

[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 18-14770
Non-Argument Calendar

D.C. Docket No. 3:18-cv-00695-MMH-JBT

TAJIKAH U. ABDUL-KARIM,

Plaintiff-Appellant,

versus

JUDGE ROBERT M. DEES,
in his individual and personal capacity,

Defendant-Appellee.

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

(June 28, 2019)

Before MARCUS, ROSENBAUM, and EDMONDSON, Circuit Judges.

PER CURIAM:

Plaintiff Tajikah Abdul-Karim, proceeding pro se, appeals the district court's dismissal of her 42 U.S.C. § 1983 civil action against Judge Robert M. Dees, a Florida state judge. The district court determined that Plaintiff's claim against Judge Dees was barred by absolute judicial immunity. No reversible error has been shown; we affirm.

This appeal arises out of an underlying personal injury lawsuit filed by Plaintiff against Wilkinson & Sons Plastering, Inc. ("Wilkinson") in Florida state court. After Wilkinson failed to file timely a responsive pleading, the state court clerk entered a default judgment in favor of Plaintiff. Wilkinson then moved to set aside the default judgment and moved to dismiss Plaintiff's complaint. Judge Dees conducted a hearing on Wilkinson's motions. At the conclusion of the hearing, Judge Dees granted Wilkinson's motion to set aside the default judgment, denied Wilkinson's motion to dismiss, and granted Wilkinson additional time to file a response.

Shortly thereafter, Plaintiff filed this section 1983 complaint against Judge Dees in his individual capacity. Briefly stated, Plaintiff alleged that the Judge granted improperly Wilkinson's motion to set aside the default judgment and that,

thus, Judge Dees violated Plaintiff's due process rights under the Fourteenth Amendment.

We review de novo a district court's dismissal for failure to state a claim, accepting all properly alleged facts as true and construing them in the light most favorable to the plaintiff. Randall v. Scott, 610 F.3d 701, 705 (11th Cir. 2010). A district court's grant of judicial immunity is also reviewed de novo. Smith v. Shook, 237 F.3d 1322, 1325 (11th Cir. 2000).

"Judges are entitled to absolute immunity from damages for those acts taken while they are acting in their judicial capacity unless they acted in the clear absence of all jurisdiction." Sibley v. Lando, 437 F.3d 1067, 1070 (11th Cir. 2005) (quotation omitted). "This immunity applies even when the judge's acts are in error, malicious, or were in excess of his or her jurisdiction." Id. In determining whether a judge acted within his judicial capacity, we consider whether the act (1) "constituted a normal judicial function;" (2) "occurred in the judge's chambers or in open court;" (3) "involved a case pending before the judge;" and (4) whether "the confrontation arose immediately out of a visit to the judge in his judicial capacity." Id. For more background on judicial immunity, see Stevens v. Osuna, 877 F.3d 1293, 1301-02 (11th Cir. 2017).

Here, Judge Dees acted clearly within his judicial capacity in setting aside the default judgment. The complained-of act -- ruling on a party's motion -- is a normal judicial function, took place during a hearing at which both parties presented argument, and pertained to a case then-pending before Judge Dees. Judge Dees also had subject-matter jurisdiction over Plaintiff's personal injury proceedings and, thus, did not act in the "clear absence of all jurisdiction."

Judge Dees is entitled to absolute judicial immunity. This immunity applies even if -- as Plaintiff argues on appeal -- Judge Dees granted improperly the motion to set aside or acted maliciously toward Plaintiff. See Sibley, 437 F.3d at 1070.

AFFIRMED.