UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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Re: Case No. 19-6348, *Stephanos Kyrkanides v. University of Kentucky, et al*
Originating Case No. : 5:19-cv-00080

Dear Counsel:

The Court issued the enclosed Order today in this case.

Sincerely yours,

s/Karen S. Fultz
Case Manager
Direct Dial No. 513-564-7036

cc: Mr. Robert R. Carr
Ms. Mauritia G Kamer

Enclosure

Mandate to issue

NOT RECOMMENDED FOR PUBLICATION

No. 19-6348

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

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DEBORAH S. HUNT, Clerk

STEPHANOS KYRKANIDES,

Plaintiff-Appellant,

v.

UNIVERSITY OF KENTUCKY; DAVID A. BLACKWELL, Provost for the University of Kentucky,

Defendants-Appellees.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF KENTUCKY

O R D E R

Before: GUY, CLAY, and DONALD, Circuit Judges.

Stephanos Kyrkanides, proceeding through counsel, appeals the district court's dismissal of his employment-related civil rights action, brought pursuant to 42 U.S.C. § 1983 and state law. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

On June 17, 2015, Kyrkanides was appointed dean of the University of Kentucky College of Dentistry ("UKCOD"). The appointment letter stated that the position would "include a faculty appointment as Professor, with tenure," and that, as dean, Kyrkanides would "serve at the discretion of the Provost for an initial period of six years." Kyrkanides served as dean until January 16, 2019. He retained and continues to hold his position as a professor.

In March 2019, Kyrkanides commenced this action against the University and University Provost, Dr. David W. Blackwell,[1] alleging that, in violation of Kentucky Revised Statutes § 344.280, he was removed from his position as dean in retaliation for (1) reporting and attempting to correct faculty misuse of state funds, (2) reporting theft by UKCOD employees of gold crowns, and (3) supporting the investigation of claims of discrimination by UKCOD students. Kyrkanides also alleged a state law breach-of-contract claim. Although the complaint referenced § 1983 as a basis for jurisdiction, Kyrkanides did not assert a cause of action under § 1983. To correct this error, Kyrkanides filed an amended complaint, adding a federal due process claim and removing the state law breach-of-contract claim. Kyrkanides alleged that the defendants terminated him as dean without notice and an opportunity to be heard. He further alleged that the defendants' actions caused harm to his "good name, honor, and integrity." Kyrkanides sought reinstatement as UKCOD dean, injunctive relief, and compensatory and punitive damages.

The defendants moved to dismiss the amended complaint on the grounds that Kyrkanides's claims were barred by the Eleventh Amendment and that the complaint failed to state a cognizable due process claim under the Fourteenth Amendment. Kyrkanides filed a motion to amend his complaint, proposing to add two defendants—Chief Legal Counsel William Thro and Chief of Staff Bill Swinford—and to add a state law breach-of-contract claim. Kyrkanides also sought to "set[] out . . . facts and statutes and University Regulations (Regulation 3:16 and KRS 230.164) that support [his due process] claims." He attached to his amended complaint and his motion to amend several documents, including his appointment letter and termination letter.

The district court concluded that Kyrkanides's due process claim, as alleged in the motion to amend, could not survive dismissal under Federal Rule of Civil Procedure 12(b)(6). The court first determined that Kyrkanides's vague and conclusory allegations that his "good name, honor, and integrity" were harmed failed to state a viable claim that he was deprived of a liberty interest

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[1] The district court and this court's dockets provide a middle initial of "A" for Dr. Blackwell, while the complaint indicated that his middle initial is "M." According to the University's website, however, Dr. Blackwell's full name is David W. Blackwell.

without due process. Next, the court rejected Kyrkanides's claim that he was deprived of a property interest without due process because he failed to establish that he had a property interest in his position as dean of the UKCOD. The court found that neither the employment agreement nor the state statutes and University regulations cited by Kyrkanides establish that he had a legitimate claim of entitlement to a continued employment in the administrative role of dean. The court found that, with respect to Kyrkanides's dean position, his service at the discretion of the Provost amounted to an at-will employment arrangement. Accordingly, the court (1) denied Kyrkanides's motion to amend as futile, (2) granted in part the defendants' motion to dismiss and dismissed the federal due process claim with prejudice, and (3) declined to exercise supplemental jurisdiction and dismissed the state law claims without prejudice.

On appeal, Kyrkanides reasserts his claim for relief under § 1983 for violation of due process based on his removal as dean. He argues that the district court failed to consider Kentucky public-policy exceptions to the at-will doctrine and erred when it held that neither the June 16, 2015, appointment letter nor state statutes and University regulations governing the removal of a dean at a state university created a property interest in his continued employment. Kyrkanides does not challenge the district court's without-prejudice dismissal of his state law claims.

