[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 15-13130
Non-Argument Calendar

D.C. Docket No. 1:11-cv-21855-MGC

FRANKLIN R. LACY,

Plaintiff-Appellant,

versus

BP P.L.C.,
APPLIED DRILLING TECHNOLOGY, INC.,
CHALLENGER MINERALS, INC.,
HALLIBURTON COMPANY,
CARL-HENRIC SVANBERG, et al.,

Defendants-Appellees,

BP AMERICA, INC., et al.,

Consol Defendants.

No. 15-15336
Non-Argument Calendar

D.C. Docket No. 1:11-cv-21855-MGC

FRANKLIN R. LACY,

Plaintiff-Appellant,

versus

BP P.L.C.,
APPLIED DRILLING TECHNOLOGY, INC.,
CHALLENGER MINERALS, INC.,
HALLIBURTON COMPANY, et al.,

Defendants-Appellees.

Appeals from the United States District Court
for the Southern District of Florida

(January 22, 2018)

Before TJOFLAT, MARTIN and JILL PRYOR, Circuit Judges.

PER CURIAM:

In this consolidated appeal, Franklin Lacy, proceeding *pro se*, appeals the District Court's dismissal of his amended complaint with prejudice under Fed. R. Civ. P. 12(b)(6) for failure to state a claim upon which relief can be granted and

the denial of his motion for reconsideration, construed as a Fed. R. Civ. P. 60(b) motion for relief from judgment. On appeal, Lacy argues that he alleged plausible facts in his amended complaint that entitled him to relief for BP's alleged theft of his idea to stop the 2010 Deepwater Horizon Oil Spill and that the District Court erroneously failed to grant him leave to amend his amended complaint because it determined it would be futile. Lacy also argues that the District Court erred when it did not rule on his second motion for reconsideration after he had filed a notice of appeal because the District Court retained jurisdiction over his motion.

I.

We review a district court's ruling on a Fed. R. Civ. P. 12(b)(6) motion to dismiss *de novo*. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003). We review a district court's decision to grant or deny leave to amend a complaint for an abuse of discretion. *Hollywood Mobile Estates Ltd. v. Seminole Tribe of Fla.*, 641 F.3d 1259, 1264 (11th Cir. 2011). We review *de novo* a district court's conclusion that granting leave to amend a complaint would be futile. *Id.*

We construe *pro se* pleadings liberally. *Evans v. Georgia Reg'l Hosp.*, 850 F.3d 1248, 1253 (11th Cir.), *petition for cert. filed*, No. 17-370 (U.S. 2017). However, liberal construction of *pro se* pleadings "does not give a court license to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action." *Campbell v. Air Jamaica Ltd.*, 760 F.3d 1165, 1168–

69 (11th Cir. 2014) (quotation omitted). We view a complaint in the light most favorable to the plaintiff and accept all of the plaintiff's well-pleaded facts as true. *Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1057 (11th Cir. 2007). A *pro se* litigant who does not address an issue in his brief abandons the issue on appeal. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

In order to survive a Rule 12(b)(6) motion to dismiss, a plaintiff "does not need detailed factual allegations," but must provide grounds for an entitlement to relief that constitute more "than labels and conclusions" or "a formulaic recitation of the elements of a cause of action." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). "Factual allegations must be enough to raise a right to relief above the speculative level." *Id.* A complaint must contain "enough facts to state a claim to relief that is plausible on its face." *Brooks v. Warden*, 800 F.3d 1295, 1300 (11th Cir. 2015) (quotation omitted). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (quotation omitted). We have stated that "conclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt., Ltd. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002).

