Appeal No. 16-1489

IN THE UNITED STATES COURT OF APPEALS
EIGHTH CIRCUIT

CHURCH OF JESUS CHRIST CHRISTIAN/ARYAN NATIONS OF MISSOURI and PASTOR MARTIN LUTHER DZERZHINSKY LINDSTEDT, **Plaintiffs-Appellants,**	)	**Appeal from the U.S. District Court, Western District of Missouri Southwestern Div., Honorable Stephen Bough**
v.	)	
TERRY NEFF, et al., **Defendants-Appellees.**	)	

BRIEF OF APPELLEES TERRY NEFF, NEWTON COUNTY, MISSOURI, NEWTON COUNTY SHERIFF'S DEPARTMENT, OREN BARNES, NEWTON COUNTY SHERIFF KEN COPELAND

/s/ Ron Mitchell
Ron Mitchell, Bar No. 24031
320 W. 4th St., P.O. Box 1626
Phone: (417) 623-1515
Fax: (417) 623-6865
mitchell@brmclaw.com
ATTORNEY FOR NEWTON COUNTY, MISSOURI, NEWTON COUNTY SHERIFF'S DEPARTMENT, SHERIFF KEN COPELAND, and OREN BARNES

/s/ Richard Strodtman
Richard Strodtman, Bar No. 61064
320 W. 4th St., P.O. Box 1626
Phone: (417) 623-1515
Fax: (417) 623-6865
strodtman@brmclaw.com
ATTORNEY FOR TERRY NEFF

TABLE OF CONTENTS

Table of Contents 1

Table of Authorities 4

Jurisdictional Statement 5

Statement of the Issues 7

Statement of the Case 9

Summary of the Argument 11

Argument 12

Issue I: The District Court did not err in dismissing the Amended Complaint as to Terry Neff because it does not state a claim upon which relief could be granted in that its allegations show Neff was entitled to absolute immunity in his role as guardian ad litem and the complaint's allegations state no other cognizable cause of action 12

1. Standard of Review 12

2. Lindstedt's allegations show Neff is entitled to absolute immunity 13

3. The facts alleged and relief sought do not allege any other cognizable claim 15

4. Conclusion 16

Issue II: The District Court did not err in dismissing the Amended Complaint as to Newton County and the Newton County Sheriff's Department because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants. 17

1. Standard of Review 17

2. The Amended Complaint does not state a plausible claim against Newton County or its Sheriff's Department 18

3. Conclusion 20

Issue III: The District Court did not err in dismissing the Amended Complaint as to Ken Copeland and Oren Barnes because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants. 21

1. Standard of Review 21

2. The Amended Complaint does not state a plausible claim against Ken Copeland or Oren Barnes 22

3. Conclusion 23

Conclusion 24

Certificate of Service 25

Certificate of Compliance 26

TABLE OF AUTHORITIES

Ashcroft v. Iqbal, 556 U.S. 662 (2009). 8, 13. 17, 22

Avalos v. City of Glenwood, 382 F.3d 792 (8th Cir. 2004). 8, 16, 22

Bell Atlantic Corp. v. Twombly, 550 U.S. 544 (2007). 13, 17, 22

Bennartz v. City of Columbia, 300 S.W.3d 251 (Mo.App. 2009). 7, 19

Demien Constr. v. O'Fallon Fire Prot., 812 F.3d 654 (8th Cir. 2016). .. 12, 17, 21

Doe v. Sch. Dist. of the City of Norfolk, 340 F.3d 605 (8th Cir. 2003). .. 7, 18

Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005). 7, 14

Gregg v. City of Kansas City, 272 S.W.3d 353 (Mo.App. 2008). 19

McCuen v. Polk County, 893 F.2d 172 (8th Cir. 1990). 7, 14

Monell v. Dept. of Social Services, 436 U.S. 658 (1978). 7, 18

Montgomery v. City of Ames, 749 F.3d 689 (8th Cir. 2014). 8, 16, 23

Moses v. Parwatikar, 813 F.2d 891 (8th Cir. 1987). 7, 14

Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010). 8, 22, 23

Russell v. Hennepin County, 420 F.3d 841 (8th Cir. 2005). 7, 18

State ex rel. Bird v. Weinstock, 864 S.W.2d 376 (Mo.App. 1993). 7, 15

Stone v. Harry, 364 F.3d 912 (8th Cir. 2004). 13, 18, 22

Teasley v. Forler, 548 F.Supp.29 694 (E.D. Mo. 2008). 19

Zutz v. Nelson, 601 F.3d 842 (8th Cir. 2010). 13

RSMo. § 516.120 23

JURISDICTIONAL STATEMENT

This appeal arises from a pro se Amended Complaint filed by Church of Jesus Christ Christian/Aryan Nations of Missouri and Pastor Martin Luther Dzerhinsky Lindstedt. The Amended Complaint attempted to assert "federal civil rights litigation" against various defendants. The District Court had jurisdiction pursuant to 28 U.S.C. § 1331.

