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EXCEPT AS AUTHORIZED BY APPLICABLE RULES.  
See Ariz. R. Supreme Court 111(c); ARCAP 28(c);  
Ariz. R. Crim. P. 31.24

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION ONE



DIVISION ONE  
FILED: 12/18/2012  
RUTH A. WILLINGHAM,  
CLERK  
BY: mjt

JESSIE LEWIS, ) No. 1 CA-CV 12-0189  
)  
Plaintiff/Appellant, ) DEPARTMENT D  
)  
v. ) **MEMORANDUM DECISION**  
) (Not for Publication -  
WILLIAM G. MONTGOMERY; HILARY I. ) Rule 28, Arizona Rules of  
WEINBERG, ) Civil Appellate Procedure)  
)  
Defendants/Appellees. )  
\_\_\_\_\_ )

Appeal from the Superior Court in Maricopa County

Cause No. CV2011-020897

The Honorable John C. Rea, Judge

**AFFIRMED**

William G. Montgomery, Maricopa County Attorney Phoenix  
By J. Scott Dutcher, Deputy County Attorney  
Attorneys for Defendants/Appellees

Jessie Lewis Tucson  
Plaintiff/Appellant *In Propria Persona*

**B R O W N**, Judge

¶1 Jessie Lewis appeals the trial court's dismissal of his complaint alleging violations of his constitutional rights. He also argues the court improperly denied his motion for leave

to amend his complaint. For the reasons set forth below, we affirm.

#### BACKGROUND

¶2 In November 2011, Lewis filed a claim alleging that “[o]n or about Aug[ust] 28, 2011, the defendant[s] William G. Montgomery, [the Maricopa County Attorney], Hillary L. Weinberg, [a Deputy County Attorney], Steven Meyer, [and] Dusten Mullen #9221 conspir[ed] to commit civil right’s violations [and] to [violate Lewis’] United States Constitutional Civil Rights [under the] 5th, 6th, 8th, [and] 14th amendment[s].”<sup>1</sup> In December 2011, appellees Montgomery and Weinberg (“M & W”) moved for dismissal of Lewis’ complaint with prejudice, arguing that (1) Lewis failed to comply with the notice of claim statute, Arizona Revised Statutes § 12-821.01(A) (2012); (2) his complaint failed to state a claim upon which relief can be granted; and (3) M & W are entitled to absolute prosecutorial immunity. In response, Lewis filed a “Motion for Summary Judgment” and alleged that on November 21, 2011, he had served a notice of claim to the clerk of the board of supervisors, that Montgomery and Weinberg were not entitled to prosecutorial immunity, and that he had stated a valid claim.

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<sup>1</sup> Although Lewis’ complaint lists Steven Meyer and Dusten Mullen as defendants, it does not appear they were ever served with the complaint.

¶13 On January 12, 2012, M & W filed their reply and again argued that Lewis had failed to state a valid claim and that they were entitled to prosecutorial immunity for any alleged wrongdoing. Additionally, M & W asserted that Lewis' notice of claim was deficient because the clerk of the board of supervisors was not authorized to accept service for any claims against M & W. On January 18, Lewis filed a motion for leave to amend his notice of claim, asserting that he still had time to properly serve it. On the same day, Lewis also filed a motion for leave to amend his complaint against M & W. In response to Lewis' motions, M & W argued that Lewis should not be allowed leave to amend because any effort to do so would be futile in light of M & W's prosecutorial immunity. M & W also argued that Lewis' motion to amend was deficient under Arizona Rules of Civil Procedure ("ARCP") 15(a)(2) because Lewis did not attach a copy of his proposed amended pleading as an exhibit.

¶14 On January 31, 2012, the trial court granted M & W's motion to dismiss with prejudice. Lewis' timely appeal followed.

#### **DISCUSSION**

¶15 Lewis argues the trial court erred by dismissing his complaint and by denying his motion for leave to amend. M & W counter that the court correctly denied Lewis' motion because

any effort to amend would be futile and because Lewis' motion did not comply with ARCP 15(a)(2).

