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[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13553
Non-Argument Calendar

D.C. Docket No. 6:19-cv-00404-RBD-LRH
TIMOTHY P. MURPHY,
Plaintiff-Appellant,
versus
SUSAN STACY,
Circuit Court Judge,
Defendant-Appellee.

Appeal from the United States District Court
for the Middle District of Florida,

(April 20, 2020)

Before MARTIN, ROSENBAUM, and BRANCH, Circuit Judges.

PER CURIAM.

Timothy P. Murphy, proceeding *pro se*, appeals the district court's dismissal of his 42 U.S.C. § 1983 complaint against the Honorable Susan Stacy (Judge

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Stacy), a Florida state circuit court judge who presided over a portion of Murphy's state foreclosure proceedings. Murphy presents two arguments on appeal: first, that the district court erred in denying his motion for entry of clerk's default and second, that the district court erred by considering and applying judicial immunity in granting Judge Stacy's Federal Rule of Civil Procedure ("Federal Rule") 12(b)(6) motion to dismiss. We do not have jurisdiction to review the magistrate judge's denial of Murphy's motion for entry of clerk's default, and therefore must dismiss that claim. And because Judge Stacy was entitled to judicial immunity, we affirm the district court's grant of her motion to dismiss.

I. Background

Judge Stacy presided over a portion of foreclosure proceedings against Murphy in Florida state court, which ultimately ended in a default judgment being entered and enforced against Murphy. *See Christina Tr. / JPMC Specialty Mortg. LLC v. Murphy*, Case No. 2010-CA-005287-14-W (Fla. Cir. Ct. 2010). In March 2019, Murphy filed the present suit against Judge Stacy in her official capacity in federal court. In his initial complaint, he alleged that Judge Stacy violated his civil rights during those foreclosure proceedings, in violation of 42 U.S.C. § 1983. Judge Stacy moved to dismiss Murphy's complaint based, in part, on judicial immunity. Before the district court ruled on that motion, Murphy filed an amended complaint and objected to Judge Stacy's motion to dismiss. In his amended

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complaint, Murphy once again referred to the state court proceedings and alleged that the default judgment in that case was “void.” With regard to Judge Stacy’s official conduct enforcing the 2014 default judgment against him, he alleged 14 instances, labeled “issues,” that violated his constitutional due process and equal protection rights. The litany of issues included, *inter alia*, issuing orders (such as a writ of possession of his home and property and allowing opposing counsel to appear telephonically) against court procedure; enforcing a “void” judgment against him despite evidence that the plaintiff in the state court foreclosure proceedings had filed a “sham” complaint and made a fraudulent standing claim; cancelling a hearing Murphy scheduled without reason or notice; allowing opposing counsel to file motions against him and raise an issue without first noticing it, shortening the time for hearing a motion from him; and denying a motion to disqualify Judge Stacy that “was legally sufficient,” in violation of Florida law. The district court denied Judge Stacy’s motion to dismiss the initial complaint as moot, given the filing of the amended complaint. Judge Stacy moved to dismiss the amended complaint on several grounds, including judicial immunity.

Murphy responded in two ways. First, he opposed Judge Stacy’s motion to dismiss, arguing that judicial immunity could not be raised in a Federal Rule 12(b)(6) motion and that the immunity did not apply to Judge Stacy’s actions because she knew she acted without subject matter jurisdiction in the foreclosure proceedings. Second, Murphy moved for the district court clerk

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to enter default against Judge Stacy, pursuant to Federal Rule 55¹ and United States District Court for the Middle District Court of Florida Rule (“Local Rule”)

¹ Federal Rule 55 states in relevant part as follows:

- (a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.
- (b) Entering a Default Judgment.
 - (1) By the Clerk. If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.
 - (2) By the Court. In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:
 - (A) conduct an accounting;
 - (B) determine the amount of damages;
 - (C) establish the truth of any allegation by evidence; or
 - (D) investigate any other matter.

Fed. R. Civ. P. 55.

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1.07(b).² He claimed that Judge Stacy had not filed an answer within 14 days of the district court's order denying her motion to dismiss Murphy's initial complaint, as required by the (federal and local) rules of civil procedure and she was therefore in default.

A magistrate judge denied Murphy's motion for entry of a clerk's default, finding that Murphy misunderstood the rules of civil procedure: under those rules Judge Stacy had 14 days to respond to Murphy's amended complaint, which she did by moving to dismiss it. The magistrate judge's order did not state a time for filing objections.

