

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

Santos Ovalle v. Orange County Sheriff Department

Santos Ovalle · No. 8:22-cv-02198-MCS-KES · Decided March 9, 2023

SUMMARY

The United States District Court for the Central District of California dismissed Santos Ovalle’s 42 U.S.C. § 1983 action without prejudice for failure to prosecute. The court concluded that Plaintiff failed to comply with an order granting leave to amend after the complaint was screened and found deficient. The dismissal was entered under Federal Rule of Civil Procedure 41(b) and Central District of California Local Rule 41-1.

OPINION

Case 8:22-cv-02198-MCS-KES Document 11 Filed 03/09/23 Page 1 of 5 Page ID #:87 1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 CENTRAL DISTRICT OF CALIFORNIA 10 11 SANTOS OVALLE, Case No. 8:22-cv-02198-MCS-KES 12 Plaintiff, ORDER DISMISSING ACTION 13 v. WITHOUT PREJUDICE FOR LACK 14 ORANGE COUNTY SHERIFF OF PROSECUTION 15 DEPARTMENT, et al., 16 Defendants. 17 18 19 I. 20 BACKGROUND 21 In December 2022, the Court received a civil Complaint alleging violations 22 of 42 U.S.C. § 1983 from Santos Ovalle (“Plaintiff”).

(Dkt. 1.) Plaintiff currently 23 resides at the Coalinga State Mental Hospital. (Id. at 11.)¹ At the time of the 24 events alleged in the Complaint, he had completed a state prison sentence and was 25 awaiting civil commitment proceedings under California’s Sexually Violent 26 27 1 Page citations refer to the pagination imposed by the Court’s electronic filing system.

28 1 Case 8:22-cv-02198-MCS-KES Document 11 Filed 03/09/23 Page 2 of 5 Page ID #:88 1 Predator Act. (Id. at 17.) The Complaint alleged that, while he was housed at the 2 Orange County Jail in connection with those civil commitment proceedings, 3 unknown deputies shot at him “through the vents of the cell” with BB pellets, 4 which caused him to quickly develop “gangrene” and eventually have several 5 fingers amputated.

(Id. at 14-15.) The Complaint brought § 1983 claims against 6 the Orange County Sheriff’s Department, three named deputies, two John Doe 7 deputies (the alleged shooters), and three doctors who treated Plaintiff’s injuries. 8 Because Plaintiff requested to proceed in forma pauperis and waive the filing 9 fee (Dkt. 2, 5, 8), the Court screened Plaintiff’s Complaint under 28 U.S.C. 10 § 1915(e)(2).

See *Lopez v. Smith*, 203 F.3d 1122, 1129 (9th Cir. 2000) (en banc) 11 (“[S]ection 1915(e) applies to all in forma pauperis complaints, not just those filed 12 by prisoners.”). On January 20, 2023, the Court issued an order finding the 13 Complaint failed to state a claim and dismissing it with leave to amend. (Dkt. 10.) 14 Regarding John Doe deputies, the Court found Plaintiff needed to add more facts 15 about how they shot him and when he developed gangrene.

(Id. at 4.) Regarding 16 the other deputies, the Court found Plaintiff needed to add more facts about their 17 involvement in the incident and what he claimed they did to violate his rights. (Id. 18 at 4-5.) Regarding the Sheriff’s Department and the official capacity claims against 19 the deputies, the Court found the Complaint did not allege a custom, policy or 20 practice as required by *Monell v. Department of Social Services*, 436 U.S. 658 21 (1978).

(Dkt. 10 at 5-6.) Regarding the doctors, the Court found that private 22 doctors who provide emergency medical services to state inmates are generally not 23 considered state actors under § 1983. (Id. at 6-7.) 24 Plaintiff’s response to the dismissal order was due on February 21, 2023. 25 (Id. at 7.)

As of the date of this order, the Court has not received any further filings 26 from Plaintiff. 27 28
2 Case 8:22-cv-02198-MCS-KES Document 11 Filed 03/09/23 Page 3 of 5 Page ID #:89 1 II. 2
LEGAL STANDARD 3 A district court may dismiss an action for failure to prosecute, failure to 4 follow court orders, or failure to comply with the federal or local rules.

See Fed. R. Civ. P. 41(b); *Link v. Wabash R. Co.*, 370 U.S. 626, 629-30 (1962); *Ghazali v. 6 Moran*, 46 F.3d 52, 53 (9th Cir. 1995) (per curiam). Central District of California 7 Local Rule 41-1 provides, “Civil suits which have been pending for an 8 unreasonable period of time without any action having been taken therein may, 9 after notice, be dismissed for want of prosecution.” 10 The Court has discretion to dismiss the action with or without prejudice.

See 11 Fed. R. Civ. P. 41(b) (“[u]nless the dismissal order states otherwise,” or certain 12 exceptions apply, a dismissal pursuant to Federal Rule of Civil Procedure 41(b) 13 “operates as an adjudication on the merits”); Local Rule 41-2 (“[u]nless the Court 14 provides otherwise, any dismissal pursuant to [Local Rule] 41-1 shall be without 15 prejudice”); *Al-Torki v. Kaempfen*, 78 F.3d 1381, 1385 (9th Cir.

