

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

AUG 31 2026

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

ESTATE OF LACY LLOYD THOMAS,

Plaintiff - Appellant,

LACY L. THOMAS,

Plaintiff,

v.

CLARK COUNTY NEVADA, Nevada; dba
Clark County District Attorney's Office,

Defendant - Appellee,

SCOTT S. MITCHELL, CLARK COUNTY
OFFICE OF THE DISTRICT ATTORNEY,

Defendants.

No. 25-3382

D.C. No.

2:18-cv-01615-CDS-MDC

MEMORANDUM*

Appeal from the United States District Court
for the District of Nevada

Cristina D. Silva, District Judge, Presiding

Argued and Submitted August 14, 2026
Reno, Nevada

Before: BADE, FORREST, and VANDYKE, Circuit Judges.

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

In 2008, Lacy Lloyd Thomas was indicted on five counts of theft and five counts of official misconduct in connection with his role as the CEO of the largest public hospital in Nevada. The criminal case against him resulted in a mistrial following the late disclosure of exculpatory evidence, and in 2017, the Nevada Supreme Court granted Thomas a writ of mandamus and held that his re-prosecution was barred by double jeopardy. Thomas brought this action under 42 U.S.C. § 1983 against Clark County, the Clark County District Attorney’s Office, and then-Chief Deputy District Attorney Scott Mitchell, alleging that Defendants violated his constitutional rights in prosecuting the criminal case against him.

The Estate of Lacy Lloyd Thomas, which was substituted as the plaintiff following Thomas’s death, appeals the district court’s orders dismissing its claim against Mitchell under the doctrine of absolute prosecutorial immunity and granting summary judgment in favor of Clark County. We review both decisions de novo. *See Health Freedom Def. Fund, Inc. v. Carvalho*, 148 F.4th 1020, 1026 (9th Cir. 2025) (en banc) (judgment on the pleadings); *Cadena v. Customer Connexx LLC*, 51 F.4th 831, 835 (9th Cir. 2022) (summary judgment). We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. The district court correctly concluded that Mitchell is entitled to absolute immunity. “[A] prosecutor enjoys absolute immunity from [§] 1983 suits

for damages when he acts within the scope of his prosecutorial duties.” *Imbler v. Pachtman*, 424 U.S. 409, 420 (1976). The Estate argues that Mitchell violated Thomas’s constitutional rights in initiating his prosecution without probable cause, evaluating the evidence assembled by law enforcement, and deliberately withholding exculpatory evidence. These actions, however, are traditional functions of an advocate for the State for which absolute immunity applies. *See id.* at 424–25 (explaining that a prosecutor is absolutely immune from suit for malicious prosecution); *id.* at 431 n.4 (explaining that even the intentional withholding of exculpatory evidence would be covered by absolute immunity); *Buckley v. Fitzsimmons*, 509 U.S. 259, 273 (1993) (stating that “the professional evaluation of the evidence assembled by the police” is protected by absolute immunity). Accordingly, the district court properly entered judgment on the pleadings in favor of Mitchell.¹

¹ The district court acted within its discretion when it invited the Estate to move for an amendment should it discover facts supporting a theory that Mitchell performed a non-prosecutorial function. *See WPP Luxembourg Gamma Three Sarl v. Spot Runner, Inc.*, 655 F.3d 1039, 1059 (9th Cir. 2011) (“[W]here some claims survive a motion to dismiss, the district court, in its discretion, has power to allow an amended complaint even with regard to claims that it earlier dismissed”—particularly when “discovery reveal[s] evidence indicating that previously dismissed Defendants were in fact involved in the alleged [wrongful] conduct.”), *abrogated on other grounds by Lorenzo v. SEC*, 587 U.S. 71 (2019). But the Estate did not seek leave to amend and thus never presented allegations that Mitchell performed an administrative or investigative function.

2. The district court properly granted summary judgment in favor of Clark County on the Estate's claim that Clark County had a policy, practice, or custom of failing to exercise proper administrative oversight and ensure prosecutors' compliance with their constitutional duty to disclose exculpatory evidence under *Brady v. Maryland*, 373 U.S. 83 (1963). Liability under *Monell v. Department of Social Services*, 436 U.S. 658 (1978), may extend to constitutional violations resulting from a municipality's failure to train its officers or employees but only when it "amounts to deliberate indifference." *City of Canton v. Harris*, 489 U.S. 378, 388 (1989). "A pattern of similar constitutional violations by untrained employees is 'ordinarily necessary' to demonstrate deliberate indifference for purposes of failure to train." *Connick v. Thompson*, 563 U.S. 51, 62 (2011) (quoting *Bd. of Cnty. Comm'rs of Bryan Cnty. v. Brown*, 520 U.S. 397, 409 (1997)).

The Estate did not present evidence of a pattern of similar *Brady* violations, and the "unconstitutional consequences" of Clark County's *Brady* policy were not "so patently obvious" that it "could be liable under § 1983 without proof of a pre-existing pattern of violations." *Id.* at 64. Clark County had a robust *Brady* policy and training program, and the Estate did not present any evidence that Clark County was aware of any inadequacy in its *Brady* training program. *See id.* at 62 ("Without notice that a course of training is deficient in a particular respect,

decisionmakers can hardly be said to have deliberately chosen a training program that will cause violations of constitutional rights.”). Evidence regarding Mitchell’s personal views or that he could not recall the nature of the specific *Brady* training he received did not preclude summary judgment because “[p]roof of a single incident of unconstitutional activity is not sufficient to impose liability under *Monell*,” absent circumstances not present here. *City of Oklahoma City v. Tuttle*, 471 U.S. 808, 823–24 (1985) (plurality opinion); *see also Monell*, 436 U.S. at 691 (“[A] municipality cannot be held liable under § 1983 on a *respondeat superior* theory.”).

AFFIRMED.