On February 26, 2015, the District Court granted motions to dismiss filed on behalf of defendants Terry Neff, Timothy Perigo and Kevin Selby. On June 26, 2015, the District Court granted a motion to dismiss filed on behalf of Newton County, Missouri and the Newton County Sheriff's Department.

On October 19-20, 2015, the District Court issued Orders to Show Cause why the Amended Complaint should not be dismissed as to all remaining defendants. Following a response by the plaintiffs/appellants, the District Court ordered the case dismissed and judgment was entered on November 12, 2015 as to all remaining defendants. On December 9, 2015, plaintiffs/appellants filed a motion, purportedly under Rule 59(e), to alter or amend which was subsequently denied by the District Court on January 19, 2016. Plaintiffs/appellants then filed a notice of appeal on February 16, 2016.

This appeal is from a final judgment disposing of all claims asserted against all parties in the Amended Complaint. This Court has jurisdiction pursuant to 28 U.S.C. § 1291.

STATEMENT OF THE ISSUES

ISSUE I: The District Court did not err in dismissing the Amended Complaint as to Terry Neff because it does not state a claim upon which relief could be granted in that its allegations show Neff was entitled to absolute immunity in his role as guardian ad litem and the complaint's allegations state no other cognizable cause of action.

Dornheim v. Sholes, 430 F.3d 919 (8th Cir. 2005).

McCuen v. Polk County, 893 F.2d 172 (8th Cir. 1990).

Moses v. Parwatikar, 813 F.2d 891 (8th Cir. 1987).

State ex rel. Bird v. Weinstock, 864 S.W.2d 376 (Mo.App. 1993).

ISSUE II: The District Court did not err in dismissing the Amended Complaint as to Newton County and the Newton County Sheriff's Department because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants.

Bennartz v. City of Columbia, 300 S.W.3d 251 (Mo.App. 2009).

Doe v. Sch. Dist. of the City of Norfolk, 340 F.3d 605 (8th Cir. 2003).

Monell v. Dept. of Social Services, 436 U.S. 658 (1978).

Russell v. Hennepin County, 420 F.3d 841 (8th Cir. 2005).

ISSUE III: The District Court did not err in dismissing the Amended Complaint as to Ken Copeland and Oren Barnes because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants.

Ashcroft v. Iqbal, 556 U.S. 662 (2009).

Avalos v. City of Glenwood, 382 F.3d 792 (8th Cir. 2004).

Montgomery v. City of Ames, 749 F.3d 689 (8th Cir. 2014).

Parrish v. Ball, 594 F.3d 993 (8th Cir. 2010).

STATEMENT OF THE CASE

Martin Lindstedt ("Lindstedt") and the Church of Jesus Christ Christian/Aryan Nations of Missouri filed an Amended Complaint wherein they alleged attorney Terry Neff committed wrongdoing in acting as the court-appointed guardian ad litem of Lindstedt's mother, Martina Lindstedt, who was a resident of South Dakota. (Doc. 15, p.5-6, 12)[1] Lindstedt alleges Neff drafted an "idiotic" and "bogus" motion to dismiss the guardianship proceedings which was subsequently granted by the probate court in Newton County, Missouri. (Doc. 15, p. 5-6, 12) Lindstedt alleges that Neff's motion to dismiss allowed Lindstedt's brother, Michael, to embezzle from Martina and eventually murder her. (Doc. 15, p. 5-6, 12)

Neff sought dismissal of the Amended Complaint on the ground that it failed to state a plausible claim for relief. (Doc. 25, p. 1-2) Following briefing by Neff and Lindstedt, the District Court granted the motion and dismissed Neff as a party. (Doc. 36)

The Amended Complaint also attempted to assert claims against Newton County, the Newton County Sheriff's Department, Sheriff Ken Copeland, and

[1] Citations to the record are made to the document number assigned by the District Court's electronic filing system followed by a reference to any specific pages being cited. "Doc. 15" refers to the Amended Complaint at issue in this appeal.