1996) (“Dismissal 16 with prejudice and default on counterclaims, for willful and inexcusable failure to 17 prosecute, are proper exercises of discretion under Federal Rules of Civil Procedure 18 41(b), 16(f), and the inherent power of the court.”). 19 In determining whether to dismiss a case for failure to prosecute or failure to 20 comply with court orders, the Ninth Circuit has instructed district courts to consider 21 the following five factors: (1) the public’s interest in expeditious resolution of 22 litigation; (2) the court’s need to manage its docket; (3) the risk of

prejudice to the 23 defendants; (4) the availability of less drastic sanctions; and (5) the public policy 24 favoring disposition of cases on their merits.

In re Phenylpropanolamine (PPA) 25 26 2 The Local Rules of the U.S. District Court for the Central District of 27 California are available online at: <https://www.cacd.uscourts.gov/court-procedures/local-rules>. 28 3 Case 8:22-cv-02198-MCS-KES Document 11 Filed 03/09/23 Page 4 of 5 Page ID #:90 1 Prods. Liab. Litig., 460 F.3d 1217, 1226 (9th Cir. 2006).

The test is not 2 “mechanical,” but provides a “non-exhaustive list of things” to “think about.” 3 Valley Eng’rs v. Elec. Eng’g Co., 158 F.3d 1051, 1057 (9th Cir. 1998). 4 III. 5 DISCUSSION 6 Here, the first two factors favor dismissal.

The first factor—the public’s 7 interest in the expeditious resolution of litigation—“always favors dismissal.” 8 Yourish v. Cal. Amplifier, 191 F.3d 983, 990 (9th Cir. 1999). The second factor— 9 the Court’s need to manage its docket—favors dismissal here because Plaintiff’s 10 “noncompliance has caused [this] action to come to a complete halt, thereby 11 allowing [him] to control the pace of the docket rather than the Court.” Id. (internal 12 quotations marks omitted).

13 The third factor—prejudice to Defendants—weighs in favor of dismissal, 14 although perhaps not as strongly as some of the other factors. Because this Court 15 dismissed the complaint on screening, Defendants have not been served. See 16 Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002) (“We have previously 17 recognized that pendency of a lawsuit is not sufficiently prejudicial in and of itself 18 to warrant dismissal.”); Hunter v. Sandoval, No. 17-cv-09257-CJC-SHK, 2018 U.S. 19 Dist.

LEXIS 210543 at *5, 2018 WL 6570870 at *2 (C.D. Cal. Dec. 12, 2018) 20 (finding no prejudice to a defendant who had not yet been served). On the other 21 hand, a rebuttable presumption of prejudice to the defendants arises when a plaintiff 22 unreasonably delays prosecution of an action, In re Eisen, 31 F.3d 1447, 1452-53 23 (9th Cir. 1994), and unnecessary delay “inherently increases the risk that witnesses’ 24 memories will fade and evidence will become stale.” Pagtalunan, 291 F.3d at 643.

25 The fourth factor—availability of less drastic sanctions—favors dismissal. 26 The Court’s prior order warned Plaintiff that failure to respond might result in a 27 dismissal of this action. (Dkt. 10 at 7.) See Ferdik v. Bonzelet, 963 F.2d 1258, 28 1262 (9th Cir. 1992) (“a district court’s warning to a party that his failure to obey 4 Case 8:22-cv-02198-MCS-KES Document 11 Filed 03/09/23 Page5of5 Page ID#:91 1 | the court’s order will result in dismissal can satisfy the ‘consideration of 2 | alternatives’ requirement’) (citation omitted).

3 The fifth factor—public policy favoring a disposition of an action on its 4 | merits—arguably weighs against dismissal here. Pagtalunan, 291 F.3d at 643. 5 || However, the effect of this factor

is somewhat mitigated by the fact that Plaintiffs 6 | Complaint failed to state a claim for relief for the reasons explained in the Court's 7 | January 20, 2023 dismissal order.

(Dkt. 10.) 8 Given that the enumerated factors largely support dismissal, this action will 9 | be dismissed pursuant to Rule 41(b) and Local Rule 41-1. Considering all of the 10 | circumstances, and in particular given that Plaintiff is proceeding pro se, the 11 | dismissal shall be without prejudice. 12 IV. 13 CONCLUSION 14 IT IS THEREFORE ORDERED that Judgment will be entered dismissing 15 | this action without prejudice for failure to prosecute.

16 4, £ 17 | DATED: March 9, 2023 ake L Conor 18 MARK C. SCARSI 19 UNITED STATES DISTRICT JUDGE 20 || Presented by: 1) Tous. Seote 22 | KAREN E. SCOTT 93 | UNITED STATES MAGISTRATE JUDGE 24 25 26 27 28