Four days later, the district court granted Judge Stacy's motion to dismiss, concluding she was entitled to judicial immunity, and dismissed Murphy's amended § 1983 complaint with prejudice. Murphy now appeals the district court's denial of his motion for

² Local Rule 1.07(b) provides:

When service of process has been effected but no appearance or response is made within the time and manner provided by Rule 12, Fed. R. Civ. P., the party effecting service shall promptly apply to the Clerk for entry of default pursuant to Rule 55(a), Fed. R. Civ. P., and shall then proceed without delay to apply for a judgment pursuant to Rule 55(b), Fed. R. Civ. P. Failing which, the case shall be subject to dismissal 60 days after such service without notice and without prejudice; provided, however, such time may be extended by order of the Court on reasonable application with good cause shown.

U.S. Dist. Ct., M.D. Fla. R. 1.07(b).

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entry of clerk’s default,³ and the district court’s grant of Judge Stacy’s motion to dismiss. We take each issue in turn.

II. Analysis

A. Magistrate Judge’s Denial of Murphy’s Motion for Entry of Clerk’s Default

The Federal Rules of Civil Procedure set forth a two-step process for a plaintiff to obtain a default judgment. First, the plaintiff must apply to the clerk for entry of default. Fed. R. Civ. P. 55(a). Second, after receiving the clerk’s entry of default, if the plaintiff’s claim is not for a sum certain and the defendant is not an infant or an incompetent person, then the plaintiff must apply for the court to enter a default judgment. Fed. R. Civ. P. 55(b)(2). Here, Murphy appeals the magistrate judge’s order denying his motion for entry of clerk’s default—the first step in the process.

Before we can consider Murphy’s argument that the magistrate judge erred in denying Murphy’s motion for the entry of clerk’s default, we must determine that we have jurisdiction to do so. *See United Steel, Paper & Forestry, Rubber, Mfg., Energy, Allied Indus. & Serv. Workers Int’l Union v. Wise Alloys, LLC*, 807 F.3d 1258, 1266 (11th Cir. 2015) (“We must *sua sponte* examine the existence of appellate jurisdiction and review jurisdictional issues *de novo*.”). “The law is settled

³ Although Murphy asserts that he is appealing the “district court’s” order denying his motion for entry of clerk’s default, it was the *magistrate judge* who issued the order on this issue.

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that appellate courts are without jurisdiction to hear appeals directly from federal magistrates.” *United States v. Schultz*, 565 F.3d 1353, 1359 (11th Cir. 2009) (quoting *United States v. Renfro*, 620 F.2d 497, 500 (5th Cir. 1980)). Thus, we have long held that where a party never appealed a magistrate judge’s order to the district court, we lack jurisdiction to review the magistrate judge’s ruling on appeal. *See id.* at 1362 (holding that we had no jurisdiction to review the magistrate judge’s order denying defendant’s motion to represent himself because defendant did not appeal the magistrate judge’s ruling to the district court); *United States v. Brown*, 441 F.3d 1330, 1352 (11th Cir. 2006) (holding that we lacked jurisdiction to review a magistrate judge’s order quashing a subpoena because the appellant never appealed the ruling to the district court). We have applied this jurisdictional rule even where the magistrate judge’s order failed to inform a party of the applicable time frame in which to object. *See Schultz*, 565 F.3d at 1361–62.

Here, the magistrate judge—not the district court judge—entered the order denying Murphy’s motion for entry of clerk’s default. This was an order on a non-dispositive motion, not a report and recommendation. Murphy never appealed that order to the district court. We are therefore without jurisdiction to review the magistrate judge’s order and must dismiss Murphy’s related claim.

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B. District Court’s Grant of Judge Stacy’s Rule 12(b)(6) Motion for Failure to State a Claim

We now turn to the portion of Murphy’s appeal which we do have jurisdiction to consider: whether the district court erred by granting Judge Stacy’s motion to dismiss based on her assertion of judicial immunity. We review a district court’s grant of judicial immunity and grant of a Federal Rule 12(b)(6) motion to dismiss for failure to state a claim *de novo*. *Hill v. White*, 321 F.3d 1334, 1335 (11th Cir. 2003); *Smith v. Shook*, 237 F.3d 1322, 1325 (11th Cir. 2001). In so doing, we accept the complaint’s allegations as true and construe them in a light most favorable to the plaintiff. *Hill*, 321 F.3d at 1335. We liberally construe *pro se* pleadings. *Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir. 1998).

