

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF UTAH

Jack Conrad Franchek v. Park City Municipal Corporation, et al.

Franchek · No. 2:25-cv-694-DBP-DBB · Decided June 4, 2026

SUMMARY

The United States District Court for the District of Utah adopts a magistrate judge's Report and Recommendation recommending dismissal for failure to prosecute. The court dismisses the civil rights action without prejudice after the plaintiff failed to submit required summons and service-of-process forms and filed no objections.

CASE DETAILS

COURT	United States District Court for the District of Utah
WRITING FOR THE COURT	David Barlow
JURISDICTION	United States District Court for the District of Utah
DECIDED	June 4, 2026
DOCKET	2:25-cv-694-DBP-DBB
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court reviewed a magistrate judge's Report and Recommendation recommending dismissal for failure to prosecute because Plaintiff did not submit required summons and service-of-process forms. No objections were filed.
STANDARD OF REVIEW	De novo review applies to portions of a magistrate judge's report and recommendation to which a timely and proper objection is made; unobjected-to portions are reviewed for clear error. Clear error requires a definite and firm conviction that a mistake has been committed.
PRECEDENTIAL VALUE	unpublished

TOPICS

[service of process](#) [civil procedure](#) [police misconduct](#) [civil rights](#) [municipal liability](#)

PRACTICE AREAS

[civil procedure](#) [civil rights](#) [municipal law](#)

QUESTIONS PRESENTED

1. Whether the magistrate judge's recommendation to dismiss the action for failure to prosecute was clearly erroneous where Plaintiff filed no objections and failed to submit the required summons and service-of-process forms.
2. Whether the district court should adopt the Report and Recommendation and dismiss the action without prejudice.

HOLDINGS

1. When no timely and proper objection is filed, the district court reviews the unobjected-to portions of a magistrate judge's Report and Recommendation for clear error.
2. Dismissal without prejudice for failure to prosecute was warranted because Plaintiff failed to submit the required summons and service-of-process forms by the court-ordered deadline after being warned that noncompliance could result in dismissal.

KEY QUOTATIONS

“To overturn a decision as clearly erroneous, the court must be left with a “definite and firm conviction that a mistake has been committed.””

“The magistrate judge’s analysis and conclusion are not clearly erroneous.”

FACTUAL BACKGROUND

Plaintiff brought a civil rights action based on a September 2019 incident in Park City, Utah, alleging that Park City police officers unlawfully arrested and tased his father and unlawfully arrested and physically interfered with Plaintiff. Plaintiff alleged physical pain, emotional distress, fear of law enforcement, nightmares, anxiety, and PTSD symptoms. The court ordered Plaintiff to submit a summons and service-of-process form for each named Defendant, but Plaintiff did not submit the required documents by the court-ordered deadline.

PROCEDURAL HISTORY

Plaintiff filed a civil rights action arising from a September 2019 incident in Park City, Utah. The court ordered Plaintiff to submit summonses and USM-285 service forms for each Defendant by May 4, 2026, warning that failure to do so could result in dismissal. After Plaintiff failed to comply, the magistrate judge recommended dismissal for failure to prosecute. The district court reviewed the unobjected-to recommendation for clear error, adopted it, and dismissed the case without prejudice.

DISPOSITION

dismissed

CASES CITED

- Johnson v. Progressive Leasing, No. 2:22-cv-00052, 2023 WL 4044514, at *2 (D. Utah 2023)
- Johnson v. Zema Sys. Corp., 170 F.3d 734, 739 (7th Cir. 1999)

- United States v. Gypsum Co., 333 U.S. 364, 395 (1948)
- Ocelot Oil Corp. v. Sparrow Indus., 847 F.2d 1458, 1464 (10th Cir. 1988)

OPINION

UNITED STATES DISTRICT COURT DISTRICT OF UTAH JACK CONRAD FRANCHEK, MEMORANDUM DECISION AND Plaintiff, ORDER ADOPTING [10] REPORT AND RECOMMENDATION v. Case No. 2:25-cv-694-DBP-DBB PARK CITY MUNICIPAL CORPORATION, ET AL., District Judge David Barlow Defendants. Magistrate Judge Dustin B. Pead Before the court is United States Magistrate Judge Dustin B. Pead's Report and Recommendation.¹ It recommends dismissing the matter for failure to prosecute.² BACKGROUND Plaintiff brings a civil rights action based on an incident that occurred in September 2019 in Park City, Utah.³ Plaintiff alleges that Park City Police officers unlawfully arrested the Plaintiff's father, including tazing him, and unlawfully arrested and physically interfered with Plaintiff.⁴ Plaintiff alleges having suffered "physical pain, emotional distress, fear of law enforcement, nightmares, anxiety, and PTSD symptoms" as a result of the incident.⁵ 1 R. & R. ("R&R"), ECF No. 10, filed May 13, 2026.

2 Id. at 7. 3 Compl. at 1, ECF No. 1, filed August 19, 2025. 4 Id. at 1, 3. 5 Id. at 3. On April 4, 2026, the court ordered Plaintiff to complete and submit to the Clerk's Office a summons (AO 440) and service of process form (USM-285) for each named Defendant.⁶ The deadline for submitting these documents was on May 4, 2026, and the court warned Plaintiff that the case may be dismissed if the forms were not timely submitted.⁷ Plaintiff did not submit these documents by the deadline.

On that basis, the Magistrate Judge recommended dismissing the matter for failure to prosecute.⁸ STANDARD The court conducts a de novo review of any part of a report and recommendation for which a plaintiff offers a timely and proper objection.⁹ This court "reviews unobjected-to portions of a report and recommendation for clear error."¹⁰ To overturn a decision as clearly erroneous, the court must be left with a "definite and firm conviction that a mistake has been committed."¹¹ DISCUSSION No objections were filed, and therefore, the Report and Recommendation is reviewed for clear error.

The magistrate judge's analysis and conclusion are not clearly erroneous. Accordingly, the court adopts the Report and Recommendation. 6 Order, ECF No. 9, filed April 6, 2026. 7 Id. 8 Id. at 7. 9 Fed. R. Civ. P. 72(b)(3). 10 Johnson v. Progressive Leasing, No. 2:22-cv-00052, 2023 WL 4044514, at *2 (D. Utah 2023) (citing Johnson v. Zema Sys. Corp., 170 F.3d 734, 739 (7th Cir.

1999); see Fed. R. Civ. P. 72(b) adv. comm. note to 1983 amend. ("[T]he court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.").

11 United States v. Gypsum Co., 333 U.S. 364, 395 (1948); see also Ocelot Oil Corp. v. Sparrow Indus., 847 F.2d 1458, 1464 (10th Cir. 1988). ORDER For the reasons stated above, the court: 1.

ADOPTS the Report and Recommendation.” 2. DISMISSES the Case without prejudice. Signed June 4, 2026. BY THE COURT David Barlow United States District Judge ECF No. 10.