We review de novo a district court's dismissal under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted. *Wesley v. Campbell*, 779 F.3d 421, 428 (6th Cir. 2015). "To survive a motion to dismiss, 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)). In considering a motion to dismiss, a court may consider "exhibits attached [to the complaint], public records, items appearing in the record of the case and exhibits attached to defendant's motion to dismiss so long as they are referred to in the complaint and are central to the claims contained therein." *Rondigo, LLC v. Twp. of Richmond*, 641 F.3d 673, 681 (6th Cir. 2011) (alteration in original) (quoting *Bassett v. Nat'l Coll. Athletic Ass'n*, 528 F.3d 426, 430 (6th Cir. 2008)). We generally review a district court's denial of leave to file an amended complaint

under the abuse-of-discretion standard. *Puckett v. Lexington-Fayette Urban Cty. Gov't*, 833 F.3d 590, 610 (6th Cir. 2016). But when the district court has denied the motion because the complaint would still fail to state a claim for relief even with the proposed amendment, this court reviews that decision de novo as well. *Id.*

To state a viable 42 U.S.C. § 1983 claim, a plaintiff must allege that (1) a person deprived him of a right, privilege, or immunity secured by the laws or Constitution of the United States, and (2) that person was acting under color of state law while causing the deprivation. *Flagg Bros. v. Brooks*, 436 U.S. 149, 155-56 (1978).

> To establish a procedural due process violation under 42 U.S.C. § 1983, [plaintiffs are] required to demonstrate three elements: (1) that [they] had a life, liberty, or property interest protected by the Due Process Clause of the Fourteenth Amendment; (2) that [they were] deprived of that protected interest within the meaning of the due process clause; and (3) that the state did not afford [them] adequate procedural rights before depriving [them] of [their] protected interest.

Wedgewood Ltd. P'ship I v. Twp. of Liberty, 610 F.3d 340, 349 (6th Cir. 2010). When plaintiffs cannot establish that a life, liberty, or property interest exists, then there can be no concomitant due process violation. *See id.*

Kyrkanides claimed that he was deprived of a protected property interest without due process when he was removed as dean of the UKCOD. In order to show that he was entitled to due process protections before his removal, Kyrkanides had to "demonstrate a 'legitimate claim of entitlement' to his position." *Crosby v. Univ. of Ky.*, 863 F.3d 545, 552 (6th Cir. 2017) (quoting *Bd. of Regents v. Roth*, 408 U.S. 564, 577 (1972)). "A property interest can be created by a state statute, a formal contract, or a contract implied from the circumstances." *Singfield v. Akron Metro. Hous. Auth.*, 389 F.3d 555, 565 (6th Cir. 2004). In determining whether an employment agreement created a protected property interest, the "essential inquiry is whether there exists a 'mutually explicit understanding that supports the plaintiff's claim of entitlement.'" *Crosby*, 863 F.3d at 552 (alterations in original) (quoting *Perry v. Sindermann*, 408 U.S. 593, 601 (1972)). In *Crosby*, we reiterated that "tenured university professors [do] not have a constitutionally protected property interest in administrative posts." *Id.* (alteration in original) (quoting *Stringfield v. Graham*, 212 F.

App'x 530, 538 (6th Cir. 2007)). We noted, however, that a plaintiff may have a protected property interest in an administrative position "where the administrative position itself is a tenure-track appointment or where a professor has received an express guarantee that he will not be removed from the position except for cause." *Id.* at 553.

Kyrkanides argues that "the lower court erred when it did not consider state statutes and [a] university regulation that govern the removal of a dean at a state university." He cites only one statute to support this argument—Kentucky Revised Statutes § 164.230. This section governs the removal of professors, officers, and employees at the University of Kentucky. Contrary to Kyrkanides's argument, the district court did consider whether this statute created a protected property interest in the deanship and concluded correctly that it did not. The statute requires the University to provide notice and an opportunity before removal, but that provision of the statute applies only to the removal of a *president, professor, or teacher*, not a dean. *See* Ky. Rev. Stat. § 164.230. It is undisputed Kyrkanides did not lose his professorship. Thus, the process outlined in the statute was not due to him before the Provost terminated his term as dean.

