

UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF
FLORIDA, OCALA DIVISION

Peter J. Allsot, as next friend of his minor child B.P.L.A. v. Naseem
Latif

Allsot v. Latif · No. 5:25-cv-395-MMH-PRL · Decided January 21, 2026

SUMMARY

The United States District Court for the Middle District of Florida overruled the plaintiff’s objections and adopted the magistrate judge’s recommendation. The court dismissed without prejudice a verified emergency petition for habeas corpus filed by a non-attorney parent on behalf of a minor child, holding that the parent could not represent the child pro se and that appointment of counsel was not required.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Ocala Division
WRITING FOR THE COURT	Marcia Morales Howard
JURISDICTION	United States District Court for the Middle District of Florida, Ocala Division
DECIDED	January 21, 2026
DOCKET	5:25-cv-395-MMH-PRL
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's report and recommendation recommending dismissal of a verified emergency petition for writ of habeas corpus filed by a non-attorney parent on behalf of his minor child. The parent objected, arguing that dismissal was improper and that the court was required to appoint counsel for the child.
STANDARD OF REVIEW	Under 28 U.S.C. § 636(b)(1) and Federal Rule of Civil Procedure 72(b)(3), the court reviews de novo those portions of a magistrate judge's disposition to which a proper objection is made. Unobjected-to factual and legal conclusions are reviewed for plain error, if necessary in the interests of justice.

TOPICS

civil procedure

guardianship procedure

remedies

PRACTICE AREAS

civil procedure

civil rights

habeas corpus

representation of minors

QUESTIONS PRESENTED

1. Whether a non-attorney parent may prosecute a civil action pro se on behalf of a minor child.
2. Whether dismissal is proper when the non-attorney parent fails to retain counsel after being afforded an opportunity to do so.
3. Whether the district court was required to appoint counsel for the minor child instead of dismissing the action.
4. Whether arguments first raised in objections to a magistrate judge's report and recommendation and a request for affirmative relief contained in objections should be considered.

HOLDINGS

1. A parent who is not an attorney may not bring a pro se action on behalf of the parent's minor child.
2. Dismissal without prejudice is proper when a non-attorney parent attempts to represent a minor child pro se and fails to retain counsel after being given an opportunity to do so.
3. The court was not required to appoint counsel for the minor child; appointment of counsel in a civil case is discretionary and warranted only in exceptional circumstances.
4. A request for affirmative relief must be made by motion and is not properly presented solely through objections to a report and recommendation.

KEY QUOTATIONS

“a parent, who is not an attorney, may not bring a pro se action on his child’s behalf.” (at 1)

“If [the plaintiff] does not retain counsel and if the district court declines to appoint counsel, the complaint should be dismissed without prejudice.” (at 2)

FACTUAL BACKGROUND

Peter J. Allsot, a non-attorney parent, filed a verified emergency petition for writ of habeas corpus on behalf of his minor child. The magistrate judge advised that a parent who is not an attorney may not bring a pro se action on behalf of a child and gave Plaintiff an opportunity to retain counsel. Plaintiff did not retain counsel and instead objected to dismissal, contending that the court was required to appoint counsel for the child.

PROCEDURAL HISTORY

Magistrate Judge Philip R. Lammens recommended dismissal after Plaintiff failed to retain counsel to represent the minor child despite being afforded an opportunity to do so. Plaintiff filed objections, which the district court overruled after de novo review of the properly objected-to portions and plain-error review of unobjected-to portions. The court adopted the report and recommendation and dismissed the petition without prejudice, terminating pending motions and deadlines and closing the case.

DISPOSITION

dismissed

CASES CITED

- Whitehurst v. Wal-Mart, 306 Fed. App'x 446, 448–49 (11th Cir. 2008)
- Devine v. Indian River Cnty. Sch. Bd., 121 F.3d 576, 582 (11th Cir. 1997)
- Winkelman ex rel. Winkelman v. Parma City Sch. Dist., 550 U.S. 516 (2007)
- Warner v. Sch. Bd. of Hillsborough Cnty., No. 23-12408, 2024 WL 2053698, at *2–3 (11th Cir. May 8, 2024)
- FuQua v. Massey, 615 Fed. App'x 611, 613 (11th Cir. 2015)
- Grossman-Lepp v. Wilson, No. 5:25-CV-00240-TES, 2025 WL 1953613, at *2 (M.D. Ga. July 16, 2025)
- Kilgo v. Ricks, 983 F.2d 189, 193 (11th Cir. 1993)
- Steele v. Shah, 87 F.3d 1266, 1271 (11th Cir. 1996), as amended (Sept. 6, 1996)
- Cheung v. Youth Orchestra Found. of Buffalo, Inc., 906 F.2d 59, 62 (2d Cir. 1990)
- Thomas v. Arn, 474 U.S. 140, 150 (1985)
- Dupree v. Warden, 715 F.3d 1295, 1304–05 (11th Cir. 2013)
- Williams v. McNeil, 557 F.3d 1287, 1292 (11th Cir. 2009)
- McNamara v. GEICO, 30 F.4th 1055, 1060–61 (11th Cir. 2022)
- Stone v. First Union Corp., 371 F.3d 1305, 1310 (11th Cir. 2004)
- M.S. ex rel. S.S. v. Wermers, 74 F.3d 857 (8th Cir. 1996)
- 11th Cir. R. 3-1

OPINION

Allsot

PER CURIAM.

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

OCALA DIVISION

PETER J. ALLSOT, as next friend of his minor child B.P.L.A., Plaintiff, vs. Case No. 5:25-cv-395-MMH-PRL

NASEEM LATIF,

Defendant. /

ORDER

THIS CAUSE is before the Court on the Report and Recommendation (Doc. 11; Report), entered by the Honorable Philip R. Lammens, United States Magistrate Judge, on August 6, 2025. In the Report, the Magistrate Judge recommends that this action be dismissed. See Report at 2. On August 8, 2025, Plaintiff filed Objections to the Magistrate Judge's Report and Recommendation (Doc. 12; Objections). Upon careful consideration and independent review of the record, the Court will overrule the Objections and accept and adopt the factual and legal conclusions recommended by the Magistrate Judge. As such, the Court writes briefly only to address Plaintiff's specific objections. 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). Under Rule 72, Federal Rules of Civil Procedure, the Court "must determine de novo any part of the magistrate judge's disposition that has been properly objected to." Fed. R. Civ. P. 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"). In the Report, the Magistrate Judge correctly notes that "a parent, who is not an attorney, may not bring a pro se action on his child's behalf." See Report at 1 (citing *Whitehurst v. Wal-Mart*, 306 Fed. App'x 446, 448–49 (11th Cir. 2008)); see also *Devine v. Indian River Cnty. Sch. Bd.*, 121 F.3d 576, 582 (11th Cir. 1997) ("[P]arents who are not attorneys may not bring a pro se action on their child's behalf—because it helps to ensure that children rightfully entitled to legal relief are not deprived of their day in court by unskilled, if caring, parents."), overruled in part on other grounds by *Winkelman ex rel. Winkelman v. Parma City Sch. Dist.*, 550 U.S. 516 (2007). Accordingly, the Magistrate Judge recommends that this action be dismissed because, despite being afforded an opportunity to do so, Plaintiff has failed to retain counsel to represent his minor child. See Report at 2. In objecting to the Report, Plaintiff does not dispute that he cannot represent his minor child. See Objections at 1. However, Plaintiff contends that dismissal is not proper in this case. See *id.* at 1–2. Rather, according to Plaintiff, dismissal would be an abuse of discretion, and the Court must instead appoint counsel for the child. See generally *id.* Plaintiff's arguments are unavailing.² First, dismissal is proper where a non-attorney parent attempts to represent his minor child pro se. See *Warner v. Sch. Bd. of Hillsborough Cnty.*, No. 23-12408, 2024 WL 2053698, at *2–3 (11th Cir. May 8, 2024) (affirming the dismissal of the plaintiff's complaint² Plaintiff's arguments, which were not presented to the

