

APPEAL NO. 22-12038 and 22-12411

**IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT**

WILLIAM M. WINDSOR,
Plaintiff – Appellant,

versus

JAMES N. HATTEN, et al,
Defendants

**Appeal from the United States District Court
for the Northern District of Georgia, Atlanta Division
D.C. Docket No. 1:11-CV-01923-TWT
Judge Thomas Woodrow Thrash**

**APPELLANT’S PETITION FOR REHEARING
AND EN BANC DETERMINATION**

APPENDIX 143

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PRO SE FOR PLAINTIFF/ APPELLANT, WILLIAM M. WINDSOR

Timson v. Sampson

518 F.3d 870 (11th Cir. 2008)
Decided Feb 27, 2008

No. 07-12797 Non-Argument Calendar.

872 February 27, 2008. *872

John Timson, St. Petersburg, FL, pro se.

Michael R. D'Lugo, Wicker, Smith, O'Hara, McCoy, Graham Ford, P.A., Orlando, FL, for Defendants-Appellees.

Sushma Soni, Douglas N. Letter, Dept. of Justice/Civ. Div./App. Staff, Washington, DC, Todd B. Grandy, Tampa, FL, for U.S.

Appeal from the United States District Court for the Middle District of Florida.

Before MARCUS, WILSON and FAY, Circuit Judges.

PER CURIAM:

John Timson, proceeding *pro se*, appeals the district court's dismissal of his *pro se qui tam* action under the FCA, 31 U.S.C. §§ 3729- 3733. Timson makes two arguments on appeal. First, he argues that the district court erred in dismissing his complaint because, as a *pro se* relator, he was unable to maintain a *qui tam* action under the FCA. Second, he argues that the district court abused its discretion in declining to exercise supplemental jurisdiction over his state law claims. For the reasons set forth more fully below, we affirm.

As an initial matter, Timson also appeals the stay of his motion for a temporary restraining order; however, the merits of this appeal render that issue

moot. *See BankWest, Inc. v. Baker*, 446 F.3d 1358, 1363 (11th Cir. 2006).

I.

We review *de novo* the district court's grant of a motion to dismiss for failure to state a claim under Fed.R.Civ.P. 12(b)(6), accepting the allegations in the complaint as true and construing them in the light most favorable to the plaintiff. *Glover v. Liggett Group, Inc.*, 459 F.3d 1304, 1308 (11th Cir. 2006). We also review *de novo* questions of statutory interpretation. *Burlison v. McDonald's Corp.*, 455 F.3d 1242, 1245 (11th Cir. 2006).

The FCA permits a private individual, called a *qui tam*¹ "relator," to file a civil action against, and recover damages on behalf of the United States from, any person who:

¹ " *Qui tam* is short for '*qui tam pro domino rege quam pro se ipso in hac parte sequitur*,' which means 'who pursues this action on our Lord the King's behalf as well as his own.'" *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1237 n. 1(11th Cir. 1999).

- (1) knowingly presents, or causes to be presented, to an officer or employee of the United States Government . . . a false or fraudulent claim for payment or approval;
- (2) knowingly makes, uses, or causes to be made or used, a false record or statement to get a false or fraudulent claim paid or approved by the Government.

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31 U.S.C. §§ 3729(a)(1)-(2), 3730(b)(1), (c)(3); *United States ex rel. Clausen v. Laboratory Corp. of America, Inc.*, 290 F.3d 1301, 1308 n. 4 (11th Cir. 2002). Section 3730(b)(1) of the FCA states that actions brought by private individuals "shall be brought in the name of the Government." 31 U.S.C. § 3730(b)(1). Regarding the rights of the parties to *qui tam* actions, the FCA provides, first, that "[i]f the government proceeds with the action, it shall have the primary responsibility for prosecuting the action, and shall not be bound by an act of the person bringing the action[,]" 31 U.S.C. § 3730(c)(1), and second, "[i]f the government elects not to proceed with the action, the person who initiated the action shall have the right to conduct the action[,]" 31 U.S.C. § 3730(c)(3). "The United States is the real party in interest in a *qui tam* action under the False Claims Act even if it is not controlling the litigation." *United States ex rel. Walker v. RF Properties of Lack County, Inc.*, 433 F.3d 1349, 1359 (11th Cir. 2005). "The purpose of the Act . . . is to encourage private individuals who are aware of fraud being perpetrated against the government to bring such information forward." *Ragsdale v. Rubbermaid, Inc.*, 193 F.3d 1235, 1237 n. 1 (11th Cir. 1999).

