention to take administrative steps incident to arrest, such as booking. See King, 569 U.S. at 449. And Plaintiff's amended complaint failed to allege that his three-hour detention was anything other than a brief period of detention necessary to complete the booking process.

Because probable cause supported Plaintiff's detention at the jail following his arrest, his retaliation claim can succeed only if Officer Karnes treated him differently than similarly situated arrestees who did not engage in the same speech. See Nieves, 139 S. Ct. at 1727. In other words, Plaintiff must have alleged that Officer Karnes ordinarily immediately releases arrestees who refuse to participate in the booking process when those arrestees do not express a desire for an attorney. Plaintiff's amended complaint contains no such allegation.

Because Plaintiff failed to allege either that Karnes lacked probable cause to detain him for three hours or that Karnes usually does not detain similarly situated arrestees not engaged in the same speech, Plaintiff failed to state a valid retaliation claim against Karnes. The district court thus properly dismissed Plaintiff's retaliation claim based on the detention at the jail.

IV.

The second issue concerns Plaintiff's claims against the Municipal Defendants under Monell v. Department of Social Services, 436 U.S. 658 (1978). Under § 1983, a plaintiff may sue a municipality or other local governmental body for monetary, declaratory, or injunctive relief. Id. at 690. But municipal liability attaches only when a "policy statement, ordinance, regulation, or decision"—or sometimes an

unofficial custom—causes a constitutional tort. Id. at 690–91. In other words, vicarious liability does not apply to a municipal entity, and such an entity cannot be liable simply because it employs someone who commits a constitutional tort. Id. at 691. To state a claim for municipal liability, a plaintiff must allege (1) a constitutional violation (2) caused by (3) a municipal policy or custom.[12] Bryson v. City of Oklahoma City, 627 F.3d 784, 788 (10th Cir. 2010) (quotation omitted).

Plaintiff argues that two of his municipal-liability claims should have survived dismissal: his claim against Jackson and the Airport arising from Karnes's arrest and search of Plaintiff and a First Amendment retaliation claim against Jackson and Teton County arising from the detention in the jail. The district court dismissed these municipal-liability claims after determining that Defendants did not violate Plaintiff's constitutional rights. Defendants also argue that Plaintiff failed to sufficiently plead a policy or custom and a causal connection between any policy or custom and the alleged constitutional violation. We agree with the district court.

[12] Over time, courts have defined the terms "policy or custom," explaining that municipal liability may arise from "(1) a formal regulation or policy statement; (2) an informal custom amount[ing] to a widespread practice that, although not authorized by written law or express municipal policy, is so permanent and well settled as to constitute a custom or usage with the force of law; (3) the decisions of employees with final policymaking authority; (4) the ratification by such final policymakers of the decisions—and the basis for them—of subordinates to whom authority was delegated subject to these policymakers' review and approval; or (5) the failure to adequately train or supervise employees, so long as that failure results from deliberate indifference to the injuries that may be caused." Bryson v. City of Oklahoma City, 627 F.3d 784, 788 (10th Cir. 2010) (alteration in original) (quotations omitted).

We first address Plaintiff's claim arising from Karnes's arrest and search of Plaintiff at the airport.[13] Plaintiff argues that Jackson and the Airport have instituted policies and engaged in customs that cause illegal arrests and searches, and he tried to allege that those policies or customs caused his arrest and search. Whether Plaintiff pursues a claim under the Fourth Amendment for unlawful seizure or under the First Amendment for retaliatory arrest, both claims fail because probable cause supported Plaintiff's arrest. See supra Section III.A.

If a plaintiff suffered no constitutional violation, he cannot recover simply because some municipal policy might have authorized an officer to violate the Constitution. City of Los Angeles v. Heller, 475 U.S. 796, 799 (1986) (per curiam). The crux of a municipal-liability claim is that a municipal policy or custom caused the plaintiff to suffer a constitutional injury. See Bryson, 627 F.3d at 788 (quoting Hinton v. City of Elwood, 997 F.2d 774, 782 (10th Cir. 1993)). Without a constitutional violation, Plaintiff has suffered no injury for which a municipality can be liable. As explained above, Plaintiff's allegations reveal that Karnes had probable cause to arrest Plaintiff, meaning that the arrest did not violate the First or Fourth Amendments.

Plaintiff also suffered no constitutional violation from Officer Karnes's search of his person incident to the arrest. Even if Plaintiff is correct that Jackson and the Airport have policies authorizing or requiring unconstitutional searches, the only

[13] On appeal, Plaintiff does not pursue municipal liability for Karnes's use of a wristlock.

search Plaintiff experienced was incident to a lawful arrest and therefore constitutional. Plaintiff alleged no constitutional injury.

Finally, Plaintiff argues that the district court should not have dismissed his First Amendment retaliation claim arising from his detention at the Teton County Jail. Plaintiff claims that Jackson and Teton County have a policy or custom of prolonging detention for those who engage in protected speech—specifically, those who request legal counsel. But, as with his claims arising out of the arrest and search, Plaintiff did not plead a First Amendment violation because he failed to allege that probable cause did not support his detention or that jail officials treated him differently than similarly situated arrestees not engaged in the same speech. See supra Section III.B. Thus, Plaintiff alleged no constitutional injury.

V.

Plaintiff also partially challenges the district court's denial of his motion for leave to amend. While Defendants' motions to dismiss the amended complaint were still pending, Plaintiff filed a motion under Federal Rule of Civil Procedure 15(a)(2) for leave to file a second amended complaint and attached his 59-page, proposed amended complaint and 45 pages of exhibits. The proposed amendment added (1) constitutional challenges to Jackson's Municipal Code § 12.16.170 and to 49 C.F.R. § 1540.105; (2) claims for constitutional violations against the Airport Defendants and Individual Defendants; and (3) claims against the TSA and one of its screening supervisors, Martha Preston ("Preston"), for violating Plaintiff's constitutional rights and for abuse of process, false imprisonment, assault, and

battery under state law and the Federal Tort Claims Act ("FTCA"). Concluding that the amendment would be futile because Plaintiff's new claims would be subject to dismissal, the district court denied Plaintiff's motion for leave to amend.

On appeal, Plaintiff challenges the district court's denial of leave to amend only as to his proposed tort claims against the TSA and Preston.[14] First, the district court correctly determined that the proposed claims against the TSA were futile because they would have faced dismissal. A federal agency is never a proper defendant for an FTCA claim. 28 U.S.C. § 2679(a); see Franklin Sav. Corp. v. United States, 180 F.3d 1124, 1142–43 (10th Cir. 1999). Thus, we affirm the district court's denial of Plaintiff's motion for leave to amend to add FTCA claims against the TSA.

As to the proposed tort claims against airport screening supervisor Martha Preston, the district court determined that they too would be futile because Preston is not a proper defendant under the FTCA and because the FTCA retains immunity for intentional torts committed by TSA screeners. But the applicability of the FTCA to

[14] While Plaintiff argues elsewhere in his brief that his other proposed claims were valid, he does so only as part of his argument that we should reverse the district court's award of attorney's fees to the Municipal Defendants because the proposed claims were not frivolous. The section of Plaintiff's brief arguing for reversal of the district court's denial of Plaintiff's motion for leave to amend addresses only Plaintiff's proposed tort claims against the TSA and Preston. Because Plaintiff does not argue that we should reverse the district court's denial of his motion for leave to amend as to any of his other proposed claims, we do not review the district court's decision not to allow Plaintiff to add those claims. See United States v. Abdenbi, 361 F.3d 1282, 1289 (10th Cir. 2004).

the proposed tort claims against Preston is unclear. The FTCA applies only to torts committed by employees of the federal government in the scope of their employment. See 28 U.S.C. § 1346(b)(1). But Plaintiff's proposed second amended complaint ambiguously alleged that Preston is both an employee of the TSA and of the Jackson Hole Airport Board. For example, Plaintiff alleged that Preston "was employed as an acting supervisor for TSA" but also that according to the TSA, the Airport Board employs Preston as an independent contractor for the TSA. Plaintiff then alleged that Preston committed torts against him as "an employee of TSA, the Airport, or both." Given the ambiguity in Plaintiff's allegations and the lack of input from Preston or the United States, whether the FTCA applies to Plaintiff's claims against Preston is unclear.

But we need not resolve whether the FTCA applies to Plaintiff's proposed allegations against Preston because we conclude that Plaintiff's proposed tort claims would be futile regardless. We may affirm the district court on any ground supported by the record, even one not addressed by the district court or presented on appeal. Fields v. City of Tulsa, 753 F.3d 1000, 1015 (10th Cir. 2014) (citation omitted). We conclude that regardless of who employs Preston, Plaintiff's proposed claims would be futile because his allegations fail to plausibly allege that Preston committed any torts against him.

Plaintiff's proposed second amended complaint sought to add tort claims against Preston for assault, false imprisonment, abuse of process, and battery. But Plaintiff's allegations against Preston are vague and amount to nothing more than

insufficient, "unadorned, the-defendant-unlawfully-harmed-me accusation[s]." Iqbal, 556 U.S. at 678 (citation omitted).

For example, as to the assault claim, Plaintiff alleged merely that Preston told him that TSA policy required him to submit to a pat-down and demanded that he consent to the pat-down. Wyoming follows the second restatement in defining tortious assault as an act intending to place another in imminent apprehension of harmful or offensive contact and that causes such imminent apprehension. See Jung-Leonczynska v. Steup, 782 P.2d 578, 583 (Wyo. 1989); Restatement (Second) of Torts § 21 (Am. L. Inst. 1965). Plaintiff's proposed second amended complaint contains no allegation that by informing Plaintiff of TSA policy, Preston intended to place him in "imminent apprehension" of offensive contact or that Plaintiff actually experienced such imminent apprehension. In fact, Plaintiff's allegation that Preston demanded he consent to the pat-down undercuts both elements by suggesting that contact would occur only if Plaintiff consented.

As to the false-imprisonment claim, Plaintiff alleged only that Preston "falsely imprisoned the Plaintiff by detaining the Plaintiff at the security screening checkpoint." This conclusory allegation contains no detail as to what actions Preston allegedly took that resulted in Plaintiff's detention at the checkpoint. Plaintiff's only allegation remotely to that effect is that Preston "instructed [Officer Karnes] to arrest the Plaintiff." But that allegation is also vague and fails to show the causal connection between Preston and the actions of a police officer employed by a separate agency. And regardless, Plaintiff's proposed second amended complaint,

like his amended complaint, fails to allege that probable cause did not support his arrest.

As to the abuse-of-process claim, Plaintiff's only allegation is that Preston "assisted the Town of Jackson in its pursuit of charges." The proposed second amended complaint contains no allegation of any specific actions that reveal what kind of assistance Preston gave or how it constituted the use of improper process with an ulterior motive in a legal proceeding. See Bosler v. Shuck, 714 P.2d 1231, 1234 (Wyo. 1986) (defining tortious abuse of process).

As to the battery claim, Plaintiff alleged only that Preston "instructed" Officer Karnes to conduct a pat-down of Plaintiff and arrest him. Not only is the allegation too vague as to Preston's role in the search and arrest conducted by Karnes—a police officer employed by a different agency—but like Plaintiff's previous allegations, the allegations in the proposed second amended complaint reveal that probable cause supported the arrest and Karnes's search was a lawful search incident to arrest.

Because the tort claims against Preston in Plaintiff's proposed second amended complaint would be subject to dismissal for failure to state a claim, we affirm the district court's denial of Plaintiff's motion for leave to amend.

VI.

Finally, we turn to the last issue, presented in case No. 20-8021. The district court ordered Plaintiff—under 42 U.S.C. § 1988(b)—and his attorneys—under 28 U.S.C. § 1927—to pay for a portion of the Municipal Defendants' attorney's fees. Section 1988(b) provides that a prevailing party may recover "a reasonable attorney's

fee" from the opposing party in some cases. And § 1927 permits a district court to assess attorney's fees against an attorney personally as a sanction when that attorney's conduct caused the opposing party to incur those fees. Plaintiff argues that the district court abused its discretion in making both awards.[15]

A.

We review a district court's award of attorney's fees under 42 U.S.C. § 1988(b) for an abuse of discretion. D.A. Osguthorpe, 705 F.3d at 1236. A district court abuses its discretion when its decision is "arbitrary, capricious, whimsical, or manifestly unreasonable." Att'y Gen. of Okla. v. Tyson Foods, Inc., 565 F.3d 769, 776 (10th Cir. 2009) (quotation omitted). Thus, we will not reverse the award of attorney's fees simply because we find it harsh or because we would have made a different decision; we will reverse only if the award fell "beyond the bounds of the rationally available choices before the district court given the facts and the applicable law in the case." Madron v. Astrue, 646 F.3d 1255, 1257 (10th Cir. 2011) (quotation and brackets omitted).

