

**Civil No. 24-2207**  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE EIGHTH CIRCUIT**

Renee Martin,  
Plaintiff – Appellant,  
v.  
Kelan Gourneau, et al.,  
Defendants – Appellees.

---

**APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE  
DISTRICT OF NORTH DAKOTA  
(CASE NO. 3:22-CV-00136-PDW)**

---

**BRIEF OF DEFENDANT-APPELLEE CRAIG ZACHMEIER**

---

State of North Dakota  
Drew H. Wrigley  
Attorney General

By: Courtney R. Titus  
Assistant Attorney General  
State Bar ID No. 08810  
Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Email [ctitus@nd.gov](mailto:ctitus@nd.gov)

Attorneys for Defendant-Appellee  
Craig Zachmeier

## **CORPORATE DISCLOSURE STATEMENT**

Appellee Craig Zachmeier (“Zachmeier”) is sued in his individual and official capacity for actions arising out of the course of his employment with the North Dakota Bureau of Criminal Investigation. Zachmeier is a state government employee, not a corporation, and therefore, no corporate disclosure statement is required pursuant to Fed. R. App. P. 26.1 or 8th Cir. R. 26.1A.

## **TABLE OF CONTENTS**

	<b><u>Page</u></b>
Table of Authorities .....	ii
Statutes .....	ii
Statement of Issues.....	1
Statement of the Case.....	2
Summary of the Argument.....	4
Argument.....	4
I. Martin’s complaint fails to meet the basic pleading standards to establish a plausible claim to relief under Section 1983 .....	5
A. The district court properly dismissed the individual capacity claim against Zachmeier.....	6
B. The district court properly dismissed the official capacity claim against Zachmeier.....	7
Conclusion .....	8

## **TABLE OF AUTHORITIES**

<b><u>Cases</u></b>	<b><u>Page(s)</u></b>
<i>A.J. ex rel Dixon v. Tanksley</i> , 94 F. Supp. 3d 1061, 1071 (E.D. Mo. 2015) .....	6
<i>Ashcroft v. Iqbal</i> , 556 U.S. 662, 678 (2009) .....	5
<i>Dahl v. Weber</i> , 580 F.3d 730, 733 (8th Cir. 2009) .....	7
<i>Kruger v. Nebraska</i> , 820 F.3d 295, 301 (8th Cir. 2016) .....	7
<i>Schmidt v. City of Bella Villa</i> , 557 F.3d 564, 571 (8th Cir. 2009) .....	5
<i>S.M. v. Krigbaum</i> , 808 F.3d 335, 340 (8th Cir. 2015) .....	7
<i>White v. Jackson</i> , 865 F.3d 1064, 1081 (8th Cir. 2017) .....	5
<i>Yang v. Robert Half International, Inc.</i> , 79 F.4th 949, 961 (8th Cir. 2023) .....	4
 <b><u>Statutes</u></b>	
42 U.S.C. § 1983 .....	5
Rule 12(b)(6) of the Federal Rules of Civil Procedure .....	4

## **STATEMENT OF THE ISSUES**

I. Whether the district court properly granted Defendant-Appellee Craig Zachmeier's motion to dismiss the individual and official capacity claims under Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Most apposite authority:

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009)

White v. Jackson, 865 F.3d 1064 (8th Cir. 2017)

Schmidt v. City of Bella Villa, 557 F.3d 564 (8th Cir. 2009)

Kruger v. Nebraska, 820 F.3d 295 (8th Cir. 2016).

## **STATEMENT OF THE CASE**

On August 23, 2020, Brandon Richard Laducer (“Laducer”) was shot and killed by law enforcement on the Turtle Mountain Indian Reservation following an incident in Bottineau County. R. Doc. 1. As a result, Plaintiff-Appellant Renee Martin (“Martin”), Laducer’s mother, filed a lawsuit on August 22, 2022, alleging that the Bureau of Indian Affairs and Rolette County Law Enforcement mistook Laducer for another individual with a similar name: Brandon Lee Laducer. Id. Brandon Lee Laducer had active warrants, but Laducer did not. Id. However, due to the mistaken identity, Laducer was improperly pursued without a warrant, shot, and killed. Id.

