NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 24-13353
Non-Argument Calendar

LEE MICHAEL TOMKO,

Plaintiff-Appellant,

versus

BRUNO MARTIN,
FBI Agent,

Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida
D.C. Docket No. 6:24-cv-01063-WWB-DCI

Before JILL PRYOR, BRASHER, and ANDERSON, Circuit Judges.

PER CURIAM:

Lee Michael Tomko, proceeding *pro se*, appeals the district court's dismissal of his *Bivens v. Six Unknown Named Agents of Federal*

Bureau of Narcotics, 403 U.S. 388 (1971), action alleging that a Federal Bureau of Investigation agent named Bruno Martin violated Tomko's Fourth Amendment rights by hacking his personal electronics and interfering with his life. On appeal, Tomko argues that the district court erred by (1) incorrectly applying the standard for dismissing a *pro se* pleading; (2) concluding that the FBI and Martin were not in default; and (3) dismissing his complaint before discovery began. After careful review of the record, we affirm.

I.

Tomko filed a *Bivens* complaint against agent Martin in the Middle District of Florida. He alleged that Martin had violated his Fourth Amendment rights by interfering with his stock and other investments, hacking his personal electronics, defaming him to current and potential employers, and attempting to kill him. Tomko alleged that he had personal knowledge of these Fourth Amendment violations because he had observed people around him and his personal electronic devices behaving strangely. Specific anomalies that Tomko observed included that his computer screen glitched when people said certain signaling words, his home air conditioning switched on just after a person on the television said, "air is on max," and waiters often seated him at restaurant tables under an American flag. Tomko believed this strange behavior indicated that Martin, the FBI, the White House, and members of Congress were hacking his devices and interfering with his life. Tomko sought $3.5 million in damages related to career losses, unrealized stock gains, "personal security," and punitive damages.

A summons was issued as to Martin, and several days later Tomko filed a notice that the summons had been returned executed on the FBI Headquarters in Washington, D.C. When sixty days had passed since this self-attested date of service, Tomko filed a motion for default. The United States opposed this motion and moved to dismiss Tomko's complaint because it was frivolous and, alternatively, failed to state a claim. The United States also attached a declaration from FBI Special Agent Cheryl Mimura asserting that no one with the name Bruno Martin had ever worked for the FBI. Tomko responded to the United States's motion by contending that the motion to dismiss was untimely because Martin was in default, that the FBI had changed Martin's name in a coverup attempt, and that Tomko had observed more strange occurrences that bolstered the factual allegations in his complaint.

A magistrate judge issued a report and recommendation to dismiss Tomko's complaint without leave to amend because any amendment would be futile. First, the magistrate judge reasoned that Plaintiff had not provided sufficient proof that the United States was in default. Second, the magistrate judge concluded that the complaint should be dismissed because it asserted factual allegations that were clearly baseless and therefore frivolous. Third, the magistrate judge concluded that the motion for default should be denied because even if the United States had been served on the date that Tomko asserted, Tomko could not have served Martin as an officer because no one with that name had worked for the FBI.

Tomko objected to the report and recommendation. He argued that it was biased and wrong, attached screenshots from the United States Postal Service to establish when the summons had been delivered by certified mail, and contended that without discovery he did not know how to amend his complaint to sue the correct FBI agent.

The district court adopted the report and recommendation. In doing so, the district court responded to Tomko's objections by writing that, even if Tomko had properly served the United States, Federal Rule of Civil Procedure 4(i)(3) required Tomko to serve both the United States and Martin, and there was no evidence that Tomko had done so. The district court also wrote that Tomko's objection that his complaint was not frivolous was conclusory and repeated allegations from his complaint.

Tomko appealed.

II.

We review a district court's dismissal of a complaint for frivolity under an abuse of discretion standard. *Miller v. Donald*, 541 F.3d 1091, 1100 (11th Cir. 2008). Discretion means that 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." *Guideone Elite Ins. Co. v. Old Cutler Presbyterian Church, Inc.*, 420 F.3d 1317, 1324 (11th Cir. 2005) (quoting *Ameritas Variable Life Ins. Co. v. Roach*, 411 F.3d 1328, 1330 (11th Cir. 2005)). Applying this standard, we will reverse only upon finding that the district court made "a clear error of judgment" or "applied the

wrong legal standard." *Rance v. Rocksolid Granit USA, Inc.*, 583 F.3d 1284, 1286 (11th Cir. 2009) (quoting *United States v. Frazier*, 387 F.3d 1244, 1259 (11th Cir. 2004) (en banc)). We review *de novo* a district court's decision that a particular amendment to a complaint would be futile. *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007).

