

NOT FOR PUBLICATION

In the
United States Court of Appeals
For the Eleventh Circuit

No. 26-10076
Non-Argument Calendar

TAVERN DOWNING, SR.,

Plaintiff-Appellant,

MARVIN WELLS, et al.,

Plaintiffs,

versus

DISTRICT ATTORNEY, MACON JUDICIAL CIRCUIT,
TONY MAY,
PAIGE MILLER,
VANESSA FLOURNOY,
ROBERT COLLINS, III, et al.,

Defendants-Appellees.

Appeal from the United States District Court
for the Middle District of Georgia
D.C. Docket No. 5:25-cv-00277-TES

Before JORDAN, BRASHER, and KIDD, Circuit Judges.

PER CURIAM:

Tavern Downing, Sr., proceeding pro se, appeals from the district court’s dismissal of his conversion and civil rights complaint. He alleges that a county employee, the district attorney, and several assistant district attorneys failed to return 600 bitcoins that law enforcement seized when he was charged with drug and fire-arm offenses. The district court dismissed the operative complaint and denied Downing’s motion to file a second amended complaint. After careful review, we affirm.

I.

The procedural history of this dispute spans several lawsuits and multiple amended complaints and other similar filings. We focus on the key filings and omit others that are less relevant to the appeal.

Upon arresting Downing for drug trafficking and illegally possessing a firearm, law enforcement seized his computer equipment, including a “cold wallet” with 600 bitcoins. After a judge dismissed the charges, Downing contacted the sheriff’s office for the return of his seized property. A county employee, identified as

26-10076

Opinion of the Court

3

Deborah Statham in Downing's filings, told Downing that the district attorney's office had his property. Eventually, Downing received his seized computers, but not the bitcoin.

Downing's first amended complaint alleges that Statham, Bibb County District Attorney Anita Howard, and three Bibb County Assistant District Attorneys—Tony May, Paige Miller, and Vanessa Flournoy—stole or lost his bitcoin in violation of his constitutional rights. His amended complaint did not distinguish between the defendants or explain what they did individually. He did, however, bring three counts under 42 U.S.C. § 1983, alleging that Statham and her codefendants acted knowingly, intentionally, and with reckless disregard for his constitutional rights. More specifically, Downing alleged “that John Doe, acting under color of law as an employee of the District Attorney's Office, was the principal actor who unlawfully took possession of and misappropriated the cold wallet, and that [the defendants] each aided, abetted, conspired with, or were deliberately indifferent to the theft and concealment of Plaintiff's property.” Doc. 15 at 3 (boldface removed).

Downing twice asked for leave to file a second amended complaint. These proposed second amended complaints sought to add a claim against Bibb County. The district court denied Downing's requests to file a second amended complaint as futile.

The district court dismissed the claims in the first amended complaint against Statham for failure to plead any factual, non-conclusory allegations sufficient to state a claim for relief under 42 U.S.C. § 1983. The district court explained that a “complaint *must*

contain enough factual allegations to ‘allow . . . [c]ourt[s] to draw the reasonable inference that [a] defendant is liable for the misconduct alleged.’” Doc. 36 at 6. (quoting *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009)). The district court concluded that, “[o]n the whole, Plaintiff’s allegations with respect to Counts I, II, and III from the First Amended Complaint do not provide enough for the Court to make that reasonable inference” as to Statham. *Id.*

Downing appealed.

II.

We review the grant of a motion to dismiss for failure to state a claim under Rule 12(b)(6) *de novo*, accept the plaintiff’s allegations as true, and construe them in the light most favorable to the plaintiff. *Caterpillar Fin. Servs. Corp. v. Venequip Mach. Sales Corp.*, 147 F.4th 1341, 1346 (11th Cir. 2025). We review a district court’s decision whether to grant further leave to amend a complaint for abuse of discretion, *Pinnacle Advert. & Mktg. Grp., Inc. v. Pinnacle Advert. & Mktg. Grp., LLC*, 7 F.4th 989, 999-1000 (11th Cir. 2021) (leave to amend), but review *de novo* whether granting leave to amend is futile, *L.S. ex rel. Hernandez v. Peterson*, 982 F.3d 1323, 1328 (11th Cir. 2020). A court abuses its discretion if it applies an incorrect legal standard, follows improper procedures, or makes clearly erroneous findings of fact. *Peer v. Lewis*, 606 F.3d 1306, 1311 (11th Cir. 2010). We may affirm on any ground that is supported by the record. *Cisneros v. Petland, Inc.*, 972 F.3d 1204, 1210 (11th Cir. 2020).