Kyrkanides's only argument to support his claim that section 164.230 entitles him to continued employment is that "the absence of the word 'dean' does not and should not prevent [him] from receiving the same notice rights as his colleagues." But as we explained in *Crosby*, the statute "do[es] not proscribe a procedure for removal of administrative appointees." 863 F.3d at 554. And Kyrkanides's deanship was an "administrative appointment" as explicitly stated in the June 2015 appointment letter. Kyrkanides further contends that, even if section 164.230 does not apply to him solely in his capacity as dean, the procedural protections should apply because of the "inseparable relationship" between his role as dean and his role as a professor, asserting that "one would not exist without the other." But that is clearly not the case given that the employment agreement contemplated Kyrkanides's continuing in his role as professor at the end of his term as dean, which Kyrkanides has done. Finally, even if the statutory protections did apply, a statute like section 164.230 that sets forth merely a process or procedure governing removal does not

create a protected property interest in continued employment. *See Chandler v. Village of Chagrin Falls*, 296 F. App'x 463, 469 (6th Cir. 2008).

Kyrkanides also argued that the June 2015 appointment letter created a protected property interest in his deanship. He points to the initial six-year term set forth in the letter and asserts that "the parties intended that [his] employment agreement was for a period of six years and therefore making it a contract." He argues that the district court erred when it held that the letter was not a contract.

The district court did, in fact, consider the June 2015 letter a contract but concluded that it did not "demonstrate any mutually explicit understanding as to continued deanship entitlement." Indeed, the court cited the rebuttable presumption under Kentucky contract law that employment agreements are "'at will'—that is, an employee 'is subject to dismissal at any time and without cause' absent contractual language that 'specifically manifest[s] [the parties'] intention to condition termination only according to express terms.'" *Crosby*, 863 F.3d at 553 (alterations in original) (quoting *Bailey v. Floyd Cty. Bd. of Educ. ex rel. Towler*, 106 F.3d 135, 141 (6th Cir. 1997)). Nowhere in the June 2015 letter does it state that Kyrkanides could only be removed from the deanship for cause or that termination would be conditioned on some other terms. Instead, the letter expressly states that Kyrkanides would serve "at the discretion of the Provost." Kyrkanides insists that the letter set a fixed term of employment for at least six years, but that time period is qualified by the term specifying that his service would be "at the discretion of the Provost." To the extent Kyrkanides now contends that the district court should have permitted discovery in order "to clarify and/or expound upon the six years term," no discovery was necessary because the contract language was unambiguous. The district court therefore properly "interpret[ed] the contract's terms by assigning language its ordinary meaning and without resort to extrinsic evidence." *Frear v. P.T.A. Indus., Inc.*, 103 S.W.3d 99, 106 (Ky. 2003); *see Journey Acquisition-II, L.P. v. EQT Prod. Co.*, 830 F.3d 444, 452 (6th Cir. 2016).

Kyrkanides argues that his three claims of retaliation, which he raised only under state law, "are public policy concerns which prevent the District Court from finding that Dr. Kyrkanides was

an at-will employee." Aside from the fact that Kyrkanides cites no federal or state law to support an assertion that a person subject to a retaliatory termination cannot be considered an at-will employee, he never raised this argument in the district court. We need not consider arguments raised for the first time on appeal. *See, e.g.*, *Foster v. Barilow*, 6 F.3d 405, 408 (6th Cir. 1993). Finally, Kyrkanides attempts to distinguish his case from *Crosby*, but none of his arguments go to the threshold question of whether he had a protected property interest in his continued employment as dean. *Crosby* therefore controls. We conclude that the district court correctly found that Kyrkanides did not have a protected property interest in the UKCOD deanship.

The district court also held that Kyrkanides failed to state a claim for the denial of a protected liberty interest without due process. Kyrkanides has failed to develop any argument challenging that aspect of the court's ruling in his brief. Indeed, Kyrkanides mentions this claim only when outlining the allegations that he made in his complaint. "Issues adverted to in a perfunctory manner, unaccompanied by some effort at developed argumentation, are deemed waived." *Bickerstaff v. Lucarelli*, 830 F.3d 388, 396 (6th Cir. 2016) (quoting *McPherson v. Kelsey*, 125 F.3d 989, 995 (6th Cir. 1997)). Indeed, a brief "must contain the 'appellant's contentions and the reasons for them, with citations to the authorities and parts of the record on which the appellant relies.'" *Bouyer v. Simon*, 22 F. App'x 611, 612 (6th Cir. 2001) (quoting Fed. R. App. P. 28(a)(9)). By failing to set forth any argument with respect to this claim, Kyrkanides has waived appellate review of the claim.

Because Kyrkanides's allegations as set forth in his motion to amend could not survive dismissal under Rule 12(b)(6), the district court properly denied the motion as futile. *See Dubuc v. Green Oak Twp*, 312 F.3d 736, 752 (6th Cir. 2002). And because the district court properly dismissed Kyrkanides's federal due process claim for failure to state a claim upon which relief may be granted, it did not abuse its discretion in declining to exercise supplemental jurisdiction over any of Kyrkanides's state law claims. *See* 28 U.S.C. § 1367(c)(3).

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk