

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

McDowell v. Flores

McDowell · No. 1:21-cv-01710-CDB (PC) · Decided March 15, 2023

SUMMARY

The document contains Findings and Recommendations by a United States Magistrate Judge recommending dismissal without prejudice of Jonathan Dewitt McDowell’s civil rights action. The recommendation is based on the plaintiff’s failure to obey a screening order, file an amended complaint or notice of voluntary dismissal, or otherwise prosecute the action. The document provides a 14-day period for objections and directs the Clerk to assign a district judge.

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 JONATHAN DEWITT McDOWELL, Case No. 1:21-cv-01710-CDB (PC)
12 Plaintiff, FINDINGS AND RECOMMENDATIONS TO DISMISS ACTION WITHOUT
PREJUDICE 13 v. FOR PLAINTIFF’S FAILURE TO OBEY COURT ORDER AND FAILURE
TO 14 R. FLORES, et al., PROSECUTE 15 Defendants. 14-DAY OBJECTION PERIOD 16
Clerk of the Court to Assign District Judge 17 Plaintiff Jonathan Dewitt McDowell is a former
state prisoner¹ proceeding pro se and in 18 forma pauperis in this civil rights action.

19 I. INTRODUCTION 20 On February 13, 2023, the Court issued its First Screening Order.
(Doc. 15.) The Court 21 determined Plaintiff had stated a cognizable claim for excessive force
against Defendant Flores 22 and a failure to intervene claim against Defendant Moreno. (Id. at 4-
7.) It also found Plaintiff had 23 failed to state any other cognizable claim for relief against any
other named Defendant.

(Id.) The 24 Court directed Plaintiff to choose one of three options: (1) to notify the Court he did
not wish to 25 file a first amended complaint and was willing to proceed only on his cognizable
claims of 26 excessive force against Defendant Flores and failure to intervene against Defendant
Moreno in 27 1 Plaintiff filed a Notice of Change of Address on August 4, 2022, providing a
residential street 1 violation of the Eighth Amendment; or (2) to file a first amended complaint
curing the 2 deficiencies identified in his complaint; or (3) to file a notice of voluntary dismissal.

(Id. at 8-9.) 3 Plaintiff was to do one of the above within 21 days of service of the order. (Id.)
More than 21 4 days have now passed, and Plaintiff has failed to respond to the Court’s order in
any way. 5 II. DISCUSSION 6 A. Legal Standard 7 The Local Rules, corresponding with Federal
Rule of Civil Procedure 11, provide, 8 “[f]ailure of counsel or of a party to comply with ... any

order of the Court may be grounds for 9 the imposition by the Court of any and all sanctions ... within the inherent power of the Court.” 10 Local Rule 110. “District courts have inherent power to control their dockets” and, in exercising 11 that power, may impose sanctions, including dismissal of an action.

Thompson v. Housing Auth., 12 City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a 13 party’s failure to prosecute an action, obey a court order, or comply with local rules. See, e.g., 14 *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (dismissal for failure to comply with a 15 court order to amend a complaint); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130-31 (9th Cir.

16 1987) (dismissal for failure to comply with a court order); *Henderson v. Duncan*, 779 F.2d 1421, 17 1424 (9th Cir. 1986) (dismissal for failure to prosecute and to comply with local rules). 18 In determining whether to dismiss an action, the Court must consider several factors: 19 (1) the public’s interest in expeditious resolution of litigation; (2) the Court’s need to manage its 20 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 21 cases on their merits; and (5) the availability of less drastic sanctions.

Carey v. King, 856 F.2d 22 1439, 1440 (9th Cir. 1988). 23 B. Analysis 24 Here, Plaintiff has failed to notify the Court that he does not wish to file a first amended 25 complaint and wishes to proceed only on his cognizable claims of excessive force against 26 Defendant Flores and failure to intervene against Defendant Moreno; nor has Plaintiff filed a first 27 amended complaint or a notice of voluntary dismissal.

The Court cannot effectively manage its 1 factors—the public’s interest in expeditious resolution of litigation and the Court’s need to 2 manage its docket—weigh in favor of dismissal. *Carey*, 856 F.2d at 1440. 3 The third factor weighs in favor of dismissal since a presumption of injury arises from the 4 occurrence of unreasonable delay in prosecuting an action.

Anderson v. Air W., 542 F.2d 522, 524 5 (9th Cir. 1976). Here, the Court’s First Screening Order issued February 13, 2023. (Doc. 15.) The 6 Court determined Plaintiff’s complaint stated a cognizable claim for excessive force against 7 Defendant Flores and a failure to intervene against Defendant Moreno. (Id. at 4-7.)

However, 8 Plaintiff’s complaint failed to state any other cognizable claim for relief against any other named 9 Defendant. (Id.) Plaintiff was directed to notify the Court if he did not wish to file a first amended 10 complaint and was willing to proceed only on his cognizable claim of excessive force in violation 11 of the Eighth Amendment against Defendant Flores and failure to intervene against Defendant 12 Moreno, or to file a first amended complaint curing the deficiencies identified in his complaint, or 13 to file a notice of voluntary dismissal.

(Id. at 8-9.) Plaintiff has failed file an amended complaint 14 or a notice of voluntary dismissal, nor has Plaintiff notified the Court he wishes to proceed only 15 on his cognizable claims. Plaintiff's inaction amounts to an unreasonable delay in prosecuting this 16 action resulting in a presumption of injury.

Therefore, the third factor—a risk of prejudice to 17 defendants—also weighs in favor of dismissal. Carey, 856 F.2d at 1440. 18 The fourth factor usually weighs against dismissal because public policy favors 19 disposition on the merits. Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002).

However, 20 “this factor lends little support to a party whose responsibility it is to move a case toward 21 disposition on the merits but whose conduct impedes progress in that direction.” In re 22 Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) 23 (citation omitted). By failing to notify the Court of an intent to proceed on his claims found 24 cognizable, or to file an amended complaint or a notice of voluntary dismissal, Plaintiff is not 25 moving this case forward and is impeding its progress.

Thus, the fourth factor—the public policy 26 favoring disposition of cases on their merits—weighs in favor of dismissal. Carey, 856 F.2d at 27 1440. 1 Finally, the Court's warning to a party that failure to obey the court's order will result in 2 | dismissal satisfies the “considerations of the alternatives” requirement. Ferdik, 963 F.2d at 1262. 3 | The Court's February 13, 2023 Order expressly warned Plaintiff as follows: “If Plaintiff fails to 4 | comply with this order, the Court will recommend that this action be dismissed, without 5 | prejudice, for failure to obey a court order and for failure to prosecute.” (Doc.

15 at 9; see 6 | also Doc. 2 at 1 [First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued 7 | 12/3/21).) Thus, Plaintiff had adequate warning that dismissal could result from his 8 | noncompliance.

Therefore, the fifth factor—the availability of less drastic sanctions—also weighs 9 | in favor of dismissal. Carey, 856 F.2d at 1440. 10 I. CONCLUSION AND RECOMMENDATIONS 11 The Court DIRECTS the Clerk of the Court to assign a district judge to this action. 12 For the reasons given above, the undersigned RECOMMENDS that this action be 13. | DISMISSED without prejudice for Plaintiffs failure to obey court orders and failure to 14 | prosecute.

15 These Findings and Recommendations will be submitted to the United States District 16 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 17 | of the date of service of these Findings and Recommendations, Plaintiff may file written 18 | objections with the Court.

The document should be captioned, “Objections to Magistrate Judge's 19 | Findings and Recommendations.” Plaintiff's failure to file objections within the specified time 20 | may result in

waiver of his rights on appeal. Wilkerson v. Wheeler, 772 F.3d 834, 839 (9th Cir. 21 | 2014) (citing Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)). 22 | IT IS SO ORDERED. * | Dated: _March 14, 2023 | Wr bo 24 UNITED STATES MAGISTRATE JUDGE 25 26 27 28

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