

**UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA**

Kennard Davis v. James Walker, et al.

Davis v. Walker · No. Nos. 2:08-cv-0593-KJM-SCR-P and 2:10-cv-2139-KJM-SCR-P · Decided March 4, 2025

SUMMARY

The magistrate judge recommends denying Kennard Davis's motions to be reinstated to competency in two federal civil rights actions. The recommendation concludes that Davis's refusal to participate in a court-ordered competency evaluation, together with the available mental-health evidence and litigation history, establishes by a preponderance of the evidence that Davis is not currently competent to represent herself. The court also orders the competency report and curriculum vitae filed under seal and limits Davis's objections to a single filing of no more than 20 pages.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 KENNARD DAVIS, No. 2:08-cv-0593 KJM SCR P 12 Plaintiff, 13 v. 14
JAMES WALKER, et al., 15 Defendants. 16 17 KENNARD DAVIS, No. 2:10-cv-2139 KJM SCR
P 18 Plaintiff, 19 v. 20 JAMES WALKER, et al., ORDER AND 21 Defendants. FINDINGS AND
RECOMMENDATIONS 22 23 24 Plaintiff, a state prisoner, proceeds with these civil rights
actions under 42 U.S.C. § 1983.1 25 26 1 Plaintiff makes many of the same allegations regarding
her medical care, among other things, in the two captioned cases and, with few exceptions, files
the same documents in both cases.

27 Therefore, the court has and will continue to issue identical orders in both cases as appropriate.
Unless otherwise noted, the electronic filing numbers in the text refer to the docket in the 2008 28
case. 1 These proceedings have been referred to the undersigned magistrate judge in accordance
with 2 Local Rule 302 and 28 U.S.C. § 636(b)(1).2 Currently pending before the court are
plaintiff's 3 motions to be reinstated to competency.

ECF No. 271; ECF No. 349 in Case No. 2:10-cv-2139- 4 KJM-SCR-P. 5 I. Factual and Procedural
History 6 The parties are well versed in the procedural history of these cases since they were filed
in 7 2008 and 2010. Therefore, the court dispenses with the need to recount them herein. 8 In her
single page motions, plaintiff solely relies upon the remand order from the Ninth 9 Circuit Court
of Appeals as the basis for her request to be found competent to represent herself in 10 these civil
rights actions.3 ECF No. 271.

11 II. Competency Evaluation 12 Following numerous attempts to obtain evidence of plaintiff's
current mental status, the 13 court appointed Dr. Amanda Gregory as a neutral expert to conduct a

competency evaluation of 14 plaintiff. ECF No. 352; see also ECF Nos. 340 (describing the court's independent duty to 15 protect incompetent parties and indicating the need for additional evidence in order to render a 16 decision on plaintiff's competence); ECF No. 320 (granting plaintiff's motions to appoint an 17 expert); ECF No. 281 (requiring plaintiff's mental health clinicians to submit a report).

18 Dr. Gregory, traveled to Salinas Valley State Prison, where plaintiff is incarcerated, on 19 January 22nd and 23rd, 2025 to conduct the court ordered competency evaluation. Report at 1.4 20 Ms. Davis refused to meet with Dr. Gregory on both days.⁵ Report at 6, 16-17. "On the first 21 attempt..., Ms. Davis indicated that she did not know about the meeting despite having been 22 2 The district judge referred these cases back to the magistrate judge for all further pretrial 23 proceedings on October 13, 2023.

ECF No. 333 (Minute Order). 3 Plaintiff is transgender and uses feminine pronouns. As a result, all use of male pronouns in 24 prior court orders and decisions has been modified herein. 4 As the Report was submitted to the court via email from Dr. Gregory and there is no CMECF 25 pagination to cite to at the present, all pinpoint references are based on the internal pagination 26 within the Report itself.

5 This is not the first time nor the first case in which plaintiff has refused to meet with a court 27 appointed medical expert. See ECF Nos. 161-1, 181 (Report by Dr. Mannis indicating that plaintiff refused to be examined); see also *Davis v. Malfi*, Case No. 06-cv-4744-AHM (MLG) 28 (C.D. Cal. Sept. 29, 2010) at ECF No. 135. 1 provided with the January 6, 2025 court order specifying the dates for the evaluation." Report at 2 6.