The FCA is silent on whether a private individual can bring a *qui tam* suit *pro se*. See 31 U.S.C. §§ 3729- 3733. The plain language of the FCA does not limit *qui tam* actions to those private individuals employing counsel. See 31 U.S.C. § 3730(b)(1), (c)(3). The FCA simply states that "[a] person may bring a civil action" under the FCA "for the person and for the United States Government." 31 U.S.C. § 3730(b)(1).

We have yet to decide the issue of whether a private individual can bring a *qui tam* suit *pro se*. Those Circuits that have considered the issue have held that *pro se* relators may not prosecute *qui tam* actions. See *Stoner v. Santa Clara County Office of Educ.*, 502 F.3d 1116, 1126-28 (9th Cir. 2007); *United States ex rel. Lu v. Ou*, 368 F.3d 773, 775-

76 (7th Cir. 2004); see also *United States v. Onan*, 190 F.2d 1, 6-7 (8th Cir. 1951). Their rationale is persuasive.

Section 1654, Title 28, the general provision permitting parties to proceed *pro se*, provides: "In all courts of the United States the parties may plead and conduct *their own cases* personally or by counsel as, by the rules of such courts, respectively, are permitted to manage and conduct causes therein." 28 U.S.C. § 1654 (emphasis added). The provision appears to provide a personal right that does not extend to the representation of the interests of others. *Accord Stoner*, 502 F.3d at 1126. As noted above, "[t]he United States is the real party in interest in a *qui tam* action under the False Claims Act. . . ." *United States ex rel. Walker*, 433 F.3d at 1359. Therefore, Timson does not have authority under 28 U.S.C. § 1654 to proceed *pro se* in this *qui tam* action, and is without any authority to do so unless the FCA authorizes relators to litigate a *qui tam* suit *pro se*.

As noted above, the FCA is silent as to whether a private individual can bring a *qui tam* suit *pro se*. See 31 U.S.C. §§ 3729- 3733. The plain language of the FCA draws no distinction in an individual's ability to bring a *qui tam* suit based upon whether or not that individual is represented by counsel. See 31 U.S.C. § 3730(b)(1), (c)(3). The absence of an explicit authorization for *qui tam* suits to be brought *pro se* could indicate, however, an intention by Congress that *qui tam* suits be brought according to § 1654 and "the established procedure which requires that only one licensed to practice law may conduct proceedings in court for anyone⁸⁷⁴ other than himself." *Stoner*, 502 F.3d at 1127; see also *Onan*, 190 F.2d at 6. Moreover, the safeguards Timson outlines do not sufficiently replace adequate legal representation for the United States's interests, particularly where the United States would be bound by the judgment in future proceedings.

To the extent that Timson argues that he should be allowed to sever his interests under the FCA from the interests of the United States, that approach would be inconsistent with the purpose of the FCA, which is to aid the government in combating fraud through an incentive to private individuals aware of such fraud. *See Ragsdale*, 193 F.3d at 1237 n. 1. That approach would also conflict with the fact that the United States is the real party in interest in a *qui tam* suit.

For all these reasons, the district court did not err in dismissing Timson's complaint because Timson could not maintain a *qui tam* suit under the FCA as a *pro se* relator.

II.

As an initial matter, the government argues that we are without jurisdiction to review the dismissal of Timson's state law claims because his notice of appeal fails to explicitly reference the claims' dismissal. "Where an appellant notices the appeal of a specified judgment only[,] this court has no jurisdiction to review other judgments or issues which are not expressly referred to and which are not impliedly intended for appeal." *Whetstone Candy Co. v. Kraft Foods, Inc.*, 351 F.3d 1067, 1079-80 (11th Cir. 2003) (quotation omitted).

Timson's notice of appeal indicates that he is appealing the district court's order dated May 18, 2007, in which the district court *sua sponte* raised the issue of its supplemental jurisdiction over Timson's state law claims. Therefore, the issue is properly before this Court. *See Whetstone*, 351 F.3d at 1079-80.

Timson, however, fails to address the issue in his opening brief. He argues in his reply brief that his retaliatory discharge claim provided an independent basis for federal subject-matter jurisdiction. While we read briefs filed by *pro se* litigants liberally, *Lorisme v. I.N.S.*, 129 F.3d 1441, 1444 n. 3 (11th Cir. 1997), issues not briefed on appeal by a *pro se* litigant are deemed abandoned, *Horsley v. Feldt*, 304 F.3d 1125, 1131 n. 1 (11th Cir. 2002). Moreover, we do not address arguments raised for the first time in a *pro se* litigant's reply brief. *Lovett v. Ray*, 327 F.3d 1181, 1183 (11th Cir. 2003). Timson, thus, has abandoned this issue.

In light of the foregoing, the judgment of the district court is

AFFIRMED.
