[DO NOT PUBLISH]

In the United States Court of Appeals

For the Eleventh Circuit

No. 24-11579

Non-Argument Calendar

HARRISON BREEDLOVE,
HAAKON BREKKE,
CONNOR SMITH,
RAMONIE SMITH,
JOSHUA TOWNES, et al.,

Plaintiffs-Appellants,

versus

SHERIFF VICTOR HILL, et al.,
individually and in his official capacity as
Sheriff of the Clayton County, Georgia,

Defendants,

DEMETRY CHRISTIAN,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Georgia
D.C. Docket No. 1:23-cv-00963-TWT

Before WILLIAM PRYOR, Chief Judge, and LUCK and BRASHER, Circuit Judges.

PER CURIAM:

Harrison Breedlove and seven other named appellants were among 102 people arrested while gathered in a Sam's Club parking lot near midnight on March 13, 2021, for suspected street racing. In his amended complaint, Breedlove sued Demetrius Christian, a Clayton County Police Officer, 42 U.S.C. § 1983, for false arrest in violation of the Fourth Amendment. The district court granted Christian's motion to dismiss based on qualified immunity. Breedlove argues that the district court erred by denying his motion to amend his complaint to name 37 additional officers as defendants, denying his request for a default judgment as a spoliation sanction, and granting Christian's motion to dismiss based on qualified immunity. We affirm.

We review denial of a motion to amend a complaint for abuse of discretion. *Diesel "Repower", Inc. v. Islander Invs. Ltd.*, 271 F.3d 1318, 1321 (11th Cir. 2001). Although ordinarily leave to amend should be freely given under Federal Rule of Civil Procedure 15(a)(2), a court may properly deny leave "when [an] amendment would be futile." *Hall v. United Ins. Co. of Am.*, 367 F.3d 1255, 1262–63 (11th Cir. 2004) (citation omitted). "'This court has found that denial of leave to amend is justified by futility when the complaint as amended is still subject to dismissal.'" *Id.* at 1263 (quoting *Burger King Corp. v. Weaver,* 169 F.3d 1310, 1320 (11th Cir. 1999)).

Breedlove contends that the district court erred by denying him leave to amend his complaint to add 37 new defendant officers, whom he claims are the true parties to the case. He further asserts that it is unclear why the court denied him leave to amend, especially because courts must grant leave "freely" and the identities of the officers here were unobtainable before the initial disclosures. Fed. R. Civ. P. 15(a)(2).

Breedlove's arguments lack merit and fail to address the basis of the district court's ruling. Breedlove's proposed amended complaint was substantively the same as his original complaint; the only change was the addition of 37 new defendant officers. It contained no additional factual allegations as to any of the proposed new defendants. The district court held that the amendments were futile because the allegations were not sufficiently specific to state a plausible claim for relief against any additional officer for violating Breedlove's constitutional rights. *See* District Ct. Order 7, ECF No.

42. Breedlove fails to address the basis for the district court's ruling; accordingly, we hold that he has abandoned the issue on appeal. *See Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 680 (11th Cir. 2014) ("When an appellant fails to challenge properly on appeal one of the grounds on which the district court based its judgment, he is deemed to have abandoned any challenge of that ground, and it follows that the judgment is due to be affirmed.").

We review the denial of a motion for spoliation sanctions for an abuse of discretion. *Mann v. Taser Int'l, Inc.*, 588 F.3d 1291, 1310 (11th Cir. 2009). Federal Rule of Civil Procedure 37(e) allows a court to impose sanctions for a party's failure to preserve electronically stored information. A court may impose the severe sanction of a default judgment, however, "only upon finding that the party acted with the intent to deprive another party of the information's use in the litigation." Fed. R. Civ. P. 37(e)(2).

Breedlove moved for a default-judgment sanction under Rule 37(e)(2) based on the Clayton County Police Department's admission that several officers' bodycam videos were missing. The district court denied Breedlove's motion because he failed to provide evidence of bad-faith intent. *See Skanska USA Civ. Se. Inc. v. Bagelheads, Inc.*, 75 F.4th 1290, 1312 (11th Cir. 2023); *see also Mann*, 588 F.3d. at 1310. Breedlove argues that the district court erred by refusing to award him a default judgment as a sanction because the spoliation of bodycam videos is a misdemeanor under the Georgia Records Act and should be deemed intentional for Rule 37 purposes. *See* Ga. Code Ann., §§ 50-18-96, 50-18-102. We disagree.

The district court correctly determined that an agency's noncompliance with the Records Act does not inevitably lead to a per se bad faith finding. The propriety of Rule 37(e)(2) sanctions turns on the cause of the spoliation and requires a finding that one party "acted with the intent to deprive another party of the information's use in the litigation." Fed. R. Civ. P. 37(e)(2). Without evidence of nefarious intent, a district court cannot impose the severe default-judgment sanction. *Skanska*, 75 F.4th at 1311. The district court explained that following Breedlove's argument to its logical end would automatically subject law-enforcement agencies "to default judgment any time body camera footage was lost for any reason." *See* District Ct. Order 19, ECF No. 42. And that reasoning would impermissibly write the intent requirement out of the rule. Moreover, the district court's ruling tracks Rule 37(e)(2)'s permissive language, which explains that a court "may" issue sanctions.[1] The district court did not abuse its discretion.

Finally, we review the decision to dismiss based on qualified immunity de novo. *Baker v. City of Madison, Ala.*, 67 F.4th 1268, 1276 (11th Cir. 2023). Breedlove does not challenge the district court's substantive ruling that his amended complaint failed to allege facts

[1] Christian insists that Rule 37(e) is inapplicable because no current party is accused of failing to preserve evidence; Breedlove did not allege that Christian—the sole defendant in the operative amended complaint—failed to preserve the videos in bad-faith. By its plain text, Christian says, Rule 37(e) allows sanctions only for a *party's* spoliation of electronically stored information. Fed. R. Civ. P. 37(e). We need not decide this issue because even if Rule 37(e) applies, its legal requirements have not been satisfied here.

establishing that Christian violated clearly established law. Instead, he advances a procedural argument that the district court could not have decided the qualified-immunity issue before discovery was completed because a determination of "historical facts" had not yet been established in the record. By prematurely resolving the qualified immunity issue, Breedlove asserts, his right to a jury trial guaranteed by the Seventh Amendment was "carelessly disregarded."[2] And he adds that the defendants successfully opposed his motion for spoliation sanctions by arguing that the *sanctions motion* was premature without discovery, so the same reasoning should apply to Christian's motion to dismiss. We disagree.

It is well established that a court may grant qualified immunity at the motion-to-dismiss stage before the completion of discovery if plaintiff's complaint fails to allege the violation of a clearly established right. *See, e.g., St. George v. Pinellas Cnty.*, 285 F.3d 1334, 1337 (11th Cir. 2002); *Mitchell v. Forsyth*, 472 U.S. 511, 526 (1985) ("Unless the plaintiff's allegations state a claim of violation of clearly established law, a defendant pleading qualified immunity is entitled to dismissal before the commencement of discovery."). In determining whether a complaint alleges a violation, the court accepts the facts alleged as true and draws all reasonable inferences in the plaintiff's favor. *St. George*, 285 F.3d at 1337. The review in

[2] On reply, Breedlove raises a new argument that "the trial court failed to accept the truth of plaintiff's factual allegations and plausible inferences." But this assertion comes too late. *See Big Top Koolers, Inc. v. Circus–Man Snacks, Inc.*, 528 F.3d 839, 844 (11th Cir. 2008) ("We decline to address an argument advanced by an appellant for the first time in a reply brief.").

that circumstance is limited to the four corners of the complaint and does not require any additional materials from discovery. *Id.* (citation omitted); *see also Corbitt v. Vickers*, 929 F.3d 1304, 1311 (11th Cir. 2019). In this way, review of a motion for spoliation sanctions, which may require discovery, differs from review of a motion to dismiss for failure to state a claim, which does not. So contrary to Breedlove's argument, the district court handled the case exactly as our precedent authorizes.[3]

The judgment of the district court is **AFFIRMED**.

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[3] We hold that Breedlove abandoned any challenge to the substance of the district court's ruling that, considering only the amended complaint, he failed to allege a violation of clearly established law. Breedlove's mere recitation of the qualified-immunity standards without any application or analysis to the district court's reasoning or conclusions is insufficient. *See Sapuppo*, 739 F.3d at 680–81 ("We have long held that an appellant abandons a claim when he either makes only passing references to it or raises it in a perfunctory manner without supporting arguments and authority."); *Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1330 (11th Cir. 2004) ("[T]he law is by now well settled in this Circuit that a legal claim or argument that has not been briefed before the court is deemed abandoned and its merits will not be addressed.").