On the second day, plaintiff was directly informed that the purpose of the visit was to conduct 3 a court appointed competency evaluation. Id. "[T]he reasons for Ms. Davis refusing the visits are 4 unclear... but her behavior appears to be self-defeating and contrary to her request to be restored 5 to competency status." Id. According to Dr. Gregory, "[f]actors to consider in her refusal... 6 include possible mood symptoms... and psychotic symptoms... impairing her rational decision 7 making.

Alternatively, her refusal could be driven by antisocial personality characteristics." Id. 8 Regardless of what motivated her refusal, Dr. Gregory was unable to conduct the planned clinical 9 interview, competency assessment, and any psychological or neuropsychological testing of 10 plaintiff. Report at 5. Absent this information, Dr. Gregory was unable to render an opinion 11 concerning plaintiff's current competency.

Report at 5. 12 Dr. Gregory was then tasked with conducting a review of plaintiff's mental health records 13 from the CDCR from 2017 through January 2025 in order to render an opinion on plaintiff's 14 competency. ECF No. 415. These records indicate that Ms. Davis suffers from

Schizoaffective 15 Disorder, Bipolar Type; Gender Dysphoria; Adjustment Disorders with Disturbance of Conduct; 16 Narcissistic Personality Disorder; and, Antisocial Personality Disorder with strong psychopathic, 17 borderline, and narcissistic personality features.

Report at 12. Ms. Davis has not taken any 18 psychiatric medication since August 2023. Report at 15. 19 The most recent mental status examinations conducted by CDCR mental health staff, 20 indicate that Ms. Davis was “alert, oriented, pleasant, cooperative, appropriately dressed and 21 groomed, and able to maintain A[ctivities of] D[aily] L[iving].” Report at 12; see also Report at 22 13-14 (noting mental status exam on January 14, 2025 had similar results).

Furthermore, Ms. 23 Davis “interact[ed] with staff when approached, and exhibit[ed] good attention/concentration. 24 She also presented with no evidence of psychosis, denied suicidal or homicidal ideation but 25 presented with mildly pressured speech, perseveration, and irritation that her needs were not 26 being addressed in a manner she thought appropriate.” Report at 12-13.

However, by January 27 23, 2025, plaintiff was experiencing “paranoia, mood instability, irritability-anger, poor insight, 28 poor judgment, and being uncooperative with [a] mental health assessment.” Report at 15. 1 Ultimately, these mental health records and reported observations of Ms. Davis by CDCR mental 2 health staff were not sufficient to allow Dr. Gregory to render an opinion regarding her current 3 competency.

Report at 5-6. 4 The only other clinical evidence in the record describing plaintiff’s mental health records 5 is a June 6, 2023 Declaration from S. Neumann, a Doctor of Psychology employed by CDCR’s 6 Correctional Health Care Services. ECF No. 301. Dr. Neumann indicated that Ms. Davis did not 7 present as depressed or anxious, did not have hallucinations or delusions, or express any suicidal 8 or homicidal ideation.

ECF No. 301 at 2. Additionally, she was “lucid and her thought process 9 was organized.” ECF No. 301 at 2. At that point, Ms. Davis had only been medication non- 10 compliant for 3 days. Id. Dr. Neumann also indicated that she had not been required to take 11 psychiatric medication pursuant to a Keyhea order since August 7, 2020.6 Id. at 3. Based on all 12 of this information, Dr. Neumann opined that “[d]espite slight paranoia with regard to other 13 people’s motives, Patient Davis is oriented and their thought process is goal oriented....

She 14 [also] demonstrates the ability to advocate for herself (i.e., she files grievances and other legal 15 documents).” Id. at 4. 16 Ultimately, the magistrate judge previously assigned to these matters, found Dr. 17 Neumann’s five page report “insufficient to render a decision on plaintiff’s competence.” ECF 18 No. 340 at 4. At this point, almost two years later, the undersigned has no choice but to agree 19 with this conclusion.

