

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Jonathan Bennett v. U. Garcia

Bennett v. Garcia · No. 2:21-cv-1340 WBS CSK P · Decided February 26, 2025

SUMMARY

The United States Magistrate Judge recommends dismissing Jonathan Bennett’s 42 U.S.C. § 1983 action for failure to prosecute. The recommendation is based on Bennett’s failure to participate in discovery, failure to appear for a deposition, failure to communicate with defense counsel, and apparent absconding from parole. The court concludes that four of the five applicable dismissal factors favor dismissal and that less drastic sanctions would be ineffective.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Chi Soo Kim
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	February 26, 2025
DOCKET	2:21-cv-1340 WBS CSK P
DISPOSITION	other
PROCEDURAL POSTURE	A magistrate judge issued findings and recommendations recommending dismissal of a pro se prisoner's 42 U.S.C. § 1983 action for failure to prosecute after the plaintiff failed to participate in discovery, failed to appear for a deposition, failed to communicate with defense counsel, and failed to timely oppose the motion to dismiss.
STANDARD OF REVIEW	A district court may dismiss an action for failure to prosecute, failure to obey a court order, or failure to comply with procedural rules after weighing: the public interest in expeditious resolution, the court's need to manage its docket, the risk of prejudice to defendants, the public policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	nonprecedential

TOPICS

sanctions

motions to dismiss

discovery dispute

civil procedure

section 1983

PRACTICE AREAS

civil rights

civil procedure

prisoner litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed for failure to prosecute under Federal Rule of Civil Procedure 41(b) based on plaintiff's failure to participate in discovery, failure to appear for his deposition, and failure to communicate.
2. Whether less drastic sanctions or an order compelling plaintiff's deposition would be adequate alternatives to dismissal.

HOLDINGS

1. The five-factor test governing dismissal for failure to prosecute favored dismissal because four factors supported dismissal and the factor favoring resolution on the merits did not weigh against dismissal under the circumstances.
2. Failure to cooperate in discovery, including failure to appear for a deposition, may support sanctions including dismissal under Rules 37 and 41(b), and the governing standards are essentially the same.

KEY QUOTATIONS

"Dismissal is a harsh penalty and is to be imposed only in extreme circumstances."

"A case that is stalled or unreasonably delayed by a party's failure to comply with deadlines and discovery obligations cannot move forward toward resolution on the merits."

FACTUAL BACKGROUND

Plaintiff was proceeding pro se and in forma pauperis in a § 1983 action against U. Garcia and F. Moreno. After being released on parole, plaintiff filed two changes of address but later stopped communicating with the court and defense counsel; his parole agent and defense counsel were unable to locate or contact him. Plaintiff did not respond to a deposition notice or appear for the December 16, 2024 deposition, and defendants ultimately moved to dismiss for failure to prosecute.

PROCEDURAL HISTORY

Plaintiff filed this action on July 29, 2021, and later filed two amended complaints. Defendants moved to dismiss, but that motion was previously recommended for denial and denied by the district court. After plaintiff failed to respond to a deposition notice, failed to appear for the scheduled deposition, and could not be located, defendants moved to dismiss for failure to prosecute or alternatively to compel the deposition and extend the case schedule. The magistrate judge recommended dismissal under Federal Rule of Civil Procedure 41(b), subject to the district judge's review under 28 U.S.C. § 636(b)(1).

DISPOSITION

other

CASES CITED

- Thompson v. Housing Auth., City of Los Angeles, 782 F.2d 829, 831 (9th Cir. 1986)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-32 (9th Cir. 1987)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- Yourish v. California Amplifier, 191 F.3d 983, 990, 992 (9th Cir. 1999)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
- Morris v. Morgan Stanley & Co., 942 F.2d 648, 652 (9th Cir. 1991)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Buss v. Western Airlines, Inc., 738 F.2d 1053, 1054 (9th Cir. 1984)
- United States v. Basher, 629 F.3d 1161, 1165 (9th Cir. 2011)
- Foley v. Martz, 2018 WL 5111998, at *1 (S.D. Cal. Oct. 19, 2018)
- Woolery v. Shasta County Jail, 2022 WL 2452293, at *3 (E.D. Cal. July 6, 2022)
- Martinez v. Yist, 951 F.2d 1153 (9th Cir. 1991)