

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

April Berra v. State of Florida, et al.

Berra · No. 8:25-cv-2019-MSS-SPF · Decided January 6, 2026

SUMMARY

The United States District Court for the Middle District of Florida adopts a magistrate judge’s Report and Recommendation and denies the plaintiff’s motions to proceed in forma pauperis and for appointment of counsel. The court dismisses the complaint without prejudice because the plaintiff had initiated a substantially identical action and permits her to file an amended complaint and amended in forma pauperis motion within 21 days. Failure to do so will result in dismissal with prejudice.

CASE DETAILS

COURT	United States District Court for the Middle District of Florida, Tampa Division
WRITING FOR THE COURT	Mary S. Scriven
JURISDICTION	United States District Court for the Middle District of Florida, Tampa Division
DECIDED	January 6, 2026
DOCKET	8:25-cv-2019-MSS-SPF
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending denial of in forma pauperis status and appointment of counsel and dismissal of the complaint without prejudice. No objection was filed.
STANDARD OF REVIEW	The district judge may accept, reject, or modify a magistrate judge's report and recommendation after careful and complete review. Specific objections require de novo review of the challenged portions; absent specific objections, factual findings need not be reviewed de novo, although legal conclusions are reviewed de novo.
PRECEDENTIAL VALUE	unpublished
PARTIES	April Berra v. State of Florida, et al.

TOPICS

civil procedure

pleadings

motions to dismiss

motion to amend

PRACTICE AREAS

civil procedure

federal courts

QUESTIONS PRESENTED

1. What standard governs the district court's review of a magistrate judge's Report and Recommendation when no objection is filed?
2. Whether the Report and Recommendation denying in forma pauperis status and appointment of counsel and recommending dismissal without prejudice should be adopted.
3. Whether plaintiff may maintain two separate actions involving nearly identical complaints concurrently.

HOLDINGS

1. When no specific objection is filed, the district court is not required to review factual findings de novo, but it may accept, reject, or modify the magistrate judge's findings and recommendations; legal conclusions are reviewed de novo even without an objection.
2. The court adopted and confirmed the Report and Recommendation, denied plaintiff's motion to proceed in forma pauperis and motion for appointment of counsel, and dismissed the complaint without prejudice.
3. Plaintiff may not proceed concurrently in two separate actions involving nearly identical complaints; any claims plaintiff intends to pursue must proceed in this case.

KEY QUOTATIONS

“A district judge “shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.””

“This requires that the district judge “give fresh consideration to those issues to which specific objection has been made by a party.””

FACTUAL BACKGROUND

Plaintiff filed this action along with an application to proceed in forma pauperis and a motion for appointment of counsel. Plaintiff also initiated a second action containing nearly identical complaints. The court noted that maintaining two separate, identical proceedings concurrently was improper and directed that any claims be pursued in this case rather than both cases.

PROCEDURAL HISTORY

Plaintiff filed a complaint, an application to proceed without prepaying fees or costs, and a motion for appointment of counsel. Magistrate Judge Sean P. Flynn recommended denying the motions and dismissing the complaint without prejudice. After the objection deadline passed without objection, the district court

independently reviewed the file, adopted and confirmed the Report and Recommendation, denied both motions, and dismissed the complaint without prejudice, allowing 21 days to amend.

DISPOSITION

dismissed

CASES CITED

- Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir. 1982)
- Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th Cir. 1990)
- Garvey v. Vaughn, 993 F.2d 776, 779 n.9 (11th Cir. 1993)
- Cooper-Houston v. Southern Ry., 37 F.3d 603, 604 (11th Cir. 1994)

OPINION

UNITED STATES DISTRICT COURT MIDDLE DISTRICT OF FLORIDA TAMPA DIVISION
APRIL BERRA, Plaintiff, v. Case No: 8:25-cv-2019-MSS-SPF STATE OF FLORIDA, et al.,
Defendants. ORDER THIS CAUSE comes before the Court for consideration of Plaintiff's
Application to Proceed in District Court Without Prepaying Fees or Costs, (Dkt. 2), which the
Court construes as a motion to proceed in forma pauperis.