On appeal, Murphy raises two chief objections to the district court’s grant of Judge Stacy’s motion to dismiss. He first argues that the district court should not have considered Judge Stacy’s immunity defense in her motion to dismiss because judicial immunity is not one of the seven enumerated defenses under Rule 12(b). That argument does not succeed. One of the seven enumerated defenses in Rule 12(b) is the “failure to state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). A failure to state a claim includes a situation where an affirmative defense clearly precludes the claim. *See Sibley v. Lando*, 437 F.3d 1067, 1070 n.2 (11th Cir. 2005) (per curiam); *see also LeFrere v. Quezada*, 582 F.3d 1260, 1263 (11th Cir. 2009) (“If the complaint contains a claim that is facially subject

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to an affirmative defense, that claim may be dismissed under Rule 12(b)(6).”). Accordingly, a district court may dismiss a complaint for failure to state a claim based upon the affirmative defense of judicial immunity because “the defense is an obvious bar given the allegations.” *Sibley*, 437 F.3d at 1070 n. 2.

All of Murphy’s allegations relate to Judge Stacy’s conduct as a Florida State circuit court judge. If judicial immunity applies, then, it bars Murphy’s § 1983 claims entirely. *See Mireles v. Waco*, 502 U.S. 9, 11 (1991) (“[J]udicial immunity is an immunity from suit, not just from ultimate assessment of damages.”). The district court therefore did not err in considering whether Judge Stacy was entitled to judicial immunity when ruling on her Federal Rule 12(b)(6) motion.

Next, Murphy argues that the district court erred by dismissing Murphy’s amended complaint based on Judge Stacy’s judicial immunity. To that end, he asserts that Judge Stacy’s actions were not normal judicial functions and that she knowingly acted in the absence of her jurisdiction by presiding over the foreclosure proceedings. We disagree.⁴

A two-part inquiry determines whether judges enjoy absolute immunity: (1) “did the judge deal with the plaintiff in [her] judicial capacity,” and, if yes, (2) did “the judge act[] in the ‘clear absence of all jurisdiction.’” *Dykes v. Hosemann*, 776 F.2d 942, 945 (11th Cir.

⁴ Because we affirm the grant of judicial immunity, we need not reach Murphy’s arguments about qualified immunity or state sovereignty.

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1985) (en banc) (quoting *Stump v. Sparkman*, 435 U.S. 349, 357 (1978)). We consider four factors to determine whether a judge is acting within the scope of her judicial capacity: whether “(1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge’s chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the confrontation arose immediately out of a visit to the judge in his judicial capacity.” *Sibley*, 437 F.3d at 1070. As to the second prong of the inquiry, this Court has concluded that the “absence of all jurisdiction” means “a complete absence of subject matter jurisdiction.”⁵ *See id.* at 947. A judge does not lose immunity “because the action he took was in error,” or “was in excess of his authority.” *Stump*, 435 U.S. at 356.

⁵ In *Stump*, the Supreme Court approvingly quoted from *Bradley v. Fisher*, 80 U.S. 335 (1871), to further illustrate the meaning and import of the test’s second prong:

Where there is clearly no jurisdiction over the subject-matter any authority exercised is a usurped authority, and for the exercise of such authority, when the want of jurisdiction is known to the judge, no excuse is permissible. But where jurisdiction over the subject-matter is invested by law in the judge, or in the court which he holds, the manner and extent in which the jurisdiction shall be exercised are generally as much questions for his determination as any other questions involved in the case, although upon the correctness of his determination in these particulars the validity of his judgments may depend.

Stump, 435 U.S. at 356 n.6 (quoting *Bradley*, 80 U.S. at 351–52).

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1. Judicial Authority

We begin with the first prong. In his amended complaint, Murphy compiles a list of 14 actions Judge Stacy performed, which he says violated his civil rights, including issuing orders, such as a writ of possession of his home, allowing opposing counsel to appear electronically, enforcing a state court default judgment against him, and denying Murphy's motion to disqualify Judge Stacy. These acts are all normal judicial functions and were performed in Judge Stacy's capacity as the presiding judge over the foreclosure case against Murphy. *See Dykes*, 776 F.2d at 945. Judge Stacy therefore acted within her judicial capacity in taking all of the 14 actions of which Murphy complains.

