

CASE NO. 23-13771-CC

IN THE SUPREME COURT OF THE UNITED STATES
OF AMERICA

JUSTIN SAVAGE,

Petitioner

v.

HENRY COUNTY SCHOOL DISTRICT,

Respondent

ON PETITION FOR WRIT OF CERTIORARI TO THE
ELEVENTH CIRCUIT COURT OF APPEALS

SUPPLEMENTAL APPENDIX PETITION FOR WRIT OF
CERTIORARI

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ANNEXURE A: Justin Savage v. Henry County School District, No. 1:22 -CV-0175-CAP-LTW, Northern District Court of Georgia, Order entered on October 11, 2023

ANNEXURE A

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISON

Justin Savage
Plaintiff
Henry County School District
Defendant

CIVIL ACTION FILE

1:22-CV-0175-CAP-LTW

ORDER

This action is before the court on the magistrate judge's report and recommendation ("R&R"), which recommends that the defendant's motion for sanctions be granted and this action be dismissed with prejudice [Doc. No. 69]. The plaintiff has filed objections to the R&R [Doc. No. 74] as well as amended objections [Doc. No. 75]. Also pending is the plaintiff's motion for reassignment to a different judge [Doc. No. 72] and the plaintiff's motion to object to the defendant's leave of absence request [Doc. No. 73].

I. R&R

The magistrate judge recommends the grant of sanctions against the plaintiff for his failure to comply with her order requiring discovery related to the plaintiff's prior criminal history as well as his attempted fraud on the court. In sum, the plaintiff provided

numerous sworn statements in this action admitting that he had a prior arrest and was charged with criminal behavior; yet in his latest deposition, the plaintiff reversed course and denied any arrest or that he was ever the subject of criminal charges.

More specifically, the plaintiff acknowledged his prior arrest and charges during his first deposition but refused to discuss details about beyond his assertion that the charges were nolle prossed and dismissed. Savage Dep. at 32-3, 51-52, 184 [Doc. No. 63-1 at 30-31, 49-50, 73]. Additionally, the plaintiff admitted in his interrogatory responses that he was arrested in May 2015 and was charged with criminal damage to property and felony possession of a knife or firearm [Doc. No. 63-1 at 100]. The magistrate judge conducted a hearing on March 8, 2023 during which she ordered the plaintiff to answer the defendant's questions about his criminal history.¹ She specifically informed the plaintiff that failure to comply may result in being held in contempt of court or a dismissal of his claims [Doc. No. 56]. During the plaintiff's second deposition a few weeks later, he denied that he had ever been arrested, charged with a crime, indicted, or had criminal charges nolle prossed. Savage Dep. II at 269- 70 [Doc. No. 63-1 at 74-75].

In addition, the magistrate judge found that the plaintiff submitted a fraudulent document to this court. Despite submitting a License and Clearance Certificate to the

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¹ The plaintiff's criminal history is at the core of the dispute with the defendant because plaintiff alleges he was terminated from his employment as a teacher in retaliation for reporting sexual harassment. On the other hand, the defendant contends the plaintiff's contract was declared null and void because his clearance certification could not be completed due to his refusal to provide details about his criminal history.

defendant dated June 1, 2020 as part of his application to the defendant in which he responded “YES” to a question about past criminal history [Doc. No. 63-1 at 143], the plaintiff submitted a different version of the same document to the court in which he responds “NO” to the question about past criminal history. However, this document is dated July 1, 2020 [Doc. No. 66 at 24].

In light of the plaintiff’s disregard for his discovery obligations and his willingness to provide blatantly false testimony and submit fraudulent documentation to this court, the magistrate judge concluded that no sanction less than dismissal with prejudice will suffice. Furthermore, the magistrate judge determined that the defendant is entitled to attorneys fees pursuant to Rule 37.

After conducting a careful and complete review of the findings and recommendations, a district judge may accept, reject, or modify the Magistrate Judge’s R&R. 28 U.S.C. § 636(b)(1); United States v. Powell, 628 F.3d 1254, 1256 (11th Cir. 2010). 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); see also Fed. R. Civ. P. 72(b)(2) (requiring the objecting party’s objections to be “specific”). 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. of Ga., 896 F.2d 507, 512 (11th Cir. 1990). The district judge reviews legal conclusions de novo, even in the absence of an objection. See CooperHouston v. S. Ry. Co., 37 F.3d 603,

604 (11th Cir. 1994). “[T]he district court will review those portions of the R & R that are not objected [to] under a clearly erroneous standard.” *Liberty Am. Ins. Group, Inc. v. WestPoint Underwriters, L.L.C.*, 199 F.Supp.2d 1271, 1276 (M.D. Fla. 2001).

In his objections, the plaintiff seeks to focus on the merits of his claims rather than address the basis of the sanctions recommended by the magistrate judge [Doc. Nos. 74, 75]. He provides the court with a variety of documentation that he claims shows that he has no criminal record. Yet, he fails to explain why he admitted under oath that he was arrested and charged with crimes that, according to him, were ultimately nolle prossed. It is his inconsistent positions taken under oath that subject him to sanctions, not the existence or absence of past criminal charges. He repeatedly takes issue with the magistrate judge’s failure to obtain his state court records, which are, as he admits in his deposition, subject to a restriction order that he sought and obtained on June 16, 2020, shortly after his application for employment with the defendant [Doc. No. 63-1 at 6]. In other words, the plaintiff is contending that unless the defendant or the magistrate judge can produce documentation that undermines his current version of the facts with regard to his criminal records, his current version must be credited. The plaintiff is simply incorrect.

