

IN THE UNITED STATES COURT OF APPEALS  
FOR THE ELEVENTH CIRCUIT

NO. **02-13418-BB**

Marcellus M. Mason, Jr.,

Appellant,

- versus -

Highlands County Board of County Commissioners, et al.,

Appellees.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF FLORIDA

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BRIEF FOR DEFENDANTS HON. DONALD L. GRAHAM  
AND HON. FRANK J. LYNCH, JR.

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(Count 14), 42 U.S.C. § 1985 (Count 15), and 42 U.S.C. § 1986 (Count 16) (*id.* at pp. 11-18, ¶¶ 110-79). Mason alleged that, in that case, Magistrate Judge Lynch had acted without jurisdiction (*id.* at ¶ 122), failed to cite legal authority for his orders (*id.* at ¶¶ 120, 123, 126, 139), or misrepresented the source of his legal authority (*id.* at ¶ 141); and that Judge Graham failed to address legal issues or provide citations to the law in a final order dismissing Mason's complaint (*id.* at ¶ 146)<sup>2</sup>.

Mason further alleged that the defendants' actions in that case were "willful, illegal, petulant, childish, irresponsible, and vindictive, and moronic" (*id.* at ¶ 149). The second amended complaint also alleged that the defendants are "a discredit to the federal judiciary," "are not [the plaintiff's] daddy," and "are out of control and need to be reined in" (*id.* at ¶¶ 156, 164, 165). Mason demanded judgment against Judge Graham and Magistrate Judge Lynch "for injunctive relief, declaratory relief, compensatory damages, punitive damages, interest, costs and such other relief" as the district court deemed appropriate (*id.* at ¶ 181).

Judge Graham and Magistrate Judge Lynch filed a joint motion to dismiss the complaint on the ground that they were shielded from liability by absolute

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<sup>2</sup> We note that Mason's appeals of the district court's orders in SDFL Case No. 99-CV-14027, Graham/Lynch are presently pending before this Court as Case Nos. 01-13664-A and 02-10868-A.

appeared to be "several good reasons" for dismissing Mason's complaint, the most comprehensive reason supporting its dismissal was that it was "utterly devoid of any arguable basis in fact or legal theory upon which to base a cause of action" and that the complaint was due to be dismissed "as frivolous for failure to state a claim upon which relief can be granted" (*id.* at p. 5). This conclusion was supported, *inter alia*, by the defendants' claims of absolute immunity (*id.*). The magistrate judge further noted that, by filing the complaint in this case, Mason had "unabashedly violated the spirit, if not the letter" of an earlier district court order that had enjoined him from filing further lawsuits (*id.* at p. 6).

Mason filed written objections to the report and recommendation in which he challenged, *inter alia*, the magistrate judge's conclusion that Judge Graham and Magistrate Judge Lynch were immune from suit (R2:52 at pp. 2-3). Mason averred that the district court had "acted as an advocate" for these defendants and permitted them to "openly defy the rules of court with impunity" (*id.* at pp. 13-15).

Following a *de novo* review of the record, the district court entered an order adopting the magistrate judge's report and recommendation in its entirety and dismissing Mason's complaint with prejudice (R2:56).<sup>6</sup> The district court noted

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<sup>6</sup> For the Court's convenience, a copy of the district court's final order of dismissal is attached hereto as Appendix "D."

no reading of the complaint that would support a finding that either defendant acted in the clear absence of all jurisdiction.

### Argument

#### **The District Court Properly Dismissed, with Prejudice, Plaintiff's Complaint Against Defendants Hon. Donald L. Graham and Hon. Frank J. Lynch, Jr., for Failure to State a Claim upon Which Relief Could Be Granted.**

Mason contends, *inter alia*, that the district court erred by dismissing the amended complaint (Br. at pp. 21-24), based on an allegedly erroneous determination that defendants Judge Graham and Magistrate Judge Lynch cannot be held liable under 42 U.S.C. § 1983 (Br. at pp. 25-26) and that they enjoy absolute immunity (Br. at pp. 26-34). The district court's ruling was correct and should be affirmed.

The law in this Circuit is well settled that judges are entitled to absolute judicial 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." See Bolin v. Story, 225 F.3d 1234, 1239 (11<sup>th</sup> Cir. 2000) (citing Stump v. Sparkman, 435 U.S. 349, 356-57 (1978); Simmons v. Conger, 86 F.3d 1080, 1084-85 (11<sup>th</sup> Cir. 1996)); see also Smith v. Shook, 237 F.3d 1322, 1325 (11<sup>th</sup> Cir. 2001) (extending absolute judicial immunity to administrative law judge, where the judge "functioned in a classic adjudicatory role"). This immunity applies even when the judge's acts are

the Magistrate Judge shortly after the lawsuit was filed"). Thus, under the first prong of the Stump test, both defendants are entitled to absolute immunity. \*

As to the second prong, there are no allegations in the complaint that these defendants acted in the clear absence of all jurisdiction. The allegations in the complaint alleged only that Magistrate Judge Lynch failed to offer proper legal support for certain orders (see R1:31 at ¶¶ 120, 123, 126, 139, 141), that he was without the legal authority to issue an injunction (id. at ¶ 122); that both defendants issued orders that allegedly were "illegal and void ab initio" (see id. at ¶ 128), and had no jurisdiction with respect to the Florida Public Records Act (see id. at ¶¶ 130, 132, 158); and that Judge Graham failed to address certain legal issues in a final order in Case No. 99-CV-14027 (see id. at ¶ 146). These allegations simply do not amount to claims of extrajudicial acts on the part of either defendant that would defeat a claim of absolute immunity. See Bolin, 225 F.3d at 1239 (judicial immunity applies even where judge's act are in excess of his or her discretion, provided the judge does not act in "clear absence of all jurisdiction"). Thus, the district court properly dismissed Mason's complaint as frivolous for failure to state a claim upon which relief could be granted.

Mason's arguments on appeal do not compel a contrary result. In the first instance, the dismissal in this case was not based on the court's "personal opinion"

immunity even when the judge's acts are in error, malicious, or in excess of his or her jurisdiction, unless the judge acts in the clear absence of all jurisdiction. See Bolin, 225 F.3d at 1239. Mason has not alleged that the district court was without jurisdiction in SDFL Case No. 99-CV-14027, Graham/Lynch; in fact, Mason has continued to file papers in that case in the district court.<sup>7</sup> Thus, there is no legal basis for Mason's claims.

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<sup>7</sup> For the Court's convenience, a copy of the portion of the docket sheet in SDFL Case No. 99-CV-14027 showing Mason's continued filings in that case after the date of filing the second amended complaint in this case is attached hereto as Appendix "E."