Deputy Oren Barnes. (Doc. 15, p. 1-6) The Amended Complaint makes few allegations against these defendants. It asserts that Barnes responded to a domestic disturbance involving Lindstedt and tooks sides in the matter. (Doc. 15, p. 2-3) It also references an incident in 2004 where a member of the Sheriff's Department allegedly got into a physical altercation with Lindstedt. (Doc. 15, p. 9)

The District Court granted Motions to Dismiss filed by Newton County and the Newton County Sheriff's Department. (Doc. 47; Doc. 53) It then issued Orders to Show Cause as to why the Amended Complaint should also not be dismissed against Copeland and Barnes. (Doc. 58-59) Following a response from Lindstedt, the District Court dismissed Copeland and Barnes and entered judgment. (Doc. 60-63)

Lindstedt filed a Rule 59(e) Motion seeking to alter or amend the judgment which was subsequently denied by the District Court. (Doc. 64; Doc. 67) Lindstedt then filed a Notice of Appeal. (Doc. 68)

The issue for determination in this appeal is whether the District Court properly dismissed the Amended Complaint against Neff, Newton County, the Newton County Sheriff's Department, Copeland, and Barnes for failure to state a claim upon which relief may be granted.

SUMMARY OF THE ARGUMENT

Lindstedt's Amended Complaint fails to state a claim upon which relief may be granted because it is rife with allegations that are conclusory, speculative, contradictory, vague, and incoherent. Even given a liberal interpretation, the Amended Complaint shows that any claim alleged against Neff, arising out of his duties as a guardian ad litem, is precluded by the absolute immunity afforded them given the integral role they play in the judicial process.

Furthermore, the Amended Complaint fails to assert any discernible cause of action against Newton County, its Sheriff's Department, Copeland, or Barnes. There are no allegations showing that the governmental-defendants violated either appellant's civil rights pursuant to a policy or custom. Furthermore, there are no allegations that show Copeland or Barnes personally violated either appellant's civil rights.

Because Lindstedt's Amended Complaint does not assert any cognizable cause of action, the District Court's dismissal should be affirmed.

ARGUMENT

ISSUE I: The District Court did not err in dismissing the Amended Complaint as to Terry Neff because it does not state a claim upon which relief could be granted in that its allegations show Neff was entitled to absolute immunity in his role as guardian ad litem and the complaint's allegations state no other cognizable cause of action.

Lindstedt's Amended Complaint contains contradictory, vague, speculative, and incoherent allegations against Neff that make it impossible to discern exactly what cause of action is asserted against Neff. Lindstedt alleges that Neff, acting as an appointed guardian ad litem for Lindstedt's mother, somehow acted improperly in seeking to have the guardianship action dismissed. (Doc. 15, p. 5-6)

Lindstedt's Amended Complaint fails to state a claim upon which relief may be granted because Neff is absolutely immune from any liability for his conduct as guardian ad litem. Furthermore, the Amended Complaint's allegations, even when viewed favorably, fail to establish any other cognizable cause of action.

1. Standard of Review

Whether a complaint states a cause of action is determined by a de novo review by this Court. *Demien Constr. Co. v. O'Fallon Fire Prot. Dist.*, 812 F.3d 654, 657 (8th Cir. 2016). All factual allegations are taken as true but legal conclusions are not. *Id.*

A complaint survives a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although pro se complaints are given a liberal interpretation, they still must "allege sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

2. Lindstedt's allegations show Neff is entitled to absolute immunity

Lindstedt's allegations against Neff arise solely out of Neff's role as an appointed guardian ad litem for Lindstedt's mother, Martina Lindstedt, in guardianship proceedings. (Doc. 15, p. 5-6) In the course of those proceedings, Neff filed a motion to dismiss which was subsequently granted by the court. (Doc. 15, p. 5-6) Lindstedt alleges that Neff's motion to dismiss permitted two other individuals to embezzle from and murder Martina. (Doc. 15, p. 5-6, 12)

Lindstedt's Amended Complaint states it is "federal civil rights litigation" raising the presumption that it is brought under 42 U.S.C. § 1983. To state a claim under § 1983, the Amended Complaint must plead facts that show Neff violated Lindstedt's civil rights while acting under color of state law. *Zutz v. Nelson*, 601 F.3d 842, 848 (8th Cir. 2010).

