

FILED
United States Court of Appeals
Tenth Circuit

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

August 18, 2026

Christopher M. Wolpert
Clerk of Court

STEPHEN THEODORE GLADSTONE,

Plaintiff - Appellant,

v.

KRISTEN TARRIN,

Defendant - Appellee.

No. 25-1423
(D.C. No. 1:25-CV-01355-CNS-KAS)
(D. Colo.)

ORDER AND JUDGMENT*

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

Stephen Gladstone, proceeding pro se, appeals the district court's dismissal of his civil rights complaint against Kristen Tarrin for lack of subject matter jurisdiction.

* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Exercising jurisdiction under 28 U.S.C. § 1291,¹ we affirm on the alternative ground that the amended complaint failed to state a claim.²

I. BACKGROUND

Ms. Tarrin served as a court-appointed child legal representative (CLR) for Mr. Gladstone's son in a state court child custody case. Mr. Gladstone sued her under 42 U.S.C. § 1983, alleging that, in the state custody case, “[s]he submitted reports based on hearsay, committed perjury, omitted favorable evidence, and moved to quash subpoenas seeking evidence of therapist misconduct and maternal abuse.” R. vol. 1 at 94. He claimed that her actions caused him to lose “all parenting time” and his son to suffer emotional harm. *Id.* at 97. He also alleged Ms. Tarrin acted “under color of state law.” *Id.* at 94, 96. The amended complaint said the district court had jurisdiction under 28 U.S.C. § 1331.

Ms. Tarrin moved to dismiss Mr. Gladstone's claims under Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and under Rule

¹ Ms. Tarrin appears to dispute this court's jurisdiction. *See* Resp. Br. at 1–2 (“[T]he Court lacks jurisdictional authority over the claims against Defendant-Appellee as she is not a state actor under applicable law.”). But she also “requests a court order affirming the district court's order and final judgment” rather than dismissal of this appeal. *Id.* at 13 (capitalization omitted). We have jurisdiction to review dismissals under Federal Rule of Civil Procedure 12(b)(1) and 28 U.S.C. § 1291. *See Jacobs v. Salt Lake City Sch. Dist.*, 154 F.4th 790, 798 n.3 (10th Cir. 2025).

² Because Mr. Gladstone proceeds pro se, we construe his arguments liberally, but we “cannot take on the responsibility of serving as [his] attorney in constructing arguments and searching the record.” *Garrett v. Selby Connor Maddux & Janer*, 425 F.3d 836, 840 (10th Cir. 2005).

12(b)(6) for failure to state a claim. The district court granted the motion under Rule 12(b)(1) because Ms. Tarrin was not a state actor. It dismissed Mr. Gladstone’s case without prejudice, denied leave to amend, and denied as moot his pending motions. This appeal followed.

II. DISCUSSION

“We review a dismissal for lack of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1) de novo.” *Mukhtar v. Lambrecht*, 172 F.4th 836, 841 (10th Cir. 2026). We also review de novo whether a complaint has failed to state a claim under Federal Rule of Civil Procedure 12(b)(6). *Cuervo v. Sorenson*, 112 F.4th 1307, 1312 (10th Cir. 2024). “To survive a motion to dismiss [for failure to state a claim], 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)).

“To state a claim under § 1983, a plaintiff . . . must show that the alleged deprivation was committed by a person acting under color of state law.” *West v. Atkins*, 487 U.S. 42, 48 (1988).³ The defendant must “have exercised power

³ Section 1983 provides, in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at

possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law.” *Id.* at 49 (internal quotation marks omitted). Mr. Gladstone’s complaint failed to satisfy the “under color of state law” element.

In *Polk County v. Dodson*, 454 U.S. 312, 325 (1981), the Supreme Court held that “a public defender does not act under color of state law when performing a lawyer’s traditional functions as counsel to a defendant in a criminal proceeding.” In *Meeker v. Kercher*, 782 F.2d 153 (10th Cir. 1986) (per curiam), we extended *Polk County* to hold a guardian ad litem exempt from § 1983 liability. *See id.* at 155 (“[T]he reasoning of *Polk County* applies with equal force to a guardian ad litem representing a minor in a state proceeding on a petition alleging abuse or neglect.”).

