

United States Court of Appeals for the Fifth Circuit

No. 26-30352
Summary Calendar

United States Court of Appeals
Fifth Circuit

FILED

October 5, 2026

Thomas B. Plunkett, III
Clerk

DEREK ANTHONY DAVIS,

Plaintiff—Appellant,

versus

ALEXIS SALAY, *Police Officer, Official Capacity*; JOHN CASTELIN,
Sergeant, Official Capacity; BERNARD BLAIR, *City Attorney, Official*
Capacity,

Defendants—Appellees.

Appeal from the United States District Court
for the Eastern District of Louisiana
USDC No. 2:25-CV-2138

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

STEPHEN A. HIGGINSON, *Circuit Judge*:*

Plaintiff-Appellant Derek Anthony Davis, proceeding *pro se*, appeals the district court's dismissal of his claim under 42 U.S.C. § 1983 against Defendants-Appellees Alexis Salay and John Castelin, two New Orleans

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

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Police Department (“NOPD”) officers.¹ The district court construed Davis’s complaint to claim that Officers Salay and Castelin violated his due process rights under the Fourteenth Amendment when they declined to enforce a restraining order against Davis’s former romantic partner and did not arrest her for an alleged robbery and assault she committed against him. Davis alleges that his former partner “took a job that was directly across the street from” his job, and thus violated the restraining order’s requirement that she stay “100 yards away” from him. When Davis raised the issue with Officers Salay and Castelin, they allegedly declined to enforce the order because “she wasn’t bothering [Davis], she was just there working.”

“We review a district court’s grant of a motion to dismiss for failure to state a claim *de novo*.” *Doe 1 v. City View Indep. Sch. Dist.*, 150 F.4th 668, 674 (5th Cir. 2025). “To survive a motion to dismiss, a complaint must contain sufficient factual matter which, when taken as true, states ‘a claim to relief that is plausible on its face.’” *Innova Hosp. San Antonio, L.P. v. Blue Cross & Blue Shield of Ga., Inc.*, 892 F.3d 719, 726 (5th Cir. 2018) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “*Pro se* complaints receive a ‘liberal construction.’” *Brown v. Tarrant Cnty., Tex.*, 985 F.3d 489, 494 (5th Cir. 2021) (quoting *Carlucci v. Chapa*, 884 F.3d 534, 538 (5th Cir. 2018)).

The district court correctly determined that Davis’s § 1983 claim was barred by the Supreme Court’s decision in *Town of Castle Rock v. Gonzales*, which held that “the benefit that a third party may receive from having someone else arrested for a crime generally does not trigger protections

¹ The district court also dismissed Davis’s Title VII claims against all Defendants, and additionally dismissed his claims against Defendant-Appellee Bernard Blair, a city attorney, on prosecutorial-immunity grounds. Davis does not appeal the dismissal of his Title VII claims or his claims against Blair.

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under the Due Process Clause, neither in its procedural nor in its substantive manifestations.” 545 U.S. 748, 768 (2005). More specifically, the Supreme Court held that the plaintiff did not have a property interest in the enforcement of a restraining order (issued under Colorado law) because the relevant “provisions of Colorado law” did not “ma[k]e enforcement of restraining orders *mandatory*.” *Id.* at 760 (emphasis in original).

Here, “a Louisiana police officer’s discretion” to enforce a “Louisiana restraining order” is at least as broad as, if not “broader” than, the discretion afforded to Colorado officers under Colorado law. *Conerly v. Town of Franklinton*, 2005 WL 1501421, at *7 (E.D. La. June 20, 2005). Compare LA. STAT. ANN. § 14:79(E)(1) (“Law enforcement officers shall use every reasonable means, including but not limited to immediate arrest of the violator, . . . to enforce a temporary restraining order . . .”), *with Castle Rock*, 545 U.S. at 761 (“[A] true mandate of police action would require some stronger indication from the Colorado Legislature than ‘shall use every reasonable means to enforce a restraining order’ (or even ‘shall arrest . . . or . . . seek a warrant’).” (quoting COLO. REV. STAT. § 18-6-803.5(3)(a),(b))). Accordingly, Davis does not assert a “recognized ‘liberty or property’ interest within the purview of the Fourteenth Amendment” sufficient to support a § 1983 claim. *Doe v. Taylor Indep. Sch. Dist.*, 15 F.3d 443, 450 (5th Cir. 1994) (quoting *Griffith v. Johnston*, 899 F.2d 1427, 1435 (5th Cir. 1990)).

Further, it was not error to deny Davis leave to amend. The Federal Rules of Civil Procedure provide that leave to amend should be “freely” given “when justice so requires.” FED. R. CIV. P. 15(a)(2). The district court’s denial of leave to amend “is reviewed for abuse of discretion.” *Marucci Sports, L.L.C. v. Nat’l Collegiate Athletic Ass’n*, 751 F.3d 368, 378 (5th Cir. 2014). We have said that while “[o]rdinarily, a *pro se* litigant should be offered an opportunity to amend his complaint before it is dismissed,” a

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district court “need not grant a futile motion to amend.” *Wiggins v. La. State Univ.—Health Care Servs. Div.*, 710 F. App’x 625, 627 (5th Cir. 2017) (unpublished opinion) (quoting *Brewster v. Dretke*, 587 F.3d 764, 767–68 (5th Cir. 2009)). “An amendment is futile if it would fail to survive” a motion to dismiss for failure to state a claim under “Rule 12(b)(6),” and denial of a futile motion to amend “is not an abuse of discretion.” *Marucci Sports*, 751 F.3d at 378. Here, the district court correctly concluded that Davis’s proposed amendment was futile because it failed “to plausibly allege a constitutionally protected property interest” other than the enforcement of his restraining order against his former partner.

The judgment of the district court is AFFIRMED.