

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 25-12390
Non-Argument Calendar

CHRISTOPHER D. JACKSON,

Plaintiff-Appellant,

versus

BIRMINGHAM VETERANS AFFAIRS MEDICAL
CENTER,

Defendant-Appellee.

Appeal from the United States District Court
for the Northern District of Alabama
D.C. Docket No. 2:24-cv-01235-GMB

Before JILL PRYOR, BRANCH, and LAGOA, Circuit Judges.

PER CURIAM:

Christopher Jackson appeals the district court's dismissal of his pro se amended complaint alleging that his civil liberties and

Fifth Amendment right to due process were violated when he was arrested at the Birmingham Veterans Affairs Medical Center (“the VA”). Jackson argues that dismissal was unwarranted because the district court failed to enforce the discovery rules in Fed. R. Civ. P. 26 and its own initial order, making it impossible for him to prove his claim that the VA violated his constitutional rights.

Summary disposition is appropriate either where time is of the essence, such as “situations where important public policy issues are involved or those where rights delayed are rights denied,” or where “the position of one of the parties is clearly right as a matter of law so that there can be no substantial question as to the outcome of the case, or where . . . the appeal is frivolous.” *Groendyke Transp., Inc. v. Davis*, 406 F.2d 1158, 1161-62 (5th Cir. 1969).

We review a district court’s order granting a motion to dismiss for failure to state a claim de novo. *Caterpillar Fin. Servs. Corp. v. Venequip Mach. Sales Corp.*, 147 F.4th 1341, 1346 (11th Cir. 2025). Denial of leave to amend a complaint is reviewed for abuse of discretion, while a district court’s conclusion that amending a complaint would be futile is reviewed de novo. *Hsi Chang v. JPMorgan Chase Bank, N.A.*, 845 F.3d 1087, 1093-94 (11th Cir. 2017).

Under Rule 12(b)(6), defendants may move for a district court to dismiss a case because the complaint fails to state a claim. Fed. R. Civ. P. 12(b)(6). Dismissal is warranted if, assuming the facts alleged in the plaintiff’s complaint are true, the complaint “fails to state a claim on which relief may be granted.” *Id.* A complaint must include factual allegations sufficient “to raise a right to

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relief above the speculative level” by “stat[ing] a claim to relief that is plausible on its face.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 570 (2007). “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.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Plausibility requires “more than a sheer possibility that a defendant has acted unlawfully.” *Id.* Factual allegations are taken as true and construed “in the light most favorable to” the complainant. *Caterpillar Fin. Servs. Corp.*, 147 F.4th at 1346 (quoting *Cavalieri v. Arior Airlines C.A.*, 25 F.4th 843, 847 (11th Cir. 2022)).

Pro se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will be liberally construed. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). However, liberal construction does not permit courts “to serve as *de facto* counsel for a party, or to rewrite an otherwise deficient pleading in order to sustain an action.” *Id.* at 1168-69 (quoting *GJR Invs., Inc. v. Cnty. of Escambia, Fla.*, 132 F.3d 1359, 1369 (11th Cir. 1998)). Therefore, “issues not briefed on appeal by a *pro se* litigant are deemed abandoned.” *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008).

An appellant abandons a claim when: (a) he makes only passing references to it, (b) he raises it in a perfunctory manner without supporting arguments and authority, (c) he refers to it only in the “statement of the case” or “summary of the argument,”

(d) the references to the issue are mere background to the appellant's main arguments or are buried within those arguments, or (e) he raises it for the first time in his reply brief. *Sapuppo v. Allstate Floridian Ins. Co.*, 739 F.3d 678, 681-83 (11th Cir. 2014). “[S]imply stating that an issue exists, without further argument or discussion, constitutes abandonment of that issue and precludes our considering the issue on appeal.” *Singh v. United States*, 561 F.3d 1275, 1278 (11th Cir. 2009). We will not review forfeited issues unless the issue is extraordinary enough to excuse forfeiture and:

(1) the issue involves a pure question of law and refusal to consider it would result in a miscarriage of justice; (2) the party lacked an opportunity to raise the issue at the district court level; (3) the interest of substantial justice is at stake; (4) the proper resolution is beyond any doubt; (5) the issue presents significant questions of general impact or of great public concern.

United States v. Campbell, 26 F.4th 860, 872-73 (11th Cir. 2022) (en banc).

A district court typically must provide a pro se plaintiff with at least one opportunity to amend his complaint prior to dismissing the action with prejudice, but it is not required to do so if it finds that amendment would be “futile,” which occurs “when the complaint as amended would still be properly dismissed.” *Silberman v. Miami Dade Transit*, 927 F.3d 1123, 1132-33 (11th Cir. 2019) (quoting *Cockrell v. Sparks*, 510 F.3d 1307, 1310 (11th Cir. 2007)).

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Federal Rule of Civil Procedure 26 outlines the discovery protocols in federal civil cases. *See* Fed. R. Civ. P. 26. “Facial challenges to the legal sufficiency of a claim or defense, such as a motion to dismiss based on failure to state a claim for relief, should . . . be resolved before discovery begins.” *Chudasama v. Mazda Motor Corp.*, 123 F.3d 1353, 1367 (11th Cir. 1997) (footnote omitted).

The Fourth Amendment is violated when a person is warrantlessly arrested without probable cause, and such an arrest can serve as the basis for a claim under 42 U.S.C. § 1983. *Gates v. Khokhar*, 884 F.3d 1290, 1297 (11th Cir. 2018).

A plaintiff asserting a Fifth Amendment violation must identify the specific constitutional right allegedly infringed rather than relying on a general claim of a constitutional violation, as 42 U.S.C. § 1983 is not itself a source of substantive rights but merely provides a method for vindicating federal rights that exist elsewhere. *See Graham v. Connor*, 490 U.S. 386, 394 (1989) (stating that constitutional claims must be analyzed under the specific constitutional provision at issue rather than a generic standard, because analysis of any constitutional claim begins by identifying the specific constitutional right allegedly infringed), *overruled on other grounds by, Saucier v. Katz*, 533 U.S. 194 (2001).

Here, we grant the motion for summary affirmance because the VA has met its burden of showing that its position is clearly correct as a matter of law. Jackson abandoned any challenge to the district court’s dismissal of his amended complaint and denial of

further leave to amend by not addressing them in his brief on appeal. Moreover, even if exceptional circumstances were present to excuse Jackson's abandonment, the district court's dismissal of Jackson's amended complaint was clearly correct as a matter of law, as Jackson did not sufficiently allege specific facts to support his due process claim. And his arguments on appeal under Fed. R. Civ. P. 26 are frivolous because discovery had not yet started due to the pending motion to dismiss.

For the reasons discussed, we affirm the district court's dismissal of Jackson's pro se amended complaint.

AFFIRMED.