26-10076

Opinion of the Court

5

III.

Downing, proceeding pro se, argues that the district court made several errors in dismissing his complaint against Statham and declining to allow him to file a second amended complaint. Some of these arguments are not directed at the district court's reasons for dismissing the operative complaint. For example, contrary to Downing's contention, the district court did not grant Statham's motion to dismiss on Eleventh Amendment or qualified immunity grounds.

In any event, we will address Downing's arguments in two parts. First, we will address the district court's reasons for dismissing Downing's claims against Statham and disallowing his second amended complaint. Second, we will address whether Downing has preserved any arguments as to other defendants.

A.

The district court did not err in dismissing the claims in Downing's amended complaint against Statham. Dismissal for failure to state a claim is appropriate if the complaint's factual allegations fail to state a claim for relief that is "plausible on its face." *Iqbal*, 556 U.S. at 678; *see also 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."). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Iqbal*, 556 U.S. at 678. Threadbare recitals of

the elements of a cause of action supported by mere conclusory statements do not suffice. *Id.*

Downing's amended complaint made threadbare recitals of the elements of a cause of action. *Iqbal*, 556 U.S. at 678. Most importantly, his complaint failed to plead contents that would allow a court to draw a reasonable inference that Statham was liable because it did not allege what Statham did as a factual matter. It does not, for example, allege that she stole the bitcoin. Instead, the amended complaint alleges that a "John Doe" misappropriated the bitcoin. Any allegations of wrongdoing, and all the counts in the complaint, are directed at the "Defendants" as a whole.

Downing argues that the district court erroneously imposed a heightened pleading standard. We disagree. The district court properly evaluated Downing's claims under the correct motion to dismiss standard, explaining why the factual allegations pleaded in the first amended complaint fail to state a plausible claim for relief. Specifically, the district court explained that Downing's three claims in his first amended complaint were "textbook conclusory" and were insufficient to allow the court to draw reasonable inferences that Statham was liable for violating Downing's constitutional rights. *See id.*

We also cannot say the district court abused its discretion in declining to allow Downing to file his second amended complaint. The proposed second amended complaint also did not state a viable claim against Statham. It sought to add Bibb County as a defendant, but a county cannot be held liable under section 1983 for

26-10076

Opinion of the Court

7

the actions of its employees unless a county custom or policy caused the underlying constitutional violation. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978). Here, the proposed complaint did not assert an official policy or custom by Bibb County of allowing the Sheriff's Office or John Doe to steal or misplace property. *Id.* at 690-91, 694. The district court did not abuse its discretion in dismissing the operative complaint and denying leave to amend.

B.

Turning to the other defendants, we believe Downing has abandoned any arguments as to anyone other than Statham. We construe a pro se litigant's pleadings liberally. *Campbell v. Air Jam. Ltd.*, 760 F.3d 1165, 1168 (11th Cir. 2014). However, like other litigants, a pro se appellant abandons an issue by failing to address it in their opening brief. *Timson v. Sampson*, 518 F.3d 870, 874 (11th Cir. 2008). A party fails to adequately brief a claim when he does not "plainly and prominently raise it." *Sapuppo v. Allstate Floridian Ins.*, 739 F.3d 678, 681 (11th Cir. 2014) (quotation marks omitted). An appellant abandons a claim when either making "only passing references to it or raises it in a perfunctory manner without supporting arguments and authority." *Id.* We will affirm a judgment when the appellant fails to challenge one of the grounds of the district court's decision. *See id.* at 680.

In his reply brief, Downing contends that he did not abandon challenges to the court's dismissal related to Howard, May, and Flournoy. But, even in his reply brief, he continues to address the court's dismissal only as related to Statham. This Court does

not consider issues raised for the first time in a reply brief. *See Timson*, 518 F.3d at 874. And, in any event, Downing fails to address in either his initial brief or reply brief the district court's reasoning for dismissing Downing's claims against Howard, May, and Flournoy. *See Sapuppo*, 739 F.3d at 681.

IV.

AFFIRMED.