The undersigned cannot find that a June 2023 mental status examination is 20 sufficient current evidence of plaintiff’s competency, especially in light of her lengthy period of 21 medication non-

compliance since that examination was performed. 22 III. Legal Standards 23 In a civil case, determinations of competency are governed by Federal Rule of Civil 24 Procedure 17.

Allen v. Calderon, 408 F.3d 1150, 1153 (9th Cir. 2005). The Ninth Circuit has 25 held a party “is entitled to a Rule 17 competency determination when substantial evidence of 26 27 6 See Keyhea v. Rushen, 178 Cal.App.3d 526 (1986) (holding that state prisoners have a statutory right under California Penal Code § 2600 to refuse psychiatric medication unless there is 28 a judicial finding that they are incompetent to make that choice).

1 incompetence is presented.” Allen, 408 F.3d at 1153. Although the procedure for determining 2 competency is determined by federal law, the substantive standard for competency is derived 3 from state law. See In re County of Orange, 784 F.3d 520, 523-24 (9th Cir. 2015); Fed. R. Civ. 4 P. 17(b)(1).

Under California law, a party is incompetent “if he or she lacks the capacity to 5 understand the nature or consequences of the proceeding, or is unable to assist counsel in the 6 preparation of the case.” Golden Gate Way, LLC v. Stewart, Case No. 09-cv-04458 DMR, 2012 7 WL 4482053, at *2 (N.D. Cal. Sept. 28, 2012) (citing In re Jessica G., 93 Cal. App. 4th 1180, 8 1186 (2001)).

Therefore, the question before this court is whether plaintiff understands the nature 9 and consequences of these proceedings and whether she is able to adequately litigate them. 10 IV. Analysis 11 In these cases, plaintiff filed her first motion for the appointment of a guardian ad litem 12 and counsel in 2011. See ECF No. 25. This court determined that plaintiff was incompetent on 13 February 22, 2012 after finding that “[d]ue to mental illness, [s]he does not have the ability to 14 consult with [her] lawyer with a reasonable degree of rational understanding and does not have a 15 rational nor factual understanding of the proceedings against [her].” ECF No. 28 at 2 (taking 16 judicial notice of order from the Central District of California in Case No. 06-cv-4744-AHM 17 (MLG) finding plaintiff incompetent).

Thirteen years later, plaintiff asks this court to determine 18 whether there is sufficient evidence to show that she now has a rational and factual understanding 19 of the proceedings and is able to carry out the basic tasks needed to represent herself. 20 The only evidence that plaintiff has tendered to the court at any point to demonstrate her 21 competency is (1) her enrollment in a correspondence course in history in 2021, see ECF No. 258 22 at 3, and (2) the lack of an involuntary medication order, see ECF No. 252 at 2 (explaining that 23 her last involuntary medication order expired in August 2020).

However, the court has no 24 information as to whether plaintiff successfully completed the history course. And even if she 25 did, succeeding within the carefully managed structure of a correspondence course would not 26 necessarily demonstrate plaintiff’s capacity to orchestrate her own civil litigation.

Moreover, the 27 state court standard for issuing an involuntary medication order is not the same as the competency 28 standard this court is tasked with applying. For this reason, the lack of an involuntary medication 1 order is not determinative of plaintiff's current competence to represent herself in these civil 2 proceedings. 3 Plaintiff's lack of cooperation with the court's neutral psychiatric expert, despite several 4 warnings about the consequences for not cooperating, suggest that plaintiff does not have a 5 rational understanding of these proceedings or ability to pursue litigation on her own.

See ECF 6 No. 410 at 2 (order warning plaintiff that "[a]ny failure to cooperate in the assessment by Dr. 7 Gregory will result in a recommendation that plaintiff's pending motions to be reinstated to 8 competency be denied"); see also ECF No. 352 at 3 (explaining that "[i]f plaintiff refuses to 9 cooperate with Dr. Gregory, this court will, at the very least, consider that refusal as evidence that 10 plaintiff is unable to understand the nature of these proceedings and is therefore incompetent to 11 proceed pro se in these cases").