III.

Tomko makes three arguments. First, he argues that the district court failed to properly apply the deferential standard for a motion to dismiss a *pro se* pleading. Second, he argues that the district court erroneously determined that the FBI and Martin were not in default. Third, he argues that the district court should not have dismissed his complaint before discovery began. We address each argument in turn.

We start with Tomko's first argument that the district court applied the incorrect legal standard when dismissing his complaint because it failed to construe his *pro se* pleading broadly or accept his pleaded facts as true. We disagree. A district court may "dismiss a case under its inherent authority, which it possesses as a means of managing its own docket so as to achieve the orderly and expeditious disposition of cases." *McNair v. Johnson*, 143 F.4th 1301, 1306 (11th Cir. 2025) (quotation marks omitted and alterations accepted) (citations omitted). Included in that inherent authority is the power to dismiss a claim when a suit is "patently frivolous or vexatious," so long as "the party who brought the case has been given notice and an opportunity to respond." *Jefferson Fourteenth Assocs. v. Wometco de Puerto Rico, Inc.*, 695 F.2d 524, 526 (11th Cir. 1983).

Tomko had notice of the United States's motion to dismiss and was given an opportunity to respond to the argument that his complaint was frivolous, so the district court had the inherent authority to dismiss Tomko's complaint as frivolous.

We agree with the district court's determination that Tomko's claims are frivolous. "A claim is frivolous if it is without arguable merit either in law or fact." *Bilal v. Driver*, 251 F.3d 1346, 1349 (11th Cir. 2001) (citations omitted). A claim is not factually frivolous for being merely improbable, but it is factually frivolous only if the facts alleged are "clearly baseless," that is, "fanciful," "fantastic," or "delusional." *Denton v. Hernandez*, 504 U.S. 25, 32–33 (1992) (citations omitted). "As those words suggest, a finding of factual frivolousness is appropriate when the facts alleged rise to the level of the irrational or the wholly incredible . . . ." *Id.* at 33.

Tomko argues that his allegations are not frivolous because his complaint includes multiple pages of evidence proving why his claims are real. The United States argues that Tomko's factual allegations are fanciful, fantastic, and delusional. We agree with the United States. For example, Tomko alleges that the FBI, the White House, and members of Congress have been accessing his electronic devices to communicate with each other and signal him. Tomko also alleges that everyday people—such as restaurant servers who sat him at tables near American flags—were involved with the FBI's attempts to harass and kill him. And Tomko alleges that the FBI caused his computer to glitch when certain signal words were said and his air conditioning to switch on after someone on

his television said, "air is on max." Because Tomko's factual allegations are fanciful and irrational, we cannot say that the district court abused its discretion in dismissing Tomko's complaint as frivolous.

Nor is there any legal basis for concluding that the district court should have granted Tomko leave to amend his complaint. "Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed . . . ." *Cockrell*, 510 F.3d at 1310. Tomko has not explained how he would amend his complaint to cure its deficiencies.

Tomko's second argument, that the district court should have determined that the FBI and Martin were in default, also fails because he raised this issue only in his reply brief and not in his initial brief. We liberally construe *pro se* filings, but we do not have the license to rewrite an otherwise deficient pleading to sustain an action. *In re Ellingsworth Residential Cmty. Ass'n, Inc.*, 125 F.4th 1365, 1377 (11th Cir. 2025) (citing *Jones v. Fla. Parole Comm'n*, 787 F.3d 1105, 1107 (11th Cir. 2015)). "[I]ssues not briefed on appeal by a *pro se* litigant are deemed abandoned." *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). Moreover, if an appellant does not raise an issue in an initial brief, we consider that issue abandoned. *United States v. Campbell*, 26 F.4th 860, 871 (11th Cir. 2022) (en banc). We will only revive an abandoned issue *sua sponte* in "extraordinary circumstances." *Id.* at 872. Tomko did not assert this default issue in his initial brief, and there are no extraordinary circumstances here, so we decline to address this issue.

Tomko's third argument, that the district court should not have dismissed his complaint before discovery began, is without merit. As the Supreme Court has emphasized, the pleading standard in the Federal Rules of Civil Procedure "does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions." *Ashcroft v. Iqbal*, 556 U.S. 662, 678–79 (2009). Because Tomko's complaint is frivolous, the district court correctly determined that it was due to be dismissed before discovery began.

IV.

For the foregoing reasons, the district court's judgment is **AFFIRMED**.