Generally, district courts have "extensive discretion" in deciding whether to grant a plaintiff leave to amend. *Campbell v. Emory Clinic*, 166 F.3d 1157, 1162

(11th Cir. 1999) (quotation omitted). But where a more carefully drafted complaint might state a claim, a district court abuses its discretion if it does not provide a plaintiff with at least one opportunity to amend before dismissing the complaint with prejudice. *See Thomas v. Town of Davie*, 847 F.2d 771, 773 (11th Cir. 1988). However, leave to amend need not be given "when the amendment would prejudice the defendant, follows undue delays, or is futile." *Id.* Leave to amend a complaint is futile when the proposed amended complaint still would be subject to dismissal. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007). That is, leave to amend will be denied "if a proposed amendment fails to correct the deficiencies in the original complaint or otherwise fails to state a claim." *Mizzaro v. Home Depot, Inc.*, 544 F.3d 1230, 1255 (11th Cir. 2008).

We conclude that the District Court's dismissal of Lacy's complaint was proper. Lacy's amended complaint recites three causes of action under Florida law—breach of implied contract, civil theft, and fraud—but fails to allege any specific factual allegations that allow for the plausible inference the stated conduct took place. For example, all three causes of action rest on the assertion that BP used Lacy's idea for stopping the oil spill, but the complaint provides nothing beyond pure speculation on which a conclusion that it did so may rest. In fact, Lacy attached to the complaint a letter from BP stating the opposite, namely, that "something similar" to Lacy's proposal "was already being considered/planned" at

the time BP received Lacy's submission. Lacy failed to allege any specific facts or attach any documentation that would support the inference that that was not the case. Moreover, as the District Court observed, Lacy "admits that his submission did not provide BP with sufficient detail to implement his idea," and he says that is so because BP's form did not allow for a more detailed submission. The natural inference from this allegation is that BP would have needed to contact Lacy for a more detailed explanation if it was interested in implementing his proposal. But Lacy never alleges that BP did so, yet maintains that BP adopted his specific proposal. How then could it have done so without enough information? Accepting Lacy's allegations as true, the conclusion must be that BP adopted someone else's (or their own), more detailed proposal. These defects are fatal to all three of Lacy's causes of action, because each requires BP's adoption of and use of Lacy's specific proposal.

The complaint contains other fatal defects as well. For example, as to his implied-contract claim, Lacy alleges that he conferred a benefit on BP by sending BP his idea. However, he does not allege with specificity that he expected or reasonably should have expected compensation from the submission of his idea—one of the four required elements of an implied-contract claim under Florida law. *See Merle Wood & Assocs., Inc. v. Trinity Yachts, LLC*, 714 F.3d 1234, 1237 (11th Cir. 2013) (stating that Florida law prescribes four elements for implied contract

claims: (1) the plaintiff must confer a benefit on the defendant; (2) the defendant must have knowledge of the benefit conferred; (3) the defendant must have retained or accepted the benefit; and (4) the circumstances must dictate that "it would be inequitable for the defendant to retain the benefit without paying fair value for it." (quotation omitted)). He therefore failed to allege the elements required to make out an implied-contract claim.

As to his fraud claim, Lacy failed to allege with specificity how Halliburton and Transocean were allegedly involved in a "consortium" with BP. He merely says they were. This is a conclusory allegation that fails to meet the plausibility standard or Federal Rule of Civil Procedure 9(b)'s heightened pleading standard governing fraud claims. *See Brooks v. Blue Cross & Blue Shield of Fla., Inc.*, 116 F.3d 1364, 1381 (11th Cir. 1997) (stating "[i]n a case involving multiple defendants," Rule 9(b) requires the complaint to "inform each defendant of the nature of his alleged participation in the fraud." (quotation omitted)). As to BP's alleged fraud, he cites a letter from a BP attorney containing statements he alleges were false, but he does not allege what BP gained from making those statements, which is required to make out a fraud claim under Rule 9(b)'s particularity requirement. *See* Fed. R. Civ. P. 9(b) (requiring plaintiffs to state "with particularity the circumstances constituting fraud"); *Blue Cross*, 116 F.3d at 1380–81 (stating that Rule 9(b) requires a plaintiff to allege, among other things, "the

precise statements, documents, or misrepresentations made . . . and . . . what the defendants gained by the alleged fraud"). Nor does he allege whether or how he was misled by BP's statements, which is required to make out a fraud claim under both Florida law and Rule 9(b). *See Sacred Heart Health Sys., Inc. v. Humana Military Healthcare Servs., Inc.*, 601 F.3d 1159, 1179 (11th Cir. 2010) (defining fraud under Florida law as "the intentional misrepresentation of a material fact made for the purpose of inducing another to rely, and on which the other *reasonably relies* to his or her detriment" (emphasis added)); *Blue Cross*, 116 F.3d at 1380–81 (stating that Rule 9(b) requires the plaintiff to allege "the content and manner in which these statements misled the Plaintiff[]"). In fact, he had already submitted his idea to BP before he received the letter. Thus, the District Court properly dismissed Lacy's complaint.

