

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Frank Monaco Bazzo v. State of California, et al.

Bazzo · No. 1:23-cv-01454-KES-SAB (PC) · Decided April 29, 2025

SUMMARY

The United States District Court for the Eastern District of California ordered that the action be terminated without prejudice after Plaintiff Frank Monaco Bazzo moved for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1)(A). Because no defendant had been served and no answer or motion for summary judgment had been filed, the court concluded that dismissal was effective by operation of law.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Stanley A. Boone
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 29, 2025
DOCKET	1:23-cv-01454-KES-SAB (PC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Plaintiff moved for voluntary dismissal under Federal Rule of Civil Procedure 41(a)(1) before any defendant had been served or had filed an answer or motion for summary judgment.
STANDARD OF REVIEW	No appellate standard of review was applied. The court applied Federal Rule of Civil Procedure 41(a)(1)(A)(i) to determine whether plaintiff had an absolute right to voluntarily dismiss the action.
PRECEDENTIAL VALUE	unpublished, nonprecedential district court order
PARTIES	Frank Monaco Bazzo v. State of California, et al.

TOPICS

- default
- civil procedure
- section 1983
- civil rights
- prisoners rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether plaintiff could voluntarily dismiss the action under Federal Rule of Civil Procedure 41(a)(1)(A)(i) before service of an answer or motion for summary judgment.
2. Whether the action should be terminated without prejudice.

HOLDINGS

1. Under Federal Rule of Civil Procedure 41(a)(1)(A)(i), a plaintiff has an absolute right to voluntarily dismiss an action before the defendant serves an answer or a motion for summary judgment.
2. The action was terminated without prejudice by operation of law.

KEY QUOTATIONS

“ “[U]nder Rule 41(a)(1)(i), a plaintiff has an absolute right to voluntarily dismiss his action prior to service by the defendant of an answer or a motion for summary judgment.” ” (at 1)

“ “[A] dismissal under Rule 41(a)(1) is effective on filing, no court order is required, the parties are left as though no action had been brought, the defendant can't complain, and the district court lacks jurisdiction to do anything about it.” ” (at 1)

FACTUAL BACKGROUND

Plaintiff was proceeding pro se in an action brought under 42 U.S.C. § 1983. No defendant had been served, and no defendant had filed an answer or motion for summary judgment. After the court granted plaintiff time to amend the complaint, plaintiff filed a motion to voluntarily dismiss the action.

PROCEDURAL HISTORY

Plaintiff filed this pro se action under 42 U.S.C. § 1983. After the court discharged an order to show cause and granted plaintiff thirty days to file an amended complaint, plaintiff moved on April 29, 2025, to voluntarily dismiss the action. Because no defendant had been served and no defendant had filed an answer or motion for summary judgment, the court directed the clerk to terminate the action without prejudice by operation of law.

DISPOSITION

dismissed

CASES CITED

- Commercial Space Mgmt. Co., Inc. v. Boeing Co., Inc., 193 F.3d 1074, 1077-78 (9th Cir. 1999)

OPINION

(PC) Bazzo v. State of California

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10

11 FRANK MONACO BAZZO, No. 1:23-cv-01454-KES-SAB (PC)

12 Plaintiff, ORDER DIRECTING CLERK OF COURT TO

TERMINATE ACTION PURSUANT TO

13 v. PLAINTIFF'S MOTION FOR VOLUNTARY

DISMISSAL

14 STATE OF CALIFORNIA, et al. (ECF No. 30) 15 Defendants. 16 17 Plaintiff is proceeding
pro se in this action filed pursuant to 42 U.S.C. § 1983. 18 On March 31, 2025, the Court
discharge the order to show cause and granted Plaintiff 19 thirty days to file an amended
complaint. 20 In response, on April 29, 2025, Plaintiff filed a motion to voluntarily dismiss the
action 21 pursuant to Federal Rule of Civil Procedure 41. 22 “[U]nder Rule 41(a)(1)(i), a plaintiff
has an absolute right to voluntarily dismiss his action 23 prior to service by the defendant of an
answer or a motion for summary judgment.” Commercial 24 Space Mgmt. Co., Inc. v. Boeing Co.,
Inc., 193 F.3d 1074, 1077 (9th Cir. 1999) (quotation and 25 citation omitted). “[A] dismissal under
Rule 41(a)(1) is effective on filing, no court order is 26 required, the parties are left as though no
action had been brought, the defendant can't complain, 27 and the district court lacks jurisdiction
to do anything about it.” Id. at 1078. No defendant has 28 been served in this action and no
defendant has filed an answer or motion for summary judgment. 1 Accordingly, this action is
terminated, without prejudice, by operation of law without 2 | further order from the Court. Fed. R.
Civ. P. 41(a)(1)(A)q). 3

4 IT IS SO ORDERED. FA. ee

5 | Dated: _ April 29, 2025

STANLEY A. BOONE

6 United States Magistrate Judge 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28