

United States Court of Appeals
for the Fifth Circuit

United States Court of Appeals
Fifth Circuit

FILED

September 14, 2026

Lyle W. Cayce
Clerk

No. 26-10360

ALLEN EUGENE LOONEY, AS *CEO of LSE & R&D*,

Plaintiff—Appellant,

versus

DAVID LISCH; DAVID C. GAIR; STEPHEN S. MOSHER; CLARK R.
COWLEY; RICARDO LEE & ASSOCIATES LAW OFFICE; DOUGLAS
CLARK; DOUGLAS CLARK, L.L.P.; ET AL.,

Defendants—Appellees.

Appeal from the United States District Court
for the Northern District of Texas
USDC No. 4:25-CV-118

Before KING, HIGGINSON, and DOUGLAS, *Circuit Judges*.

PER CURIAM:*

Pro se appellant Allen Eugene Looney sued more than ninety defendants for a litany of claims. The district court dismissed the case for lack of subject matter jurisdiction. We AFFIRM.

* This opinion is not designated for publication. See 5TH CIR. R. 47.5.

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I

On February 10, 2025, Looney sued ninety-five persons and entities for a slew of claims, including legal malpractice, fraud, breach of fiduciary duty, unjust enrichment, civil conspiracy, negligent misrepresentation, tortious interference with prospective economic advantage, breach of implied covenant of good faith and fair dealing, intentional infliction of emotional distress, state consumer protection law violations, civil rights violations, RICO violations, and defamation. The district court permitted Looney to amend his complaint three times. Defendants moved to dismiss each complaint. Looney then filed a motion to file a fourth amended complaint. The district court denied that motion.

The district court referred the motions to dismiss the third amended complaint to the magistrate judge for a report and recommendation. The magistrate judge recommended granting the motions to dismiss for lack of subject matter jurisdiction. Looney objected to the magistrate judge's recommendation. The district court, after de novo review, adopted the magistrate judge's findings and conclusions over Looney's objections and dismissed the case without prejudice for lack of subject matter jurisdiction. This appeal followed.

II

Construing Looney's appeal liberally, our court considers the district court's orders dismissing the case without prejudice for lack of subject matter jurisdiction and denying leave to amend his complaint a fourth time. *See Estelle v. Gamble*, 429 U.S. 97, 106 (1976). None of the other rulings impacted whether Looney had or could invoke the district court's subject matter jurisdiction.

We review a dismissal for lack of subject matter jurisdiction de novo. *In re S. Recycling, L.L.C.*, 982 F.3d 374, 379 (5th Cir. 2020) (citation omitted).

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The burden of proof is on the party asserting subject matter jurisdiction, accepting as true the complaint's factual allegations. *Umphress v. Hall*, 133 F.4th 455, 462 (5th Cir. 2025).

There is no basis for subject matter jurisdiction in Looney's third amended complaint. The only basis Looney asserted for federal subject matter jurisdiction in his third amended complaint was federal question jurisdiction. As Looney asserted only state law claims, there was no federal question jurisdiction. The district court did not err in so holding.

We review for abuse of discretion a denial of a motion for leave to amend. *Daly v. Sprague*, 675 F.2d 716, 723 (5th Cir. 1982). "Denying a motion to amend is not an abuse of discretion if allowing an amendment would be futile." *Marucci Sports, L.L.C. v. Nat'l Collegiate Athletic Ass'n*, 751 F.3d 368, 378 (5th Cir. 2014).

Here, Looney's proposed fourth amended complaint, despite its 200 pages and 200 additional pages of attachments, did not redress the lack of federal subject matter jurisdiction. While Looney cited federal statutes in his proposed fourth amended complaint, he did not plead any facts to show that his case raised a federal cause of action. Mere invocations of federal statutes do not create federal question jurisdiction. *Howery v. Allstate Ins. Co.*, 243 F.3d 912, 917-18 (5th Cir. 2001). There was thus no subject matter jurisdiction, the absence of which renders amendment futile. *See Foman v. Davis*, 371 U.S. 178, 182 (1962). The district court did not abuse its discretion in denying leave to amend. *Stripling v. Jordan Prod. Co.*, 234 F.3d 863, 873 (5th Cir. 2000) ("It is within the district court's discretion to deny a motion to amend if it is futile.").

As the dismissal for lack of subject matter jurisdiction and denial of leave to amend are dispositive, we do not reach Looney's other assignments of error. The district court correctly dismissed the case without prejudice for

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lack of subject matter jurisdiction and did not abuse its discretion in denying leave to file a fourth amended complaint. We AFFIRM.