Under 42 U.S.C. § 1988(b), district courts may award reasonable attorney's fees to the prevailing party in lawsuits brought under 42 U.S.C. § 1983. But when the prevailing party is the defendant, district courts may award attorney's fees only if

[15] Because they were not involved in the motions that led to the awards and did not receive any award, the Individual Defendants filed a notice of non-participation in case No. 20-8021.

"the suit was vexatious, frivolous, or brought to harass or embarrass the defendant." D.A. Osguthorpe, 705 F.3d at 1236 (quoting Hensley v. Eckerhart, 461 U.S. 424, 429 n.2 (1983)). While the district court believed there was some evidence that Plaintiff brought his claims against the Municipal Defendants to embarrass them, the district court ultimately decided that the evidence did not warrant that finding. Instead, the district court awarded attorney's fees because Plaintiff's claims against the Municipal Defendants became frivolous after the court pointed out the deficiencies in those claims in its first order granting in part the Municipal Defendants' motion to dismiss and Plaintiff continued litigating the case against the Municipal Defendants without curing the deficiencies.

A claim is frivolous if it has no arguable basis in law or fact. Neitzke v. Williams, 490 U.S. 319, 325 (1989). A claim can also become frivolous during the litigation if it becomes apparent that the claim lacks any arguable basis in law or fact and the plaintiff continues to litigate the claim anyway. Hughes v. Rowe, 449 U.S. 5, 15 (1980) (per curiam) (citation omitted). The district court dismissed Plaintiff's § 1983 claims against the Municipal Defendants in his original complaint, pointing out that Plaintiff failed to allege a constitutional violation or a municipal policy or custom as required for municipal liability under § 1983. The district court offered Plaintiff a chance to replead, but only if he could plausibly plead that the Municipal Defendants had a policy or custom that caused Plaintiff to suffer a constitutional injury. Despite the district court's clear explanation of the pleading requirements for municipal liability and the court's warning that Plaintiff should amend only if he had

the facts to plead those claims, the district court determined that Plaintiff's amended complaint came nowhere near curing the identified deficiencies. Thus, the district court determined that Plaintiff's claims against the Municipal Defendants became frivolous at that time.

Plaintiff's § 1983 claims against the Municipal Defendants in his amended complaint fell into four categories—his Fourth Amendment claims arising out of Officer Karnes's arrest and search of him, his First Amendment claims arising out of his prolonged detention at the county jail, his Fifth Amendment claims arising from jail officials' refusal to allow him access to an attorney at the jail, and his Fourth Amendment claim arising from the proposed pat-down search by airport security officials that Plaintiff refused to submit to. Regarding the Fourth Amendment claims arising from Officer Karnes's arrest and search of Plaintiff, the district court's order dismissing those claims in the original complaint emphasized that the existence of probable cause defeats any Fourth Amendment claim for unlawful arrest and noted that Plaintiff's own allegations supported that Karnes had probable cause to arrest Plaintiff for violating Jackson Municipal Code 12.16.170. Still, Plaintiff did not even attempt to allege in his amended complaint that Karnes lacked probable cause to believe Plaintiff violated Jackson Municipal Code § 12.16.170 or any other law. Instead, Plaintiff alleged only that the law and policy requiring him to submit to a pat-down search by airport security are unconstitutional. But as the district court discussed in its order dismissing the claim the first time, the constitutionality of a law is generally irrelevant to whether probable cause existed to believe that Plaintiff

violated the law. See Mocek, 813 F.3d at 927–28 (citing Michigan v. DeFillippo, 443 U.S. 31, 38 (1979)).

