

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

ROSA J. VASQUEZ,

Plaintiff,

v.

CASE NO. 4:12cv532-RH/CAS

ROBERT M. FOSTER,

Defendant.

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ORDER OF DISMISSAL

This case is before the court on the magistrate judge's report and recommendation, ECF No. 5, and the objections, ECF No. 6. I have reviewed *de novo* the issues raised by the objections.

The defendant is a state circuit judge. The complaint alleges that the defendant presided over a criminal case in which the plaintiff's daughter was a defendant and that, because of the defendant's malpractice, the plaintiff's daughter spent time in jail. The complaint does not allege that the defendant acted in the absence of jurisdiction, just that the defendant ruled erroneously.

The report and recommendation correctly concludes that the plaintiff is not entitled to relief. This may be so for a number of reasons, but the most obvious is

judicial immunity. The complaint fails to state a claim on which relief can be granted.

A plaintiff may be entitled to notice and an opportunity to be heard prior to a dismissal on the court's own motion in circumstances like these. *See, e.g., Am. United Life Ins. Co. v. Martinez*, 480 F.3d 1043, 1069 (11th Cir. 2007); *Danow v. Borack*, 197 F. App'x 853, 856 (11th Cir. 2006); *see also Jefferson Fourteenth Assocs. v. Wometco de Puerto Rico, Inc.*, 695 F.2d 524 (11th Cir. 1983). Here the report and recommendation gave the plaintiff adequate notice, and she had an opportunity to respond—and took advantage of the opportunity—by filing objections. The plaintiff has been fully heard.

For these reasons,

IT IS ORDERED:

The report and recommendation is ACCEPTED and adopted as the court's further opinion. The clerk must enter judgment stating, "This case is DISMISSED with prejudice." The clerk must close the file.

SO ORDERED on November 20, 2012.

s/Robert L. Hinkle
United States District Judge