The court agrees with the magistrate judge that dismissal with prejudice is the only appropriate sanction here. The plaintiff has demonstrated his complete willingness to falsify records and provide false testimony. More importantly, he steadfastly refuses to comply with this court’s orders and instructions. Therefore, there is no lesser sanction that

will suffice.

II. Motion for Recusal

The plaintiff has filed a motion to be reassigned to a different judge [Doc. No. 72]. While he has titled his motion a request for a new district judge, he refers to Magistrate Judge Linda Walker as the judge he seeks to have removed. No judge will ever make every party happy with his or her rulings. The Supreme Court has made clear that “judicial rulings alone almost never constitute a valid basis for a bias or partiality motion.” *Liteky v. United States*, 510 U.S. 540, 555 (1994). “In every lawsuit, judges make rulings adverse to one or the other party. That these rulings may be unwelcome is simply too commonplace a circumstance to support an allegation of bias.” Federal Judicial Center, *Judicial Disqualification: An Analysis of Federal Law*, p. 53 (3rd ed., August 17, 2020) (citation omitted). “Bias sufficient to disqualify generally ‘must stem from extrajudicial sources,’ not court rulings, ‘unless the judge’s acts demonstrate such pervasive bias and prejudice that it unfairly prejudices one of the parties.’ *In re Eric Watkins Litig.*, No. 20-10408, 2020 WL 5823773, at *1 (11th Cir. Oct. 1, 2020) (quoting *United States v. Bailey*, 175 F.3d 966, 968 (11th Cir. 1999) (quotation marks omitted)). “Challenges to adverse rulings are generally grounds for appeal, not recusal.” *In re Evergreen Sec., Ltd.*, 570 F.3d 1257, 1274 (11th Cir. 2009).

Pursuant to 28 U.S.C. § 455, “[a]ny justice, judge, or magistrate judge of the United

States shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned.” 28 U.S.C. § 455(a).² “The very purpose of § 455(a) is to promote confidence in the judiciary by avoiding even the appearance of impropriety whenever possible.” *Liljeberg v. Health Servs. Acquisition Corp.*, 486 U.S. 847, 865 (1988). “Thus, the standard of review for a § 455(a) motion ‘is whether an objective, disinterested, lay observer fully informed of the facts underlying the grounds on which recusal was sought would entertain a significant doubt about the judge’s impartiality,’ and any doubts must be resolved in favor of recusal.” *United States v. Patti*, 337 F.3d 1317, 1321 (11th Cir. 2003) (quoting *Parker v. Connors Steel Co.*, 855 F.2d 1510, 1524 (11th Cir. 1988)).

In this case, the plaintiff argues that his former counsel told him that she is “close friends” with Judge Walker [Doc. No. 72 at 4]. The plaintiff does not explain how this allegation creates doubt about Judge Walker’s impartiality in presiding over this matter. Furthermore, the plaintiff is representing himself pro se, and his former counsel is no longer involved in this case. Accordingly, the plaintiff’s motion for reassignment to a different judge [Doc. No. 72] is DENIED.

III. Motion to Object to the Defendant’s Leave of Absence Request

On September 19, 2023, Attorney Susana Gude-Rodriguez of the law firm of Smith, Welch, Webb, & White filed an application for leave of absence [Doc. No. 71]. The plaintiff

² Recusal in a federal case is governed by two distinct statutes, 28 U.S.C. § 144 and 28 U.S.C. § 455, though only the latter may be invoked by pro se litigants. See *Morrison v. United States*, 432 F.2d 1227, 1229 (5th Cir. 1970).

seeks to object, arguing that the dates contained the application conflict with this case's time-sensitive schedule. Notably, Ms. Gude-Rodriguez does not request a continuance of any court deadlines. Furthermore, the defendant is represented by Attorney Grant McBride, who is employed at the same firm as Ms. Rodriguez. Therefore, there is no basis to allow the plaintiff to object to the application for leave of absence, and his motion to do so [Doc. No. 73] is DENIED.

IV. Conclusion

For the reasons stated above, the court OVERRULES the plaintiff's objections [Doc. Nos. 74-75] and ADOPTS the magistrate judge's R&R [Doc. No. 69]. The defendant's motion for sanctions GRANTED [Doc. No. 63] and this action is DISMISSED WITH PREJUDICE.

The plaintiff's motion for reassignment to a different judge [Doc. No. 72] is DENIED.

The plaintiff's motion to object to the defendant's leave of absence request [Doc. No. 73] is DENIED.

The issue of whether to award attorneys fees in favor of the defendant is REFERRED to the magistrate judge for hearing.

SO ORDERED this 11th day of October, 2023.

S/Charles A. Pannell, Jr.
CHARLES A. PANELL, JR.
United States District Judge

A handwritten signature in black ink, appearing to read "Charles A. Pannell, Jr." The signature is fluid and cursive, with the first name on top and the last name below it.

3/2/2025