

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

CYNTHIA BENEFIELD,

Plaintiff,

v.

Case No. 3:23-cv-1075-MMH-LLL

CITY OF JACKSONVILLE, FL
MAYOR, et al.,

Defendants.

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ORDER

THIS CAUSE is before the Court on the Report and Recommendation (Dkt. No. 3; Report), entered by the Honorable Laura Lothman Lambert, United States Magistrate Judge, on November 13, 2023. In the Report, the Magistrate Judge recommends that Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. No. 2; Motion) be denied without prejudice, Plaintiff's Complaint (Dkt. No. 1; Complaint) be dismissed without prejudice, and Plaintiff be given an opportunity to file an amended complaint. See Report at 6. Plaintiff has failed to file objections to the Report, and the time for doing so has now passed.

The Court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b). Pursuant to Rule 72, Federal Rules of Civil Procedure (Rule(s)), the Court “must determine de novo any part of the magistrate judge’s disposition that has been properly objected to.” See Rule 72(b)(3); see also 28 U.S.C. § 636(b)(1). However, a party waives the right to challenge on appeal any unobjected-to factual and legal conclusions. See 11th Cir. R. 3-1.¹ As such, the Court reviews those portions of the Magistrate Judge’s findings to which no objection was filed for plain error and only if necessary, in the interests of justice. See id.; see also Thomas v. Arn, 474 U.S. 140, 150 (1985) (“It does not appear that Congress intended to require district court review of a magistrate [judge’s] factual or legal conclusions, under a de novo or any other standard, when neither party objects to those findings.”); Dupree v. Warden, 715 F.3d 1295, 1304-05 (11th Cir. 2013) (recommending the adoption of what would become 11th Circuit Rule 3-1 so that district courts do not have “to spend significant amounts of time and resources reviewing every issue—whether objected to or not.”).

¹ The Magistrate Judge properly informed the parties of the time period for objecting and the consequences of failing to do so. See Report at 7.

Upon independent review of the file, the Court will accept and adopt the Magistrate Judge's determination that in the Complaint Plaintiff fails to establish a basis for the Court's exercise of jurisdiction and further fails to state any plausible claim to relief. The Court also accepts and adopts the Magistrate Judge's determination that the Complaint should be dismissed without prejudice and Plaintiff should be given an opportunity to file an amended complaint. However, the Court is of the view that denial of the Motion at this time is premature. Instead, the Court will take the Motion under advisement pending review of Plaintiff's amended complaint. Accordingly, it is hereby

ORDERED:

1. The Magistrate Judge's Report and Recommendation (Dkt. No. 3) is **ADOPTED** to the extent that the Magistrate Judge determines that the Complaint fails to state a claim and that Plaintiff should be permitted to file an amended complaint.
2. The Complaint (Dkt. No. 1) is **DISMISSED without prejudice**.
3. Plaintiff shall file an amended complaint on or before **January 5, 2024**. Failure to do so may result in the dismissal of this action.

4. Plaintiff's Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (Dkt. No. 2) is **TAKEN UNDER ADVISEMENT** pending the Magistrate Judge's review of the sufficiency of the amended complaint.

DONE AND ORDERED in Jacksonville, Florida, this 6th day of December, 2023.


MARCIA MORALES HOWARD
United States District Judge

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Copies to:

Counsel of Record
Pro Se Party