After the incident, North Dakota Bureau of Criminal Investigation Agent Craig Zachmeier (“Zachmeier”) investigated the officer-involved shooting and authored a report. Id. Martin brought suit against Zachmeier in both his individual and official capacities under 42 U.S.C. § 1983. Id. Martin alleged Zachmeier investigated the officer involved shooting, determined that the warrants were for Brandon Lee Laducer not Brandon Richard Laducer, and Zachmeier did not know or identify in his report the owner of the home where Laducer was shot. Id.

On January 26, 2023, Zachmeier moved to dismiss the claims against him because they failed to meet the well-established pleading requirements and Martin failed to reasonably articulate that Laducer had a clearly established right such that Zachmeier would have notice that his conduct of investigating a shooting and authoring a report, would violate such a right. R. Doc. 15.

The district court granted Zachmeier’s motion on March 20, 2023. R. Doc. 47. In its order, the district court accepted as true all the factual allegations Martin set

forth in her complaint and specifically noted that the only allegations against Zachmeier were that he investigated the shooting, the investigation identified that Laducer did not have active warrants, but a Brandon Lee Laducer did, Zachmeier authored a report, and the report did not identify or Zachmeier did not know the owner of the home at which Laducer was shot. R. Doc. 47 at 4 of 5.

The district court addressed the individual capacity claim by analyzing the two-part test for Section 1983 claims. Id. at 3-4 of 5. The district court held that while from the allegations of the complaint “there is a reasonable inference to be drawn that Zachmeier was acting under color of state law when he authored the report at issue” the complaint was silent as to any allegations of how Zachmeier’s report deprived Laducer—or anyone else—of a constitutionally protected right and, thus, the complaint failed to state any plausible claim under Section 1983. Id.

Similarly, the district court held that the official capacity claim against Zachmeier fared no better. Id. The district court recognized that a suit against a governmental official in their official capacity is a suit against the State, and that a State is not a person subject to suit under Section 1983. The district court also held that the money damages sought against Zachmeier in his official capacity were barred by Eleventh Amendment Immunity and dismissed the official capacity claim on this basis as well. Id.

Later, the district court dismissed the remaining Defendants-Appellees and Martin appealed. R. Doc. 95.

## **SUMMARY OF THE ARGUMENT**

Martin’s appeal contains scant reference to Zachmeier or identifying how she believes the district court erred in granting Zachmeier’s motion to dismiss and the only reference Martin makes to Zachmeier indicates that the error is with the defense’s position rather than the district court’s order. See Appellant Brief 08/02/2024 [5420418] (“The defenses’ notion that the District Court did not have jurisdiction over Craig Zachmeier . . . we believe was premature.”). Without more, it is not clear if Martin intended to appeal the district court’s order dismissing Zachmeier from this case. To the extent Martin intended to appeal Zachmeier’s dismissal, the following arguments will be made.

A plaintiff must plead sufficient factual matter that if accepted as true would plausibly entitle the plaintiff to relief. The failure to do so may lead to dismissal under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Here, Martin’s factual allegations with respect to Zachmeier fail to state a claim for relief under Section 1983 in both his individual and official capacity. Moreover, Martin’s request for money damages is barred by the Eleventh Amendment and this Court should affirm the district court’s order.

## **ARGUMENT**

The district court granted Zachmeier’s motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. R. Doc. 47. On appeal, this Court reviews de novo the district court’s decision, “accepting as true all factual allegations and viewing them in the light most favorable to the non-moving party.” Yang v. Robert Half International, Inc., 79 F.4th 949, 961 (8th Cir. 2023).