Putting aside the speculative and fanciful nature of Lindstedt's allegations, it is clear they fail to state a cause of action because Neff is entitled to absolute immunity. In *McCuen v. Polk County*, 893 F.2d 172, 173 (8th Cir. 1990), a mother, individually and on behalf of her minor child, sued various officials arising out of the issuance of ex parte orders that removed the minor from the mother's home. One of the defendants was Jeanine Gazzo who served as the minor's guardian ad litem. *Id*. at 174.

On appeal, this Court affirmed summary judgment in favor of Gazzo finding that Gazzo, acting as a guardian ad litem, was entitled to "absolute immunity" for her "role in helping to prepare and in signing the motion for an order to stay proceedings. . . ." *Id*.

That same logic warrants dismissal of Lindstedt's Amended Complaint against Neff. Lindstedt alleges that Neff's liability arises out of his drafting of an "idiotic" and "bogus" motion to dismiss. (Doc. 15, p. 5-6) Under *McCuen*, Neff is absolutely immune from any liability for this conduct. *Id*.

This Court has previously recognized that provision of absolute immunity to guardians ad litem is necessary because they are "integral parts of the judicial process." *Dornheim v. Sholes*, 430 F.3d 919, 925 (8th Cir. 2005)(internal quotation omitted). Furthermore, it is clear that absolute immunity is just that, absolute. *Moses v. Parwatikar*, 813 F.2d 891, 892-93 (8th Cir. 1987)("That malicious or

corrupt acts are protected . . . indicates how solidly the doctrine of absolute immunity is entrenched in our legal system.") Thus, the gravity of the allegations lodged at Neff, even though wholly implausible and speculative, do not defeat his immunity and overcome his motion to dismiss.

Missouri law also affords Neff immunity for his role as guardian ad litem for any state-law causes of action that Lindstedt may be attempting to allege in his Amended Complaint. *See e.g., State ex rel. Bird v. Weinstock*, 864 S.W.2d 376, 381-86 (Mo.App. 1993). As Martina's guardian ad litem, Neff's responsibility was owed to her, not to Lindstedt. Lindstedt's Amended Complaint is nothing more than an attempt to inject himself into that relationship which would create conflicts of interest and destroy the role guardians ad litem play in the judicial process.

In sum, Lindstedt has failed to state a claim upon which relief may be granted because it is clear that Neff's role in drafting a motion to dismiss as a guardian ad litem is immune from suit.

3. The facts alleged and relief sought do not allege any other cognizable claim

Even when given the most liberal interpretation that is reasonable, Lindstedt's Amended Complaint fails to allege any other discernible cause of action against Neff.

Lindstedt's Amended Complaint could, perhaps, be read as an attempt to allege a claim for failing to protect Martina. However, there is no "general

affirmative obligation to protect individuals against private violence." *Avalos v. City of Glenwood*, 382 F.3d 792, 798 (8th Cir. 2004). Lindstedt has not alleged facts, rather than conclusory and speculative assertions, showing that either of the two exceptions—state custody and state-created danger—to this general rule apply. *Id*. at 798-99; *See also Montgomery v. City of Ames*, 749 F.3d 689, 694-95 (8th Cir. 2014)(stating the elements of the state-created danger rule).

Moreover, it is clear from the relief sought in Lindstedt's Amended Complaint that he has not stated any cognizable cause of action. Lindstedt seeks "a jury trial [to] determine whether Neff is incompetent to be an attorney or not and whether his bogus Motion to Dismiss encouraged Mike Lindstedt to think that he could do whatever he pleased . . . ." (Doc. 15, p. 12) Federal courts simply do not have jurisdiction to determine whether an attorney is competent.

Lastly, there are no allegations in Lindstedt's Amended Complaint that show The Church of Jesus Christ Christian/Aryan Nations of Missouri suffered any civil rights violations arising out of Neff's conduct as guardian ad litem for Martina.

4. Conclusion

In sum, the Amended Complaint fails to allege facts showing the existence of any federal or state-law claim against Neff. This is especially true given that Neff, in acting as a guardian ad litem, is protected by absolute immunity. The District Court's dismissal of Neff should be affirmed.

ISSUE II: The District Court did not err in dismissing the Amended Complaint as to Newton County and the Newton County Sheriff's Department because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants.

The Amended Complaint contains few allegations against Newton County and the Newton County Sheriff's Department. (Doc. 15, p. 2-3) It alleges that Deputy Sheriff Oren Barnes responded to a domestic dispute involving Lindstedt and that Lindstedt perceived Barnes to take the side of someone other than Lindstedt. (Doc. 15, p. 2-3)

1. Standard of Review

Whether a complaint states a cause of action is determined by a de novo review by this Court. *Demien Constr. Co. v. O'Fallon Fire Prot. Dist.*, 812 F.3d 654, 657 (8th Cir. 2016). All factual allegations are taken as true but legal conclusions are not. *Id*.

A complaint survives a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

Although pro se complaints are given a liberal interpretation, they still must "allege sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

2. The Amended Complaint does not state a plausible claim against Newton County or its Sheriff's Department

Governmental entities such as Newton County and the Sheriff's department can be liable under 42 U.S.C. § 1983 only where their "policy or custom . . . inflicts the injury." *Monell v. Dept. of Social Services*, 436 U.S. 658, 690 (1978). Isolated incidents of unconstitutional conduct are generally insufficient to establish the existence of a governmental policy or custom. *See Russell v. Hennepin County*, 420 F.3d 841, 849 (8th Cir. 2005). To assert a claim under § 1983 against these defendants, the Amended Complaint, "[a]t a minimum . . . must allege facts which would support the existence of an unconstitutional policy or custom." *Doe v. Sch. Dist. of the City of Norfolk*, 340 F.3d 605, 614 (8th Cir. 2003).

Here, the Amended Complaint does not contain factual allegations showing this "federal civil rights litigation" involves the violation of any constitutional rights by a policy or custom of Newton County or its Sheriff's Department. In the absence of such allegations, the Amended Complaint fails to state a plausible claim to relief under § 1983. *See id.*

In addition, the Amended Complaint fails to adequately plead any state-law cause of action against these defendants because there are no allegations showing their sovereign immunity has been waived. Governmental entities in Missouri enjoy sovereign immunity from common law tort actions in all but four cases: (1) if the injury was caused by a public employee's negligent operation of a vehicle; (2) if the injury was caused by a dangerous condition of the municipality's property; (3) where the injury was caused by the municipality's performance of a proprietary, rather than governmental, function; and (4) for any acts covered by an insurance policy purchased by the municipality. *Bennartz v. City of Columbia*, 300 S.W.3d 251, 259 (Mo.App. 2009). Immunity applies to both negligent and intentional torts. *Id*. at 261.

In Missouri, sovereign immunity is the general rule and a plaintiff must plead facts showing that an exception applies. *Gregg v. City of Kansas City*, 272 S.W.3d 353, 359-60 (Mo.App. 2008). District Courts in the 8th Circuit have applied this rule to dismiss common law claims where the plaintiff has failed to plead an exception to the general rule of sovereign immunity. *See e.g., Teasley v. Forler*, 548 F.Supp.29 694, 711-12 (E.D. Mo. 2008).

Because there are no facts alleged showing that Newton County and its Sheriff's Department have waived their sovereign immunity, the Amended

Complaint fails, as a matter of law, in stating a plausible claim for relief. As a result, the District Court did not err in dismissing these defendants.

3. Conclusion

In sum, the Amended Complaint fails to allege any facts showing the violation of civil rights that resulted from any governmental policy or custom. As a result, it fails to state a claim under 42 U.S.C. § 1983 against Newton County or the Newton County Sheriff's Department.

Moreover, the Amended Complaint fails to include any allegations showing these defendants have waived their sovereign immunity under Missouri law. For this reason, the Amended Complaint fails to state a claim for any state-law causes of action against these defendants.

For all of the above reasons, the District Court's dismissal of the Amended Complaint against Newton County and the Newton County Sheriff's Department should be affirmed. (Doc. 53)

ISSUE III: The District Court did not err in dismissing the Amended Complaint as to Ken Copeland and Oren Barnes because it does not state a claim upon which relief may be granted in that it fails to allege facts stating any cognizable cause of action against these defendants.

The Amended Complaint does not make many allegations against Sheriff Copeland or Deputy Barnes. It alleges that Barnes responded to a domestic disturbance involving Lindstedt and his brother, that Barnes took the side of the brother and encouraged the brother to sell Lindstedt's mother's house. (Doc. 15, p. 2-3) The Amended Complaint also references a 2004 incident wherein Lindstedt's "teeth were knocked out by Newton County Sheriff's Department deputies with the collusion of Sheriff Ken Copeland." (Doc. 15, p. 9) A "possible conspiracy of Cpl Barnes and the Newton County Sheriff's Department" and a reference to these defendants offering a "license to kill" Lindstedt's mother are also mentioned in the Amended Complaint. (Doc. 15, p. 13, 16)

1. Standard of Review

Whether a complaint states a cause of action is determined by a de novo review by this Court. *Demien Constr. Co. v. O'Fallon Fire Prot. Dist.*, 812 F.3d 654, 657 (8th Cir. 2016). All factual allegations are taken as true but legal conclusions are not. *Id*.

A complaint survives a motion to dismiss if it contains "enough facts to state a claim to relief that is plausible on its face." *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). A claim is plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Although pro se complaints are given a liberal interpretation, they still must "allege sufficient facts to support the claims advanced." *Stone v. Harry*, 364 F.3d 912, 914 (8th Cir. 2004).

2. The Amended Complaint does not state a plausible claim against Ken Copeland or Oren Barnes

The Amended Complaint fails to state a plausible claim for relief against Barnes or Copeland. It does not allege any facts showing that Barnes or Copeland personally violated either appellant's civil rights or that they were conspirators in any violation that occurred. *Parrish v. Ball*, 594 F.3d 993, 1001 (8th Cir. 2010)("Because vicarious liability is inapplicable to § 1983 suits, a plaintiff must plead that each Government-official defendant, through the official's own individual actions, has violated the Constitution.")(internal quotation omitted)

At best, the Amended Complaint may be read as attempting a claim under the state-created danger exception. Generally speaking, there is no "affirmative obligation to protect individuals against private violence." *Avalos*, 382 F.3d at

798. The Amended Complaint alleges no facts, rather than conclusory and speculative assertions, showing that either of the two exceptions—state custody and state-created danger—to this general rule apply. *Id*. at 798-99; *See also Montgomery v. City of Ames*, 749 F.3d 689, 694-95 (8th Cir. 2014)(stating the elements of the state-created danger rule). Nor are there facts alleged showing that Barnes and Copeland acted in any way that would remove their qualified immunity. *See generally, Parrish*, 594 F.3d at 1001(discussing qualified immunity).

Moreover, Lindstedt's reference to the 2004 incident where his teeth were allegedly knocked out is, on the face of Amended Complaint, precluded by the applicable five-year statute of limitations. RSMo. § 516.120(4).

Thus, the Amended Complaint does not state any plausible claim for relief against Barnes or Copeland. Instead, it contains only vague, speculative, and highly implausible allegations that do not constitute any actionable claim under state or federal law. As a result, the District Court's dismissal of the Amended Complaint against Barnes and Copeland should be affirmed.

3. Conclusion

In sum, the Amended Complaint fails to plead facts establishing any cognizable cause of action against Copeland or Barnes. Thus, the District Court's dismissal of the Amended Complaint as to these defendants should be affirmed.

CONCLUSION

In sum, Lindstedt's Amended Complaint fails to state a plausible claim for relief as to Neff in that his allegations are vague, speculative, conclusory, and incoherent. Lindstedt's allegations make it impossible to discern exactly what causes of action he alleges against Neff or any other defendants.

Even when given a liberal reading, Lindstedt's Amended Complaint shows that Neff is entitled to absolute immunity for his conduct in drafting and filing the motion to dismiss in his capacity as guardian ad litem for Martina.

Moreover, the Amended Complaint fails to allege facts establishing any cognizable cause of action against Newton County, the Newton County Sheriff's Department, Copeland, and Barnes. There are no allegations showing that any of these defendants violated either appellant's civil rights or committed any other tortious acts.

As a result, the judgment of the District Court should be affirmed.

CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2016 I electronically filed the Brief and Addendum of Appellees Terry Neff, Newton County, Newton County Sheriff's Department, Ken Copeland, and Oren Barnes with the Clerk of the Court for the United States Court of Appeals for the Eighth Circuit by using the CM/ECF system. Participants in this case who are registered CM/ECF users will be served by the CM/ECF system. Participants who are not registered users will be served by mailing a copy of the Brief and Addendum to their home addresses:

Michael Lindstedt
684 Bacon Ridge Rd
Neosho, MO 64850

Martin Lindstedt
Church of Jesus Christ/Aryan Nations
338 Rabbit Track Road
Granby, MO 64844

Crystal Courtney
378 Rabbit Track Road
Granby, MO 64844

/s/ Richard Strodtman

CERTIFICATE OF COMPLIANCE

The undersigned attorney hereby certifies that Appellees' Brief and Addendum was prepared using Microsoft Word. The Brief and Addendum have been scanned for viruses and are virus-free. Additionally, in conformity with the requirements of Fed.R.App.P. 32(a)(7)(C), the undersigned attorney certifies that Appellant's Brief complies with the type volume limitation and contains 4,692 words.

/s/ Richard Strodtman