Moreover, dismissal with prejudice was warranted. Although it is usually an abuse of discretion for a district court to dismiss a *pro se* complaint without granting leave to amend, Lacy never stated what exactly he would have changed about his complaint in the many documents he filed in the District Court, including in his motion for reconsideration, nor did he ever propose an amended complaint. Lacy asserted multiple times throughout the record and on appeal that the facts he alleged were plausible as alleged, he repeated the factual crux of his claim as it is stated in the complaint, and he failed to allege or propose any new facts that would

have cured the complaint's defects. In short, despite multiple opportunities to do so, Lacy failed to demonstrate that he would be able to resolve the defects in his amended complaint. Hence, the District Court did not err in concluding that granting leave to amend the complaint would have been futile.

II.

We review the denial of a Rule 60(b) motion for an abuse of discretion. *Am. Bankers Ins. Co. of Fla. v. Nw. Nat'l Ins. Co.*, 198 F.3d 1332, 1338 (11th Cir. 1999). "Discretion means the district court has a range of choice, and that its decision will not be disturbed as long as it stays within that range and is not influenced by any mistake of law." *Josendis v. Wall to Wall Residence Repairs, Inc.*, 662 F.3d 1292, 1306 (11th Cir. 2011). (quotations omitted). We leave undisturbed a district court's discretionary ruling unless we find that the court has made a clear error of judgment, or has applied the wrong legal standard. *Id.* at 1307.

Rule 60(b)(6) authorizes district courts to grant a party relief from a final judgment for any reason that justifies relief. *See Cano v. Baker*, 435 F.3d 1337, 1342 (11th Cir. 2006). Relief under this clause "is an extraordinary remedy which may be invoked only upon a showing of exceptional circumstances," and that, "absent such relief, an extreme and unexpected hardship will result." *Griffin Swim-Tech Corp.*, 722 F.2d 677, 680 (11th Cir. 1984) (quotations omitted). Even

when the circumstances are extraordinary, the decision to grant a Rule 60(b)(6) motion is within the district court's "sound discretion." *Cano*, 435 F.3d at 1342 (quotation omitted).

A district court retains subject-matter jurisdiction to entertain and deny a Rule 60(b) motion filed after a notice of appeal is filed. *Mahone v. Ray*, 326 F.3d 1176, 1180 (11th Cir. 2003). Although a district court lacks jurisdiction to grant a Rule 60(b) motion after the notice of appeal is filed, the court should consider the motion, assess its merits, and then either deny the motion or indicate its belief that the arguments raised therein are meritorious. *Id.* If the district court believes the arguments are meritorious, "the movant may then petition the court of appeals to remand the matter so as to confer jurisdiction on the district court to grant the motion." *Id.*

Here, we conclude that the District Court did not abuse its discretion in denying Lacy's motion for reconsideration. Although the District Court incorrectly stated that it lacked subject-matter jurisdiction to consider his motion, this error was harmless. The District Court considered the merits of his first motion and denied it, and Lacy's second motion (which the District Court dismissed for lack of jurisdiction) was identical to the first. Thus, the District Court had the opportunity to consider the merits of his second motion when it dismissed his first motion. Further, Lacy fails to present any argument on appeal

that the District Court's ruling on the merits was substantively incorrect. He has therefore waived any challenge to the District Court's denial of his motion for reconsideration. *See Sampson*, 518 F.3d at 874.

III.

Therefore, the District Court's decision is **AFFIRMED.**