**I. Martin’s complaint fails to meet the basic pleading standards to establish a plausible claim to relief under Section 1983.**

To survive dismissal, the plaintiff must “plead[] factual content that allows the court to draw the reasonable inference that [each] defendant is liable for the misconduct alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Martin sought relief against Zachmeier under 42 U.S.C. § 1983 in both his individual and official capacities. Section 1983 provides a civil action for deprivation of civil rights and states that “every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State” who causes a person to be subjected to the deprivation of any right, privilege, or immunities “shall be liable to the party injured[.]” 42 U.S.C. § 1983. To prevail on a Section 1983 claim, the plaintiff must demonstrate the personal and direct involvement of each defendant in the alleged violation. White v. Jackson, 865 F.3d 1064, 1081 (8th Cir. 2017). To adequately state a claim under § 1983, a plaintiff must allege (1) that the defendant acted under color of state law; and (2) that the defendant’s alleged conduct deprived the plaintiff of a constitutionally, protected federal right. See Schmidt v. City of Bella Villa, 557 F.3d 564, 571 (8th Cir. 2009).

The allegations in the complaint against Zachmeier, in total, were as follows:

- Zachmeier was not involved in the shooting but investigated it afterwards;
- Zachmeier’s investigation identified that the active warrants of Brandon Lee Laducer were imputed to Laducer, who did not have active warrants;
- Zachmeier authored a report from his investigation; and
- Zachmeier’s report did not identify or Zachmeier did not know the owner of the home at which Laducer was shot.

R. Doc. 1 at 10 of 13; R. Doc. 47 at 4 of 5. Looking at the allegations in light of the two-part test for Section 1983 liability, it is clear that Martin has failed to sufficiently plead a plausible claim for relief against Zachmeier in his individual or official capacities.

**A. The district court properly dismissed the individual capacity claim against Zachmeier.**

With respect to the individual capacity claim, construing the allegations in the light most favorable to Martin, presumably Zachmeier was acting under color of state law when he investigated the officer-involved shooting and wrote his resulting report. However, the allegations do not sufficiently plead with any particularity that Zachmeier's actions deprived Laducer of a constitutional right, which is required for Martin to succeed on a Section 1983 claim. The district court succinctly explained that at most, Martin alleged Zachmeier's report was incomplete. R. Doc. 47 at 4 of 5. However, an incomplete report, without more does not somehow translate to the deprivation of a constitutional right such that the second element of a Section 1983 claim is satisfied. See A.J. ex rel Dixon v. Tanksley, 94 F. Supp. 3d 1061, 1071 (E.D. Mo. 2015). "Even if police knowingly insert false information in their reports, [plaintiff] was not deprived of a constitutional protected interest because of that false information, and thus she was not deprived of substantive due process." Additionally, Martin does not allege that Zachmeier was involved in any manner in a deprivation of rights. See R. Doc. 1; R. Doc. 47 at 4 of 5. Because Martin failed to sufficiently plead a claim against Zachmeier under Section 1983, the district court

correctly dismissed her individual capacity claim against Zachmeier under Rule 12(b)(6).

So too does Martin's claim for damages against Zachmeier in his individual capacity fail. A state official sued in an individual capacity can only be liable for money damages if a plaintiff shows the official was directly and personally involved in the constitutional violation. See, e.g., S.M. v. Krigbaum, 808 F.3d 335, 340 (8th Cir. 2015) ("Government officials are personally liable only for their own misconduct."); Dahl v. Weber, 580 F.3d 730, 733 (8th Cir. 2009) ("Section 1983 liability is personal. To recover § 1983 damages from [defendant] individually, [plaintiff] must show that [defendant] was personally involved in, or directly responsible for, [plaintiff's] prolonged incarceration[.]"). Again, Martin failed to allege that Zachmeier was directly or personally involved in conduct that resulted in the deprivation of a constitutional right and any claim for money damages cannot stand.