She filed a motion to be determined competent, yet she refused 12 to come out of her cell and participate in obtaining evidence to support her motion. Whether her 13 actions—demonstrating a lack of rational understanding about court proceedings and an inability 14 to pursue the goals of her lawsuit—is caused by her Schizoaffective Disorder or her personality 15 disorders is not the issue before this court.

Either way, it appears that plaintiff's mental illness is 16 currently preventing her from a rational and factual understanding of these proceedings and from 17 prosecuting this action. Based on a preponderance of the evidence, the undersigned finds that 18 plaintiff is not currently competent to represent herself in these proceedings. 19 By separate order, the court requests briefing from the parties about the court's Rule 20 17(c)(2) duties at this procedural juncture in these cases.

21 V. Plain Language Summary for Pro Se Party 22 Since plaintiff is acting as her own representative in this case, the court wants to make 23 sure that the words of this order are understood. The following information is meant to explain 24 this order in plain English and is not intended as legal advice. 25 Based on your refusal to visit or communicate with Dr. Gregory, the court does not have 26 sufficient evidence to find that you are competent to proceed with your pending civil rights cases.

27 It is recommended that your motion to be reinstated to competency be denied. This means that 28 your civil cases cannot proceed to discovery, a settlement conference, or trial until the court 1 locates and appoints another guardian ad litem or issues another appropriate order to protect your 2 legal interests in these cases. 3 If you disagree with the recommendation to deny your motion to be deemed competent, 4 you have 21 days to explain why it is not correct.

Label your explanation as “Objections to 5 Magistrate Judge’s Findings and Recommendations” and do not exceed 20 pages. The district 6 judge will review your case and make the final decision about your motion to be determined 7 competent to proceed. 8 IT IS HEREBY ORDERED that: 9 1.

The Clerk of Court file Dr. Gregory’s February 24, 2025 Competency Evaluation 10 Report under seal, and nunc pro tunc to the date it was received by the court. See Local Rule 141. 11 This report shall be docketed but not served on any non-party to this proceeding. 12 2.

The Clerk of Court is also directed to file Dr. Gregory’s Curriculum Vitae as a separate 13 docket entry in this case. This docket entry shall also be filed nunc pro tunc to February 24, 14 2025. 15 3. Based on her history of filing multiple repetitious motions after being warned about 16 such excessive filings, the court limits plaintiff’s filings in response to these Findings and 17 Recommendations.

Plaintiff may file one single set of Objections limited to no more than 20 18 pages in length including attachments. Any additional pleadings filed by plaintiff that are 19 not specifically authorized by the court will be stricken from the docket as filed in violation 20 of a court order and not responded to by the court. 21 4.

The Clerk of Court is directed to serve a courtesy copy of these Findings and 22 Recommendations on Saor E. Stetler, Esquire, P.O. Box 2395, Mill Valley, CA 94942, and 23 Stephanie Marie Adraktas, Esquire, 2625 Alcatraz Avenue, #233, Berkeley, CA 94705, as they 24 have been appointed to represent plaintiff in her pending habeas appeal that is stayed in the Ninth 25 Circuit Court of Appeals pending this court’s competency evaluation.

26 IT IS FURTHER RECOMMENDED that plaintiff’s motions to be reinstated to 27 competency (ECF No. 271; ECF No. 349 in Case No. 2:10-cv-2139-KJM-SCR-P) be denied 28 based on the lack of any evidence in support thereof.] These findings and recommendations are submitted to the United States District Judge 2 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1).

Within twenty one days 3 || after being served with these findings and recommendations, any party may file written 4 || objections with the court and serve a copy on all parties. Such a document should be captioned 5 || “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the 6 || objections shall be served and filed within fourteen days after service of the objections.

The 7 || parties are advised that failure to file objections within the specified time may waive the right to 8 | appeal the District Court’s order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991). 9 || DATED: March 3, 2025 10 12 SEAN C. RIORDAN 1B UNITED STATES MAGISTRATE JUDGE 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28