¶16 We review the trial court's dismissal of Lewis' complaint de novo. *Coleman v. City of Mesa*, 230 Ariz. 352, \_\_\_, ¶ 7, 284 P.3d 863, 866 (2012). "Dismissal is appropriate under Rule 12(b)(6) only if 'as a matter of law plaintiffs would not be entitled to relief under any interpretation of the facts susceptible to proof.'" *Id.* at \_\_\_, ¶ 8, 284 P.3d at 867 (quoting *Fid. Sec. Life Ins. Co. v. State Dep't of Ins.*, 191 Ariz. 222, 224, ¶ 4, 954 P.2d 580, 582 (1998)).

¶17 The trial court in this case granted M & W's motion to dismiss without indicating on what basis it did so. Nevertheless, our review of the record and relevant case law provide support for the court's ruling. M & W argued that dismissal was appropriate because any claims that Lewis could have brought against them would be barred by absolute prosecutorial immunity. Lewis did not argue to the trial court, or to this court on appeal, that prosecutorial immunity does not apply here. Nevertheless, we must review de novo whether or not M & W would be entitled to prosecutorial immunity, thereby warranting dismissal of Lewis' complaint. See *Coleman*, 230 Ariz. at \_\_\_, ¶ 7, 284 P.3d at 866.

¶18 "[A] prosecutor enjoys absolute immunity where his or her activities are 'intimately associated' with the judicial

process. *Challenge, Inc. v. State ex rel. Corbin*, 138 Ariz. 200, 204, 673 P.2d 944, 948 (App. 1983) (quoting *Imbler v. Pachtman*, 424 U.S. 409, 430 (1976)). Furthermore, “[a]bsolute immunity is warranted when the prosecutor acts as an advocate in initiating a prosecution and presenting the state’s case.” *State v. Superior Court In and For County of Maricopa*, 186 Ariz. 294, 298, 921 P.2d 697, 701 (App. 1996) (quoting *Gobel v. Maricopa County*, 867 F.2d 1201, 1203 (9th Cir. 1989)).

¶9 In his complaint, Lewis alleged that M & W conspired, along with the other defendants, to assist in maliciously prosecuting him. At best, Lewis’ complaint can be construed as asserting that M & W pursued charges against him knowing the charges were baseless. We have previously held that exact conduct to be entitled to absolute prosecutorial immunity. See *id.* (citing *Challenge*, 138 Ariz. at 204, 673 P.2d at 948). Based on the allegations contained in the complaint, it is clear that Lewis would not be entitled to relief under any interpretation of the facts susceptible to proof. *Coleman*, 230 Ariz. at \_\_\_, ¶ 8, 284 P.3d at 867. Because Lewis’ allegations against M & W would be barred by prosecutorial immunity, the trial court did not err in dismissing Lewis’ complaint.

¶10 Next, we review the court’s denial of Lewis’ motion for leave to amend for an abuse of discretion. *Dewey v. Arnold*, 159 Ariz. 65, 68, 764 P.2d 1124, 1127 (App. 1988). While

amendments to a complaint should be liberally granted, a trial court may deny such a motion where "the court finds undue delay in the request, bad faith, undue prejudice, or futility in the amendment." *MacCollum v. Perkinson*, 185 Ariz. 179, 185, 913 P.2d 1097, 1103 (App. 1996).

¶11 M & W assert that any claims Lewis brings against them would ultimately be subject to absolute prosecutorial immunity, and accordingly, any effort by Lewis to amend his complaint would be futile. We agree. As already discussed, Lewis would not be entitled to relief under any interpretation of the facts contained in his complaint. Furthermore, nothing in the record indicates that Lewis would be able to amend his complaint in a way that would cure the defect. Accordingly, because it would have been futile to allow Lewis to amend his complaint, the trial court did not abuse its discretion in denying Lewis' motion for leave to amend.<sup>2</sup>

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<sup>2</sup> Because we affirm the trial court's ruling on the motion for leave to amend based on the futility of amendment, we do not reach M & W's argument that Lewis' motion was deficient under Arizona Rule of Civil Procedure 15(a)(2).

**CONCLUSION**

¶12 For the forgoing reasons, we find the trial court did not err in dismissing Lewis' complaint or abuse its discretion in denying his motion for leave to amend. We therefore affirm the trial court's rulings.

/s/

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MICHAEL J. BROWN, Presiding Judge

CONCURRING:

/s/

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ANDREW W. GOULD, Judge

/s/

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DONN KESSLER, Judge