2. Jurisdiction

Because Judge Stacy acted within her judicial capacity, we can proceed to the next step of the inquiry: whether Stacy acted in the clear absence of all subject-matter jurisdiction. We conclude that she did not. By statute, Florida state circuit courts have exclusive original jurisdiction over "all cases in equity." Fla. Stat. § 26.012(2)(c). Foreclosure cases sound in equity. *See Corbin Well Pump & Supply, Inc. v. Koon*, 482 So. 2d 525, 527 (Fla. 5th Dist. Ct. App. 1986) ("A lien foreclosure is an equitable action."). And we have recognized that Florida State circuit courts have jurisdiction over foreclosure proceedings. *See Cnty. Bank of Homestead v. Torcise*, 162 F.3d 1084, 1087 (11th Cir. 1998).

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Therefore, as a Florida State circuit court judge, Judge Stacy did not act in the clear absence of all jurisdiction in presiding over the foreclosure case against Murphy.⁶

Finally, Murphy argues that all those involved in the state foreclosure action against him—including the judges, the court clerk, the plaintiffs, and the attorneys—are complicit in a conspiracy to deprive Murphy of his constitutional rights. Because Murphy failed to raise this argument before the district court, we will

⁶ Murphy argues that the state court lost any jurisdiction it may have possessed because the court violated his due process rights by entering a default judgment against him, without notice or hearing after he responded to the complaint. However, Murphy already raised this argument before the state courts and it was rejected. *See Murphy v. Christiana Trust, et. al.*, 225 So.3d 835 (Fla. 5th DCA 2017) (table). We have held that § 1983 cannot be used “as a device for collateral review of state court judgments.” *Sibley*, 437 F.3d at 1070. Moreover, even assuming *arguendo* that Judge Stacy entered a judgment without proper notice and hearing, it would have been at most in error or in excess of her authority, and she would still be entitled to judicial immunity. *Stump*, 435 U.S. at 356; *see also Dykes*, 776 F.2d at 948 (explaining in a parenthetical that “[w]here a court has some subject-matter jurisdiction, there is sufficient jurisdiction for immunity purposes.” (quoting *Adams v. McIlhany*, 764 F.2d 294, 298 (5th Cir. 1985))).

Murphy further claims that Judge Stacy acted in the “clear absence of all jurisdiction,” because the foreclosure plaintiff never established it had standing. Even assuming *arguendo* the plaintiff did not have standing, a lack of standing does not deprive a circuit court of subject matter jurisdiction. *See Godfrey v. Reliance Wholesale, Inc.*, 68 So. 3d 930, 932 (Fla. 3d Dist. Ct. App. 2011) (holding that a lack of standing does not deprive a Florida court of its subject matter jurisdiction). Therefore, this argument fails.

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not consider it on appeal. *See Access Now, Inc. v. Sw. Airlines Co.*, 385 F.3d 1324, 1331 (11th Cir. 2004).

We therefore **AFFIRM** in part and **DISMISS** in part for lack of jurisdiction.

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

TIMOTHY P. MURPHY,

Plaintiff,

v.

Case No. 6:19-cv-404-
Orl-37LRH

SUSAN STACY,

Defendant.

ORDER

(Filed Aug. 13, 2019)

Defendant Susan Stacy (“**Judge Stacy**”), a judge for the Eighteenth Judicial Circuit Court in Seminole County, Florida, moves to dismiss Plaintiff Timothy P. Murphy’s *pro se* complaint against her. (Doc. 16 (“**Motion**”).) Plaintiff responded. (Doc. 22.) On review, the Motion is due to be granted in part.

I. BACKGROUND

Plaintiff’s claims stem from a state-court foreclosure proceeding against Plaintiff in Seminole County, Florida, over which Judge Stacy presided (“**Foreclosure Case**”). (*See* Doc. 13, pp. 6–11); *see also* *Christiana Tr./JPMC Specialty Mortg. LLC v. Murphy*, No. 2010- CA-005287-14-W (Fla. Cir. Ct. 2010). According to Plaintiff, Judge Stacy violated his due process and equal protection rights and his right to be heard based on fourteen decisions she has made in her official

