

2007 WL 2692460

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United States District Court,
M.D. Alabama,
Northern Division.

Deborah Joyce CLACKER, Plaintiff,

v.

Gladys DEESE, et al., Defendants.

Civil Action No. 2:06cv172-WHA.

|
Sept. 11, 2007.

Attorneys and Law Firms

Debra Joyce Clackler, Wetumpka, AL, pro se.

Jeffery Harris Long, Office of the Attorney General,
Montgomery, AL, David Berman Block, Douglas
Barkley Hargett, William Richard Lunsford, Balch &
Bingham, Huntsville, AL, for Defendants.

ORDER

W. HAROLD ALBRITTON, Senior United States
District Judge.

*1 On August 22, 2007, the Magistrate Judge filed
a Recommendation in this case to which no timely
objections have been filed. (Doc. # 43). Upon an
independent review of the file in this case and
upon consideration of the Recommendation of the
Magistrate Judge, it is

ORDERED and ADJUDGED as follows:

1. That the Recommendation of the Magistrate Judge
be and is hereby ADOPTED;
2. That the plaintiff's motion to dismiss be and is
hereby GRANTED;
3. That this case be and is hereby DISMISSED without
prejudice; and
4. That no costs be and are hereby TAXED herein.

RECOMMENDATION OF THE MAGISTRATE JUDGE

CHARLES S. COODY, Chief United States
Magistrate Judge.

On August 21, 2007, the plaintiff, Deborah Joyce
Clackler ["Clackler"], filed a motion for dismissal.
Court Doc. No. 42. Upon consideration of Clackler's
motion to dismiss, the court concludes that the motion
is due to be granted and this case dismissed without
prejudice. See [Rule 41\(a\)\(2\)](#), *Federal Rules of Civil
Procedure*.

Dismissal without prejudice pursuant to [Rule 41\(a\)\(2\)](#)
at the insistence of the plaintiff is committed to the
sound discretion of this court and absent some plain
legal prejudice to a defendant denial of the dismissal
constitutes an abuse of this court's discretion. *McCants
v. Ford Motor Company, Inc.*, 781 F.2d 855 (11th
Cir.1986). Simple litigation costs, inconvenience to the
defendant, and the prospect of a second or subsequent
lawsuit do not constitute clear legal prejudice. *Id.* See
also *Durham v. Florida East Coast Railway Company*,
385 F.2d 366 (5th Cir.1967).

The court has carefully reviewed the file in this
case and determined that even if the defendants were
provided an opportunity to file a response to the
plaintiff's motion to dismiss they would not be able
to demonstrate the existence of clear legal prejudice.
Consequently, the court concludes that this case should
be dismissed without prejudice on the motion of the
plaintiff.

CONCLUSION

Accordingly, it is the RECOMMENDATION of the
Magistrate Judge that:

1. The plaintiff's motion to dismiss be granted.
2. This case be dismissed without prejudice.
3. No costs be taxed herein.

It is further

ORDERED that on or before September 4, 2007 the parties may file objections to this Recommendation. Any objections filed must clearly identify the findings in the Magistrate Judge's Recommendation to which the party is objecting. Frivolous, conclusive or general objections will not be considered by the District Court. The parties are advised that this Recommendation is not a final order of the court and, therefore, it is not appealable.

Failure to file written objections to the proposed findings and advisements in the Magistrate Judge's Recommendation shall bar the party from a de novo determination by the District Court of issues covered in the Recommendation and shall bar the

party from attacking on appeal factual findings in the Recommendation accepted or adopted by the District Court except upon grounds of plain error or manifest injustice. *Nettles v. Wainwright*, 677 F.2d 404 (5th Cir.1982). See *Stein v. Reynolds Securities, Inc.*, 667 F.2d 33 (11th Cir.1982). See also *Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir.1981, *en banc*), adopting as binding precedent all decisions of the former Fifth Circuit handed down prior to the close of business on September 30, 1981.

All Citations

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