Plaintiff also asserted a Fourth Amendment claim against the Municipal Defendants arising out of a pat-down search conducted by Karnes at the time of the arrest. Plaintiff alleged that the search violated the Fourth Amendment because it was unreasonable and unsupported by probable cause. But long-established Fourth Amendment doctrine provides that searches of persons incident to a lawful arrest are reasonable under the Fourth Amendment. E.g., United States v. Anchondo, 156 F.3d 1043, 1045 (10th Cir. 1998) (citing Chimel v. California, 395 U.S. 752, 762–63 (1969)). Karnes arrested Plaintiff, and Plaintiff's allegations did not reveal that the arrest was unsupported by probable cause. Thus, Plaintiff had no basis to challenge a pat-down search conducted incident to that arrest.

Furthermore, the principal reason the district court allowed Plaintiff to amend his complaint was to provide him the opportunity to plausibly plead that the Municipal Defendants had an unconstitutional policy or custom. But Plaintiff added no concrete allegations in his amended complaint suggesting an entity-wide policy or custom by any of the Municipal Defendants. Instead, Plaintiff included several statements that he "believe[d] that discovery [would] reveal" such policies or customs. But in Twombly, the seminal case on federal pleading standards, the Supreme Court rejected the idea that a plaintiff may proceed to discovery armed with just a belief that discovery might reveal facts to support his claims. See 550 U.S. at 561–62. A plaintiff must plead concrete facts sufficient "to raise a reasonable

expectation that discovery will reveal evidence" supporting his claims. Id. at 556. Despite the district court's reminding Plaintiff of this standard before granting leave to amend, Plaintiff added only allegations of his belief that he could draft a proper complaint after discovery. No arguable basis for the sufficiency of those allegations exists.

Reasonable minds could disagree as to whether Plaintiff's shortcomings were egregious enough to warrant an award of attorney's fees, but the district court's decision was not "arbitrary, capricious, whimsical, or manifestly unreasonable." Tyson Foods, 565 F.3d at 776. The district court accurately described the standard for awarding attorney's fees under § 1988(b) and emphasized that the court was not awarding fees simply because Plaintiff's claims were subject to dismissal. Rather, the district court made clear that it awarded fees because Plaintiff's amended allegations continued to flout well-established Constitutional law and federal pleading standards after the district court explained those standards in its first order dismissing Plaintiff's claims.

The district court also narrowly tailored the fee award. The court found only the § 1983 claims against the Municipal Defendants frivolous and only for the period after the court's first order of dismissal. The court's decision was not "beyond the bounds of the rationally available choices" given the facts and the law before the district court. Madron, 646 F.3d at 1257. Thus, the district court did not abuse its discretion, and we affirm the award of attorney's fees to the Municipal Defendants.

B.

Plaintiff's attorneys also challenge the district court's award of sanctions against them. Invoking 28 U.S.C. § 1927, the district court ordered Plaintiff's attorneys to pay the Municipal Defendants' reasonable attorney's fees incurred in opposing Plaintiff's second motion for leave to amend and moving for sanctions. Before addressing the merits of the sanctions award, we must ensure that we have jurisdiction over this part of the appeal. The Airport Defendants argue that we lack jurisdiction over the sanctions appeal because Plaintiff's attorneys did not make themselves parties to the appeal and Plaintiff lacks standing to appeal a sanctions award against his attorneys. For support, the Airport Defendants cite Riggs v. Scrivner, Inc., 927 F.2d 1146, 1149 (10th Cir. 1991), in which we held that we lacked jurisdiction over an attorney-sanctions appeal when the notice of appeal failed to name the attorney as the party to appeal.

But a 1993 amendment to Federal Rule of Appellate Procedure 3(c) superseded our holding in Riggs. Rule 3(c)(7) now makes clear that courts should not dismiss an appeal for failure to name an appellant in the notice of appeal if the appellant's "intent to appeal is otherwise clear from the notice." In Laurino v. Tate, 220 F.3d 1213, 1218 (10th Cir. 2000), we exercised jurisdiction over an attorney-sanctions appeal although the notice of appeal did not expressly identify the attorney as an appellant. We held that the notice's designation of the sanctions order as the order to be appealed made it sufficiently clear under Rule 3 that the attorney intended to appeal the sanctions. Id. Here, the notice of appeal similarly designated the

district court's order awarding attorney's fees and sanctions as the object of the appeal. Thus, we conclude that the notice of appeal made clear the attorneys' intent to appeal the sanctions despite the notice's failure to name the attorneys as appellants.