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capacity as Circuit Court Judge in the Foreclosure Case between July 2017 and February 2016. (See Doc. 13, pp. 6–11.) These decisions include, *inter alia*, enforcing a “void” default final judgment, allowing the unjust seizure of Plaintiff’s home, permitting the opposing party’s attorney to improperly appear without the requisite notice and to appear telephonically in violation of court rules, abruptly cancelling hearings, failing to address issues raised by Plaintiff, permitting the opposing party’s attorney to intimidate and harass Plaintiff, actively representing the opposing party’s interests, and arbitrarily denying Plaintiff’s motions. (*Id.*) In sum, Plaintiff contends that “[t]he record demonstrates that Judge Stacy’s decisions are not based on the record and recorded evidence as Due Process demands, but are intended to force an unjust ending to [Plaintiff’s] rightful pursuit of Justice.” (*Id.* at 11.) For these violations, Plaintiff seeks \$500,000 in general damages, \$600,000 in special damages, and \$500,000 in punitive damages. (*Id.* at 5.)

Judge Stacy now moves to dismiss Plaintiff’s complaint with prejudice, arguing that Plaintiff’s claims are barred by absolute judicial immunity, Eleventh Amendment immunity, qualified immunity, and the *Younger* doctrine, and that Plaintiff failed to state a claim upon which relief may be granted. (Doc. 16.) With Plaintiff’s response (Doc. 22), the matter is ripe.

II. LEGAL STANDARDS

Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to state a claim upon which relief can be granted.” A complaint “that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief.” Fed. R. Civ. P. 8(a)(2). A complaint does not need detailed factual allegations; however, “a plaintiff’s obligation to provide the grounds of his entitlement to relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 545 (2007) (alterations and internal quotation marks omitted). “When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). Such a determination is a context-specific task requiring the court “to draw on its judicial experience and common sense.” *Id.*

III. ANALYSIS

Judge Stacy argues dismissal with prejudice is warranted because Plaintiff’s claims are barred by, *inter alia*, absolute judicial immunity. (See Doc. 16, pp. 5–6.) As the Court finds judicial immunity bars Plaintiff’s claims, the Court begins and ends with this argument.

Under the doctrine of absolute judicial immunity, “[j]udges are entitled to absolute judicial immunity

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from damages for those acts taken while they are acting in their judicial capacity unless they acted in the ‘clear absence of all jurisdiction.’” *Bolin v. Story*, 225 F.3d 1234, 1239 (11th Cir. 2000) (quoting *Stump v. Sparkman*, 435 U.S. 349, 356–57 (1978)). Judicial immunity even covers instances where judges are “accused of acting maliciously and corruptly” in exercising their judicial decision-making power, *Pierson v. Ray*, 386 U.S. 547, 553–54 (1967), and “even when the judge’s acts are in error, malicious, or were in excess of his or her jurisdiction.” *Bolin*, 225 F.3d at 1239. “[T]he district court may dismiss a claim based on absolute judicial immunity if it represents an ‘obvious bar’ based on the allegations in the complaint.” *Williams v. Alabama*, 425 F. App’x 824, 825 (11th Cir. 2011).¹

“The Supreme Court established a two-part test for determining whether a judge enjoys absolute immunity.” *William B. Cashion Nevada Spendthrift Tr. v. Vance*, 552 F. App’x 884, 886 (11th Cir. 2014) (citing *Stump*, 435 U.S. 349). First, courts must determine “whether the judge dealt with the plaintiff in his judicial capacity.” *Id.* (citing *Dykes v. Hosemann*, 776 F.2d 942, 945 (11th Cir. 1985)). This determination hangs on whether: “(1) the act complained of constituted a normal judicial function; (2) the events occurred in the judge’s chambers or in open court; (3) the controversy involved a case pending before the judge; and (4) the

¹ While unpublished opinions are not binding precedent, they may be considered as persuasive authority. See 11th Cir. R. 36-2; see also *United States v. Almedina*, 686 F.3d 1312, 1316 n.1 (11th Cir. 2012).

confrontation arose immediately out of a visit to the judge in his judicial capacity.” *Sibley v. Lando*, 437 F.3d 1067, 1070 (11th Cir. 2005) (citing *Scott v. Hayes*, 719 F.2d 1562, 1565 (11th Cir. 1983)). “[T]hese ‘four factors are to be broadly construed in favor of immunity,’ and . . . ‘in some situations, immunity is to be afforded even though one or more of the . . . factors is not met.’” *William B. Cashion Nevada Spendthrift Tr.*, 552 F. App’x at 886 (quoting *Malina v. Gonzales*, 994 F.2d 1121, 1124 (5th Cir. 1993)).

