

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Tomasini v. Chau

Tomasini v. Chau · No. 2:18-cv-0286 DAD AC P · Decided March 10, 2023

SUMMARY

The United States District Court for the Eastern District of California denied Paul C. Tomasini’s motion for reconsideration of an earlier order denying a stay. The court granted his motion to voluntarily dismiss deceased defendant D. Gentry and successors in interest, and modified the discovery and pretrial motion deadlines.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Allison Claire
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 10, 2023
DOCKET	2:18-cv-0286 DAD AC P
DISPOSITION	other
PROCEDURAL POSTURE	Order resolving plaintiff's motion for reconsideration of an order denying a stay and motion to voluntarily dismiss deceased defendant D. Gentry and her successors in interest.
STANDARD OF REVIEW	Reconsideration of prior orders is generally available only for newly discovered evidence, clear error, or an intervening change in controlling law.
PRECEDENTIAL VALUE	Unpublished district court order; precedential status unknown

TOPICS

- motion for reconsideration
- discovery dispute
- civil procedure

PRACTICE AREAS

- civil procedure
- prisoner civil rights

QUESTIONS PRESENTED

1. Whether plaintiff was entitled to reconsideration of the order denying his request for a stay.
2. Whether defendant D. Gentry and her successors in interest should be voluntarily dismissed after Gentry's death.
3. Whether the discovery and pretrial-motion deadlines should be reset.

HOLDINGS

1. Reconsideration was not warranted because none of the recognized grounds—newly discovered evidence, clear error, or an intervening change in controlling law—was present.
2. The court granted plaintiff's motion to voluntarily dismiss deceased defendant D. Gentry and any successors in interest.
3. The operative discovery and scheduling order was modified to permit discovery through April 21, 2023, with motions to compel due by that date, and to require other pretrial motions by July 14, 2023.

KEY QUOTATIONS

“Reconsideration of prior orders is generally available only on grounds of newly discovered evidence, clear error, or an intervening change in the controlling law.” (at 1)

FACTUAL BACKGROUND

Plaintiff's request for a stay had been based on his separation from his legal property. He later reported that he had been reunited with his files but asserted other circumstances warranting a stay. Defendant D. Gentry died, and plaintiff elected not to substitute successors in interest and instead sought dismissal.

PROCEDURAL HISTORY

Plaintiff moved for reconsideration of the denial of his request for a stay after informing the court that he had regained access to his legal files but faced other circumstances. During the case, defendant D. Gentry died, and plaintiff stated that he would not seek substitution under Federal Rule of Civil Procedure 25(a) and instead sought dismissal. The court denied reconsideration, granted the voluntary-dismissal motion, and modified the discovery and pretrial-motion deadlines.

DISPOSITION

other

CASES CITED

- *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 FOR THE EASTERN DISTRICT OF
CALIFORNIA 10 11 PAUL C. TOMASINI, No. 2:18-cv-0286 DAD AC P 12 Plaintiff, 13 v.
ORDER 14 JAMES CHAU, et al., 15 Defendants. 16 17 Before the court are plaintiff's motion for

reconsideration of the order denying his request 18 for a stay (ECF No. 65) and his motion to voluntarily dismiss defendant D. Gentry (ECF No. 66).

19 Reconsideration of prior orders is generally available only on grounds of newly 20 discovered evidence, clear error, or an intervening change in the controlling law. *Marlyn 21 Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 880 (9th Cir. 2009). None of 22 these factors are present here.

The motion for a stay was based on plaintiff's separation from his 23 legal property; he now informs the court that he has been reunited with his files but faces other 24 circumstances that warrant a stay. ECF No. 65.

The motion for reconsideration will be denied, 25 but the operative discovery and scheduling order will be amended in light of the status of the case 26 generally. 27 On December 8, 2022, defendants filed a notice of death of defendant D. Gentry. ECF 28 No. 58. Plaintiff has now notified the court that he will not be seeking to substitute Gentry's 1 || successors in interest pursuant to Federal Rule of Civil Procedure 25(a), but wishes instead to 2 | dismiss Gentry.

ECF No. 66. The motion will be granted. 3 The court previously indicated that discovery deadlines would be reset once the status of 4 | defendant Gentry was clarified. ECF No. 63 at 3. New discovery and dispositive motions 5 || deadlines are accordingly set below. Due to the number of extensions previously granted, which 6 || have continued discovery well beyond the original deadline of June 24, 2022 (ECF No. 38 at 5), 7 || the discovery period will be left open for a relatively brief additional period.

8 CONCLUSION 9 For the reasons state above, IT IS HEREBY ORDERED that: 10 1. Plaintiff's motion for reconsideration (ECF No. 65) is DENIED; 11 2. Plaintiffs motion to voluntarily dismiss deceased defendant D. Gentry and any and all 12 || of her successors in interest (ECF No. 66) is GRANTED. See generally Federal Rule of Civil 13 || Procedure 41(a)(2); 14 3.

The operative Discovery and Scheduling Order is modified as follows: 15 a. The parties may conduct discovery until April 21, 2023. Any motions to compel 16 || discovery shall be filed by that date; 17 b. All pretrial motions, except motions to compel, shall be filed on or before July 14, 18 | 2023. 19 | DATED: March 9, 2023 * 20 Htttenr— Lhor—e_ ALLISON CLAIRE 21 UNITED STATES MAGISTRATE JUDGE 22 23 24 25 26 27 28