Mr. Gladstone does not distinguish how a CLR differs from a guardian ad litem for purposes of a § 1983 action. Like a guardian ad litem, a CLR “is a fiduciary who must act in the minor’s best interest.” *Id.* (internal quotation marks omitted); *see also* Colo. Rev. Stat. § 14-10-116(2)(a) (“The legal representative of the child . . . shall represent the best interests of the minor or dependent child . . .”). Ms. Tarrin thus “owe[d] . . . her undivided loyalty to the minor, not the state.” *Meeker*, 782 F.2d at 155.

Mr. Gladstone relies on *Dennis v. Sparks*, 449 U.S. 24, 27–28 (1980), and *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 941 (1982), to argue Ms. Tarrin was

law, suit in equity, or other proper proceeding for redress

a state actor because she functioned as “a court-appointed representative who jointly initiate[d], influence[d], and perpetuate[d] law-enforcement action.”

Aplt. Opening Br. at 11. But his amended complaint did not rely on this joint action theory—he simply asserted that Ms. Tarrin’s CLR position made her subject to § 1983. And in *Meeker*, we held that “[i]t is of no consequence if, in the exercise of . . . her independent judgment on behalf of the minor, the guardian ad litem arrives at a position of advocacy which corresponds with the objectives of the state.” 782 F.2d at 155. This holding applies equally to Ms. Tarrin. Under *Polk County* and *Meeker*, Ms. Tarrin, a CLR, was not a § 1983 state actor.

The district court erred, however, in dismissing the amended complaint for lack of subject matter jurisdiction under Rule 12(b)(1). For jurisdiction, the amended complaint relies only on 28 U.S.C. § 1331, which confers “jurisdiction of all civil actions arising under the . . . laws of the United States.” Unlike 28 U.S.C. § 1343(a)(3), which grants district courts jurisdiction over civil rights actions “[t]o redress the deprivation, *under color of any State law*, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States” (emphasis added), § 1331 does not contain an “under color of state law” requirement for subject matter jurisdiction.

Because the amended complaint does not rely on § 1343(a)(3) for jurisdiction, and because Mr. Gladstone’s § 1983 claims “aris[e] under the . . . laws of the United

States,” he did not need to show state action for subject matter jurisdiction under § 1331. *See Grapentine v. Pawtucket Credit Union*, 755 F.3d 29, 32 n.1 (1st Cir. 2014) (“[A]lmost by definition, a claim under § 1983 arises under federal law and will support federal-question jurisdiction pursuant to § 1331.” (internal quotation marks omitted)).

But he still must show that Ms. Tarrin acted “under color of state law” as an element of his § 1983 claim. *Elliott v. Chrysler Fin.*, 149 F. App’x 766, 768 (10th Cir. 2005) (“Ordinarily, § 1983 plaintiffs assert federal question jurisdiction under 28 U.S.C. § 1331, and the state action requirement is treated only as an element of the claim.”) (cited for persuasive value under Fed. R. App. P. 32.1; 10th Cir. R. 32.1). His amended complaint does not do so. It therefore should have been dismissed under Rule 12(b)(6) because it failed to allege that Ms. Tarrin acted under color of state law. We affirm the district court’s dismissal on this alternative ground, and remand for the district court to determine whether the dismissal should be with prejudice.⁴

⁴ In his brief, Mr. Gladstone challenges the district court’s denial of discovery motions and the referral of non-dispositive motions to a magistrate judge for recommendation. But these matters are immaterial given the amended complaint’s failure to state a claim. Also, Mr. Gladstone does not challenge on appeal the district court’s denial of his request for leave to amend his complaint, so he has waived any such argument. *See Toevs v. Reid*, 685 F.3d 903, 911 (10th Cir. 2012) (“Arguments not clearly made in a party’s opening brief are deemed waived.”).

III. CONCLUSION

We affirm dismissal of the amended complaint because it fails to state a claim under Rule 12(b)(6). We deny Mr. Gladstone’s “Request for Judicial Notice” (Dkt. No. 24) and his “Motion for Judicial Notice of Related District Court Filings and Sworn Therapeutic Evidence” (Dkt. No. 29). We remand for further proceedings consistent with this order and judgment.⁵

Entered for the Court

Scott M. Matheson, Jr.
Circuit Judge

⁵ In her response brief, Ms. Tarrin requests an award of appellate attorney fees. We deny the request because she did not make it by separate motion. *See* Fed. R. App. P. 38 (allowing the court to award damages and costs for a frivolous appeal upon “a separately filed motion”); *Abeyta v. City of Albuquerque*, 664 F.3d 792, 797 (10th Cir. 2011) (“A statement inserted in a party’s brief that the party moves for sanctions is not sufficient notice.” (internal quotation marks omitted)).