

United States Court of Appeals
For the Eighth Circuit

No. 13-2382

Adrian L. Dunn

Plaintiff - Appellant

v.

Michael B. Mattivi, Probation Officer; John 1 Doe, Federal Agent; John 2 Doe,
Federal Agent

Defendants - Appellees

Appeal from United States District Court
for the Western District of Missouri - Kansas City

Submitted: October 18, 2013

Filed: October 23, 2013

[Unpublished]

Before LOKEN, BYE, and BENTON, Circuit Judges.

PER CURIAM.

Federal inmate Adrian L. Dunn, Sr. appeals the district court's¹ pre-service dismissal, without prejudice, of his pro se action brought under *Bivens v. Six*

¹The Honorable Dean Whipple, United States District Judge for the Western District of Missouri.

Unknown Named Agents, 403 U.S. 388, 389 (1971) and state law, challenging the search and seizure of his property. Upon de novo review, *see Cooper v. Schriro*, 189 F.3d 781, 783 (8th Cir. 1999) (per curiam) (28 U.S.C. § 1915A dismissal), this court affirms with modification.

Dunn challenged a search of the residence he shared with his girlfriend. The search was conducted by the girlfriend's probation officer, accompanied by two federal law-enforcement officers. The district court correctly held the girlfriend's consent was sufficient to allow a search of the entire premises. *See Illinois v. Rodriguez*, 497 U.S. 177, 181, 186 (1990) (search conducted pursuant to consent of occupant valid as to absent co-occupant who shares, or is reasonably believed to share, authority over area in common). Neither the presence of law-enforcement officers at the search nor the actual motivations for conducting the search change the result. *See United States v. Knights*, 534 U.S. 112, 122 (2001) (reasonableness of search evaluated under traditional Fourth Amendment analysis; no basis for examining official purpose); *United States v. Brown*, 346 F.3d 808, 811-12 (8th Cir. 2003) (no basis for examining official purpose or "actual motivations" of officers; *Knights* eliminated "stalking horse" or "investigatory purpose" inquiry); *cf. United States v. Becker*, 534 F.3d 952, 955-57 (8th Cir. 2008) (consensual search of probationer's residence by probation officer and two law-enforcement officers did not violate Fourth Amendment).

Because the complaint failed to state a federal claim, the dismissal of Dunn's *Bivens* claims is modified to be with prejudice. The without-prejudice dismissal of Dunn's pendent state-law claims was within the district court's discretion. *See Labickas v. Ark. State Univ.*, 78 F.3d 333, 334-35 (8th Cir. 1996) (per curiam) (following dismissal of federal claims, court may dismiss state law claims without prejudice).