Second, “[i]f he did act in his judicial capacity, then [courts] ask whether the judge acted in the clear absence of all jurisdiction.” *Id.* (citing *Dykes*, 776 F.2d at 945). “[T]he necessary inquiry in determining whether a defendant judge is immune from suit is whether at the time he took the challenged action he had jurisdiction over the subject matter before him.” *Stump*, 435 U.S. at 356; *William B. Cashion Nevada Spendthrift Tr.*, 552 F. App’x at 887 (“The precedents of both the Supreme Court and the Eleventh Circuit tie judicial immunity directly to the subject-matter jurisdiction of the court.”). There is “a distinction between lack of jurisdiction and excess of jurisdiction.” *Dykes v. Hosemann*, 743 F.2d 1488, 1495 (11th Cir. 1984).

Illustrative of a clear lack of subject matter jurisdiction would be a situation where a probate judge, with jurisdiction only over wills and estates, would try a criminal case. The probate judge would not be immune from suit. On the other hand, if a judge of a criminal case convicted a defendant of a nonexistent crime,

he would merely be acting in excess of his jurisdiction and would be immune.

Id. Further, “[j]udges do not lose their judicial immunity even if they act in the absence of jurisdiction as long as they do not have knowledge that they lack jurisdiction or act ‘in the face of clearly valid statutes or case law expressly depriving them of jurisdiction.’” *Franklin v. Arbor Station, LLC*, 549 F. App’x 831, 834 (11th Cir. 2013) (quoting *Dykes*, 743 F.2d at 1497)). Ultimately, it’s a “high bar” to show that a judge acted in the clear absence of all jurisdiction, *Thompson v. Musleh*, No. 5:15-cv-380-Oc-28PRL, 2016 WL 347052, at *4 (M.D. Fla. Jan. 4, 2016), and “subject matter jurisdiction must be broadly construed where the issue is a judge’s immunity.” *Dykes*, 743 F.2d at 1495.

Here, the first part of the judicial immunity test is easily satisfied: Judge Stacy dealt with Plaintiff in her judicial capacity. Specifically, Plaintiff contends that Judge Stacy’s complained-of conduct occurred in her official capacity as a judge and consisted of her judicial decisions—a normal judicial function—made in her chambers or in open court. (See Doc. 13, pp. 4, 6–11); *see also William B. Cashion Nevada Spendthrift Tr.*, 552 F. App’x at 887 (“Entering orders is a normal judicial function occurring in judicial chambers. . . .”); *Cox v. Mills*, 465 F. App’x 885, 887 (11th Cir. 2012) (finding that “normal judicial functions” include “that the state court judges held hearings, disposed of motions, and made recusal decisions”). Further, Plaintiff’s claims arose out of the Foreclosure Case then-pending before Judge Stacy, and each “issue” Plaintiff raised arose

immediately out of a visit to the judge, either in person or by motion, in her judicial capacity. (See Doc. 13, pp. 4–11); *see also Sibley*, 437 F.3d at 1070. Thus, Judge Stacy acted in her judicial capacity during all conduct forming the basis for Plaintiff’s claims. *See Sibley*, 437 F.3d at 1070; *Scott*, 719 F. 2d at 1565.

The second part of the test is likewise satisfied as Plaintiff has failed to establish that Judge Stacy acted in the clear absence of all jurisdiction. *See William B. Cashion Nevada Spendthrift Tr.*, 552 F. App’x at 886. Plaintiff contends Judge Stacy acted knowing there was no subject matter jurisdiction based on: the Foreclosure Case’s plaintiff’s lack of standing due to a “sham” pleading and reliance on a “counterfeit note,” the case constituting a “legal nullity” due to this lack of standing, and the issuance of a default judgment without notice and a hearing. (Doc. 22, pp. 4–5.) But these conclusory allegations are insufficient to meet the high bar here. Rather, Judge Stacy’s decisions in the Foreclosure Case were not in the *clear* absence of *all* jurisdiction as state court circuit judges have subject matter jurisdiction over foreclosure cases. *See Fla. Stat. § 26.012* (discussing jurisdiction of Florida circuit courts); *Beepot v. J.P. Morgan Chase Nat’l Corporate Servs., Inc.*, 57 F. Supp. 3d 1358, 1379 (M.D. Fla. 2014) (considering allegations concerning state court judges’ rulings in a foreclosure case and the manner in which the judges decided the case, and concluding that “the state circuit court judges were plainly not acting in the ‘clear absence of all jurisdiction’ in resolving the state foreclosure action”). Thus, construing subject matter