Turning to the merits, we review a sanctions award under § 1927 for abuse of discretion. Baca v. Berry, 806 F.3d 1262, 1268 (10th Cir. 2015) (citation omitted). Section 1927 provides that any attorney "who so multiplies the proceedings in any case unreasonably and vexatiously may be required by the court to satisfy personally the excess costs, expenses, and attorney's fees reasonably incurred because of such conduct." We have described this as an "extreme standard," and cautioned that a district court should act under § 1927 "only in instances evidencing a serious and standard disregard for the orderly process of justice." Baca, 806 F.3d at 1268 (citation omitted). Thus, we "strictly construe" the statute, lest we dampen "the legitimate zeal of an attorney in representing his client." Id. (citation omitted). But unless a district court relies on an erroneous legal interpretation, it has broad discretion to sanction attorneys it determines unreasonably multiplied the proceedings. Id.

Here, the district court determined that Plaintiff's counsel unreasonably multiplied the proceedings against the Municipal Defendants by filing a second motion to amend just one week after the parties completed briefing on Defendants' motions to dismiss the first amended complaint. So the district court found

Plaintiff's attorneys responsible for the Municipal Defendants' reasonable attorney's fees incurred in responding to the motion for leave and moving for sanctions.

With his second motion to amend, Plaintiff filed a proposed second amended complaint asserting claims against the Municipal Defendants for violations of Plaintiff's First, Fourth, Fifth, Sixth, and Fourteenth Amendment rights. Those were largely the same claims Plaintiff asserted against the Municipal Defendants in his amended complaint, with the main addition being allegations that the Jackson Municipal Code incorporates the TSA standard operating procedures and violates the Constitution. The district court determined that Plaintiff's proposed amendment would be futile because the proposed claims against the Municipal Defendants, like the other claims in Plaintiff's proposed second amended complaint, would be subject to dismissal. Plaintiff does not challenge on appeal the district court's futility determination as to the claims against the Municipal Defendants, but his attorneys argue that the proposed amendments did not warrant sanctions.

As with the award of attorney's fees against Plaintiff, we will not reverse an award of sanctions under § 1927 simply because we might have acted differently in the district court's position—our review is limited to whether the district court abused its discretion. Baca, 806 F.3d at 1268. Because the district court's order dismissing Plaintiff's original complaint identified the deficiencies in the legal theories underlying Plaintiff's claims against the Municipal Defendants, the district court determined that Plaintiff's attorneys unreasonably continued to pursue those theories in the second motion for leave to amend. And as we explained when

addressing the award of attorney's fees against Plaintiff, the district court did not abuse its discretion in determining that Plaintiff's constitutional claims against the Municipal Defendants became obviously meritless after its order dismissing the original complaint. See supra Section VI.A. Continuing to pursue claims after a reasonable attorney would realize they lacked merit can warrant sanctions under § 1927. See Baca, 806 F.3d at 1277.

The district court also found that Plaintiff's attorneys likely sought to amend the claims against the Municipal Defendants as a dilatory tactic, that the proposed allegations against the Municipal Defendants were available to Plaintiff's attorneys when they filed the original complaint, and that the delay was unjustified. Because these findings are not clearly erroneous, we must accept them. See Dreiling v. Peugeot Motors of Am., Inc., 768 F.2d 1159, 1165 (10th Cir. 1985) ("The findings of a district court in assessing an attorney's liability under § 1927 will not be set aside on appeal unless the record establishes that the findings are clearly erroneous."). In fact, Plaintiff's attorneys do not challenge these findings as to the proposed claims against the Municipal Defendants. They argue only that the addition of the proposed claims against the TSA and Preston was not dilatory because Plaintiff had only recently exhausted his administrative remedies under the FTCA. But the district court did not find that Plaintiff's attempt to add claims against the TSA and Preston was dilatory—it found dilatory motive only in Plaintiff's attempt to amend its claims against the *Municipal Defendants*. And the district court ordered Plaintiff's counsel to pay only the Municipal Defendants' reasonable attorney's fees incurred by

opposing the motion for leave to amend and moving for sanctions. Thus, the district court did not abuse its discretion in finding that Plaintiff's attorneys unreasonably multiplied the proceedings against the Municipal Defendants.

AFFIRMED.