Magistrate Judge and are made for the first time only after entry of the Report, are also untimely. See *Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) (“[A] district court has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate judge.”). because “a parent may not advance his child’s cause of action pro se”); 3 *FuQua v. Massey*, 615 Fed. App’x 611, 613 (11th Cir. 2015) (“[T]he district court properly granted the motion to dismiss because [the plaintiff] sought to represent her minor daughter, but, as a non-attorney, she was not permitted to do so.”); see also *Grossman-Lepp v. Wilson*, No. 5:25-CV-00240-TES, 2025 WL 1953613, at *2 (M.D. Ga. July 16, 2025) (dismissing claims brought on behalf of a pro se plaintiff’s minor child).⁴ Second, the Court is not required to appoint counsel in a civil case.⁵ See *Kilgo v. Ricks*, 983 F.2d 189, 193 (11th Cir. 1993) (noting that civil litigants “have no absolute constitutional right to counsel”); *Steele v. Shah*, 87 F.3d 1266, 1271 (11th Cir. 1996), as amended (Sept. 6, 1996) (“Court appointed counsel in civil cases is warranted only in ‘exceptional circumstances,’ and whether such circumstances exist is also committed to district court discretion.” (citing *Kilgo*, 983 F.2d at 193)). And, finally, Plaintiff’s 3 The Court does not rely on unpublished opinions as binding precedent; however, they may be cited in this Order when the Court finds them persuasive on a particular point. See *McNamara v. GEICO*, 30 F.4th 1055, 1060–61 (11th Cir. 2022); see generally Fed. R. App. P. 32.1; 11th Cir. R. 36–2 (“Unpublished opinions are not considered binding precedent, but they may be cited as persuasive authority.”). 4 The Court notes that although decisions of other district courts are not binding, they may be cited as persuasive authority. See *Stone v. First Union Corp.*, 371 F.3d 1305, 1310 (11th Cir. 2004) (noting that, “[a]lthough a district court would not be bound to follow any other district court’s determination, the decision would have significant persuasive effects”). 5 Notably, Plaintiff has not filed a motion to appoint counsel for his minor child. And to the extent Plaintiff seeks such relief in the Objections, this request is not properly before the Court. See Fed. R. Civ. P. 7(b) (“A request for a court order must be made by motion.”); *Brown v. Comm’r of Soc. Sec.*, No. 617CV633ORL40KRS, 2018 WL 672276, at *1 (M.D. Fla. Feb. 2, 2018) (noting “the well settled procedural rule that requests for affirmative relief shall be stated in a separate filing”). cited authority does not support his contention that the Court must appoint counsel instead of dismissing this case. See, e.g., *Cheung v. Youth Orchestra Found. of Buffalo, Inc.*, 906 F.2d 59, 62 (2d Cir. 1990) (“If [the plaintiff] does not retain counsel and if the district court declines to appoint counsel, the complaint should be dismissed without prejudice.”).⁶ Accordingly, it is ORDERED:

1. Petitioners’ Objections to the Magistrate Judge’s Report and Recommendation (Doc. 12) are OVERRULED.
2. The Magistrate Judge’s Report and Recommendation (Doc. 11) is ADOPTED as the opinion of the Court.
3. Plaintiff’s Verified Emergency Petition for Writ of Habeas Corpus on Behalf of their Minor Child (Doc. 1) is DISMISSED without prejudice. 6 Plaintiff also cites *M.S. ex rel. S.S. v. Wermers*, 74 F.3d 857 (8th Cir. 1996). See Objections at 2. However, as far as the

Court can determine, either this case citation is incorrect or the case itself does not exist.

4. The Clerk of the Court is directed to terminate all pending motions

and deadlines as moot and close the file. DONE AND ORDERED in Chambers this 20th day of January, 2026.

MARCIA MORALES HOWARD

United States District Judge Lc35 Copies to: Pro Se Party

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