jurisdiction broadly, Plaintiff’s claims are barred by judicial immunity. *See Beepot*, 57 F. Supp. 3d at 1379; *cf. Drees v. Ferguson*, 396 F. App’x 656, 658–59 (11th Cir. 2010) (finding judicial immunity applies where circuit court judge acted in judicial capacity and had jurisdiction to hear the type of case out of which the challenged conduct arose).

Ultimately, Plaintiff’s allegations, taken as true, reveal that Judge Stacy at most acted in error or in excess of her jurisdiction, but such allegations do not deprive Judge Stacy of judicial immunity here. *See Stump*, 435 U.S. at 356–57 (“A judge will not be deprived of immunity because the action he took was in error, was done maliciously, or was in excess of his authority; rather, he will be subject to liability only when he has acted in the ‘clear absence of all jurisdiction.’”); *see also Bolin*, 225 F.3d at 1239 (noting that judicial immunity still applies “even when the judge’s acts are in error, malicious, or were in excess of his or her jurisdiction”); *Manning v. Harper*, 460 F. App’x 872, 876 (11th Cir. 2012) (“[I]t is irrelevant whether [the plaintiff] is correct that those actions were unfair or involved erroneous interpretations of Florida law or the facts of his case.”).² And Plaintiff’s disagreement with Judge Stacy’s decisions does not change that result. *Stump*, 435 U.S. at 363 (“Disagreement with the action

² Further, to the extent Plaintiff contends Judge Stacy acted in the absence of jurisdiction based on any procedural errors, judicial immunity still applies. *See Stump*, 435 U.S. at 359 (“A judge is absolutely immune from liability for his judicial acts even if his exercise of authority is flawed by the commission of grave procedural errors.”).

taken by the judge . . . does not justify depriving that judge of his immunity.”). So Plaintiff’s claims against Judge Stacy are due to be dismissed with prejudice as barred by absolute judicial immunity.³

IV. CONCLUSION

Accordingly, it is **ORDERED AND ADJUDGED** as follows:

1. Defendant, Judge Stacy’s, Motion to Dismiss Plaintiff’s Amended Complaint with Prejudice and Memorandum of Law (Doc. 16) is **GRANTED IN PART** to the extent Plaintiff’s claims are barred by absolute judicial immunity.
2. Plaintiff’s Amended Complaint for Violation of Civil Rights (Doc. 13) is **DISMISSED WITH PREJUDICE**.
3. The Clerk is **DIRECTED** to terminate all pending motions and deadlines and to close the file.

³ Because Plaintiffs cannot plead around absolute judicial immunity based on Judge Stacy’s alleged violation of his rights in the underlying Foreclosure Case, Plaintiff will not have an opportunity amend. *See Bryant v. Dupree*, 252 F.3d 1161, 1163 (11th Cir. 2001) (“A district court need not, however, allow an amendment . . . where amendment would be futile.”).

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DONE AND ORDERED in Chambers in Orlando,
Florida, on August 13, 2019.

[SEAL]

/s/ Roy B. Dalton Jr.

ROY B. DALTON JR.

United States District Judge

Copies to:
Counsel of Record

Pro Se Party

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IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 19-13553-GG

TIMOTHY P. MURPHY,
Plaintiff - Appellant,
versus
SUSAN STACY, Circuit Court Judge,
Defendant - Appellee.

Appeal from the United States District Court
for the Middle District of Florida

(Filed Jul. 1, 2020)

BEFORE: MARTIN, ROSENBAUM, and BRANCH,
Circuit Judges.

PER CURIAM:

The Petition for Panel Rehearing filed by the Appellant
is DENIED.

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**CITATIONS FOR STATUTES/
CONSTITUTIONAL PROVISIONS INVOLVED**

TITLE 18, U.S.C., SECTION 241 – If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; . . .

They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death.

42 U.S.C. § 1983. Civil Action For Deprivation of Rights
– Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory

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decree was violated or declaratory relief was unavailable. For the purposes of this Section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

U.S. Constitution, 14th Amendment – Section One – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.