**B. The district court properly dismissed the official capacity claim against Zachmeier.**

The district court correctly held that Martin could not establish she was entitled to relief against Zachmeier in his official capacity under Section 1983. R. Doc. 47 at 4 of 5. A suit against a government employee in his official capacity is a suit against the state. Kruger v. Nebraska, 820 F.3d 295, 301 (8th Cir. 2016). Martin seeks money damages for the death of Laducer, but such money damages cannot be recovered against the State pursuant to its Eleventh Amendment immunity: "[T]he defendants cannot be sued for money damages under § 1983 because claims against state officials

in their official capacities are really suits against the state and the state is not a person for purposes of a claim for money damages under § 1983.” Id. Martin seeks no other relief and the official capacity claim against Zachmeier was properly dismissed.

### **CONCLUSION**

Based on the foregoing arguments, Defendant-Appellee Zachmeier respectfully requests the Court affirm the district court’s order dismissing Zachmeier from this case.

Dated this 3<sup>rd</sup> day of October, 2024.

State of North Dakota  
Drew H. Wrigley  
Attorney General

By: /s/ Courtney R. Titus  
Courtney R. Titus  
Assistant Attorney General  
State Bar ID No. 08810  
Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Email [ctitus@nd.gov](mailto:ctitus@nd.gov)

Attorneys for Defendant-Appellee  
Craig Zachmeier

## **CERTIFICATE OF COMPLIANCE**

**Civil No. 24-2207**

The undersigned hereby certifies that this Motion conforms with the type-volume limitations of Fed. R. App. P. 27(d) and that the text of this motion contains 1,751 words, excluding the parts exempted by Fed. R. App. P. 32(f). This brief has been prepared in a proportionally spaced typeface using Microsoft Office Word 365 word processing software in Times New Roman 14 point font. The brief has been scanned for viruses and is virus-free. I further certify that the digital version of this brief was generated by printing to PDF from the original word processing file so that the text of the digital version of the pleading may be searched and copied in compliance with this Court's Local Rule 25(A).

Dated this 3<sup>rd</sup> day of October, 2024.

State of North Dakota  
Drew H. Wrigley  
Attorney General

By: /s/ Courtney R. Titus  
Courtney R. Titus  
Assistant Attorney General  
State Bar ID No. 08810  
Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Email [ctitus@nd.gov](mailto:ctitus@nd.gov)

Attorneys for Defendant-Appellee  
Craig Zachmeier

**Civil No. 24-2207**  
**IN THE UNITED STATES COURT OF APPEALS**  
**FOR THE EIGHTH CIRCUIT**

Renee Martin,  
Plaintiff – Appellant,  
  
v.  
  
Kelan Gourneau, et al.,  
Defendants – Appellees.

---

**CERTIFICATE OF SERVICE**

---

The undersigned certifies on this 3<sup>rd</sup> day of October, 2024, I served a copy of the foregoing **Brief Of Defendant-Appellee Craig Zachmeier** by filing a copy of the same using the CM/ECF electronic-filing system, which will send an electronic copy to counsel for Kelan Gourneau, Michael Slater, Evan Parisien, Earl Charbonneau, Reed Mesman, Heather Baker, Joseph Kaufman, William Poitra, Jayde Slater, Nathan Gustafson, Trenton Gunville, Andrew Saari Jr., and Mitchell Slater.

I also hereby certify that, upon notification that **Brief of Defendant-Appellee Craig Zachmeier**, has been filed I will send one (1) paper copy of Defendant-Appellee's brief to Appellant by sending it via U.S. Mail to the address listed on the Court's CM/ECF System.

State of North Dakota  
Drew H. Wrigley  
Attorney General

By: /s/ Courtney R. Titus  
Courtney R. Titus  
Assistant Attorney General  
State Bar ID No. 08810  
Office of Attorney General  
500 North 9th Street  
Bismarck, ND 58501-4509  
Telephone (701) 328-3640  
Email [ctitus@nd.gov](mailto:ctitus@nd.gov)

Attorneys for Defendant-Appellee  
Craig Zachmeier