

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

August 29, 2022

Lyle W. Cayce
Clerk

No. 21-11091
Summary Calendar

STEVEN B. AUBREY, *Individually*;
STEVEN B. AUBREY, *as beneficiary of the Aubrey Family Trust*;
BRIAN E. VODICKA,

Plaintiffs—Appellants,

versus

THE ESTATE OF IRA TOBOLOWSKY; MICHAEL TOBOLOWSKY;
FAITH G. BURK; STEPHEN SCHOETTNER;
DAVID P. HENDRICKS; RICHARD B. AUBREY, JR.;
BETSY S. AUBREY,
as Independent Executrix of the Estate of Richard Buck Aubrey, Deceased;
RACHEL ANN CRAIG; ROBIN L. LANDIS;
JACKIE K. WHEELINGTON,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
No. 3:19-CV-2792

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Before SMITH, ELROD, and SOUTHWICK, *Circuit Judges*.

PER CURIAM:*

Steven Avery and Brian Vodicka filed an amended complaint against the estate of the former attorney for the Aubrey Family Trust, Ira Tobolowsky, and various others alleging racketeering, harassment, defamation, malicious prosecution, and abuse of process, seeking \$40 million in compensatory and exemplary damages. The factual allegations included the mismanagement of the Trust, Ira Tobolowsky's legal and business activities, Tobolowsky's murder, and Aubrey's and Vodicka's arrest and prosecution for the murder.

Following defendants' motions to dismiss, the magistrate judge (M.J.) issued a series of four reports of findings and conclusions. Each recommended that the motions to dismiss be granted. In each case, Aubrey objected to the recommendation, but the district court adopted the recommendation and dismissed the complaint.

Aubrey and Vodicka challenge the dismissals. We review a dismissal *de novo*, accepting as true all well-pleaded facts and drawing all reasonable inferences in favor of the nonmoving party. *Franklin v. Regions Bank*, 976 F.3d 443, 447 (5th Cir. 2020). The plaintiffs must allege sufficient facts to "state a claim for relief that is plausible on its face," *Bass v. Stryker*, 669 F.3d 501, 506 (5th Cir. 2012), and "that, if true, raise a right to relief above the speculative level," *Franklin*, 976 F.3d at 447 (internal quotation marks and citation omitted). Aubrey and Vodicka have presented nothing on appeal to show that the district court erred in concluding that there was no

* Pursuant to 5TH CIRCUIT RULE 47.5, the court has determined that this opinion should not be published and is not precedent except under the limited circumstances set forth in 5TH CIRCUIT RULE 47.5.4.

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basis for these claims. *See Franklin*, 976 F.3d at 447.

Aubrey and Vodicka contend that the district court should not have dismissed without giving the opportunity to file a second amended complaint. The court did not abuse its discretion in concluding that amendment would have been futile and denying the motion to amend. *See Edionwe v. Bailey*, 860 F.3d 287, 291 (5th Cir. 2017); *Jones v. Robinson Prop. Grp., L.P.*, 427 F.3d 987, 994 (5th Cir. 2005). The district court also did not abuse its discretion in denying the motion to disqualify all judges in the Northern District of Texas, including the M.J. and district judge assigned to this case. *See United States v. Scroggins*, 485 F.3d 824, 830 (5th Cir. 2007).

AFFIRMED.