Also before the Court is Plaintiff's Motion for Appointment of Counsel, (Dkt. 3), and Plaintiff's
Complaint. (Dkt. 1) On October 17, 2025, United States Magistrate Judge Sean P. Flynn issued a
Report and Recommendation, (Dkt. 8), which recommended Plaintiff's motions be denied and
Plaintiff's Complaint be dismissed without prejudice. Plaintiff has not objected to the Report and
Recommendation, and the deadline for doing so has passed.

Upon consideration of all relevant filings, case law, and being otherwise fully advised, the Court
DENIES Plaintiff's Motion to Proceed In Forma Pauperis, DENIES Plaintiff's Motion to Appoint
Counsel, and DISMISSES the Complaint without prejudice.

In the Eleventh Circuit, a district judge may accept, reject, or modify the magistrate judge's report
and recommendation after conducting a careful and complete review of the findings and
recommendations. 28 U.S.C. § 636(b)(1); Williams v. Wainwright, 681 F.2d 732, 732 (11th Cir.
1982). A district judge "shall make a de novo determination of those portions of the report or
specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)
(1)(C).

This requires that the district judge "give fresh consideration to those issues to which specific
objection has been made by a party." Jeffrey S. v. State Bd. of Educ., 896 F.2d 507, 512 (11th
Cir.1990) (quoting H.R. 1609, 94th Cong. § 2 (1976)). Absent specific objections, there is no

requirement that a district judge review factual findings de novo, *Garvey v. Vaughn*, 993 F.2d 776, 779 n.9 (11th Cir.

1993), and the court may accept, reject, or modify, in whole or in part, the findings and recommendations. 28 U.S.C. § 636(b)(1)(C). The district judge reviews legal conclusions de novo, even in the absence of an objection. See *Cooper-Houston v. Southern Ry.*, 37 F.3d 603, 604 (11th Cir. 1994). Upon consideration of the Report and Recommendation, in conjunction with an independent examination of the file, the Court is of the opinion the Report and Recommendation should be adopted, confirmed, and approved in all respects.

In addition, it has come to the Court's attention that Plaintiff has initiated two separate actions with nearly identical complaints. See *Berra v. State of Florida et al.*, No. 8:25-cv-2519-MSS-TGW (M.D. Fla.) ("Berra 2").¹ It is improper to have two separate, identical proceedings pending concurrently.

Thus, to the extent Plaintiff intends to proceed with the claims raised in this case or the Berra 2 case, she must proceed in this case. Accordingly, it is ORDERED that: 1. The Report and Recommendation, (Dkt. 8), is CONFIRMED and ADOPTED as part of this Order. 2. Plaintiff's Motion to Proceed In Forma Pauperis, (Dkt. 2), is DENIED. 3. Plaintiff's Motion for Appointment of Counsel, (Dkt.

3), is DENIED. 4. The Complaint, (Dkt. 1), is DISMISSED WITHOUT PREJUDICE. Plaintiff may file an amended complaint within TWENTY-ONE DAYS of the date of this Order. If Plaintiff files an amended complaint, Plaintiff shall also file an amended motion to proceed in forma pauperis. If Plaintiff fails to file an amended complaint with an amended motion to proceed in forma pauperis within the 21-DAY PERIOD, the dismissal shall be WITH PREJUDICE.

¹ The Court notes that the docket in the Berra 2 case reflects several more defendants than this case. While these additional defendants are referenced in the body of the complaint in both cases, Plaintiff has not identified the additional entities and individuals in the caption of the complaint in either case.

Thus, despite this distinction reflected on the docket, both cases are against the same nineteen defendants. See Fed. R. Civ. P. 10(a) ("The title of the complaint must name all the parties[.]"). Moreover, the docket in this case correctly reflects the defendants that were actually named in the caption of Plaintiff's complaint. 5.

The Clerk is DIRECTED to mail a copy of this Order to the address Plaintiff provided in this case and a second copy of this Order to the address Plaintiff provided in the Berra 2 Case. DONE and ORDERED in Tampa, Florida, this 6th day of January 2026. MARYS. SCRIVEN UNITED STATES DISTRICT JUDGE Copies furnished to: Counsel of Record Any Unrepresented Person

