

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Rodarte v. Lester

Rodarte · No. 2:24-cv-3428-DC-CKD (PS) · Decided April 21, 2025

SUMMARY

The document contains findings and recommendations by a United States Magistrate Judge recommending dismissal of Alexander Rodarte’s action under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with court orders. It also recommends that the Clerk close the case and advises the parties of the procedure and deadline for filing objections.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Carolyn K. Delaney
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 21, 2025
DOCKET	2:24-cv-3428-DC-CKD (PS)
DISPOSITION	other
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending involuntary dismissal of a removed civil action for failure to prosecute and failure to comply with court orders and local rules.
STANDARD OF REVIEW	Before recommending involuntary dismissal for failure to prosecute, the court weighed the Ninth Circuit's five-factor test: 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 alternatives.
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Alexander Rodarte v. Katherine Lester

TOPICS

- sanctions
- motions to dismiss
- civil procedure

PRACTICE AREAS

civil procedure

federal civil litigation

QUESTIONS PRESENTED

1. Whether the action should be involuntarily dismissed under Federal Rule of Civil Procedure 41(b) because plaintiff failed to prosecute the action.
2. Whether plaintiff's failure to respond to the motion to dismiss and comply with the court's orders and local rules warranted dismissal after consideration of the Ninth Circuit's five-factor test.

HOLDINGS

1. A district court may impose sanctions, including involuntary dismissal under Federal Rule of Civil Procedure 41(b), when a plaintiff fails to prosecute or fails to comply with court orders, the Federal Rules of Civil Procedure, or local rules.
2. Dismissal under Rule 41(b) was warranted because plaintiff's continued failure to respond delayed the case, impaired docket management, created a risk of prejudice, prevented disposition on the merits, and left no adequate less drastic alternative after the court issued a warning and granted additional time.

KEY QUOTATIONS

"Based on evaluation of the Ferdik factors, the undersigned recommends dismissal of the case at this time."
(at 2)

FACTUAL BACKGROUND

Alexander Rodarte proceeded without counsel after defendant Katherine Lester removed the action to federal court. Lester filed a Rule 12 motion to dismiss, but Rodarte did not respond. The court later ordered Rodarte to file an opposition or statement of non-opposition within fourteen days and warned that further failure to respond could lead to sanctions and dismissal. Rodarte did not respond to the order, including after it was re-served at his updated address.

PROCEDURAL HISTORY

Plaintiff filed the action in Sacramento County Superior Court, and defendant removed it to the Eastern District of California on December 10, 2024. Defendant moved to dismiss under Federal Rule of Civil Procedure 12. Plaintiff failed to oppose the motion or comply with a subsequent order directing him to file an opposition or statement of non-opposition, despite being warned that continued noncompliance could result in dismissal under Rule 41(b). The magistrate judge recommended dismissal and closure of the case, subject to objections and review by the assigned district judge.

DISPOSITION

other

CASES CITED

- King v. Atiyeh, 814 F.2d 565, 567 (9th Cir. 1987)
- Chambers v. NASCO, Inc., 501 U.S. 32, 44 (1991)
- Hells Canyon Preservation Council v. U.S. Forest Service, 403 F.3d 683, 689 (9th Cir. 2005)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Pagtalunan v. Galaza, 291 F.3d 639, 642-43 (9th Cir. 2002)
- Turner v. Duncan, 158 F.3d 449, 455 (9th Cir. 1998)
- Martinez v. Ylst, 951 F.2d 1153, 1156-57 (9th Cir. 1991)

OPINION

(PS) Rodarte v. Lester

PER CURIAM.

1 2 3 4 5 6 7

8 UNITED STATES DISTRICT COURT

9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10

11 ALEXANDER RODARTE, No. 2:24-cv-3428-DC-CKD (PS)

12 Plaintiff,

13 v. FINDINGS AND RECOMMENDATIONS

14 KATHERINE LESTER,

15 Defendant. 16

17 Plaintiff Alexander Rodarte filed this action in the Sacramento County Superior Court and 18
defendant Katherine Lester removed it to this court on December 10, 2024.¹ (ECF No. 1.) On
19 December 11, 2024, defendant filed a motion to dismiss under Federal Rule of Civil Procedure
12

20 and set the hearing to take place on February 21, 2024. (ECF No. 3.) Plaintiff did not file a 21
response to the motion to dismiss. Accordingly, on January 13, 2025, the court vacated the 22
hearing, cautioned plaintiff that a written response to the motion was required, and ordered 23
plaintiff to file an opposition or statement of non-opposition to the motion to dismiss within 14 24
days. (ECF No. 7.) Plaintiff was specifically warned that any further failure to respond would be
25 construed as a non-opposition to the motion and constitute a ground for the imposition of 26
appropriate sanctions, and a recommendation that plaintiff’s case be involuntarily dismissed with
27 1 Plaintiff proceeds without the assistance of counsel; thus, this case is referred to the
undersigned 28 pursuant to Local Rule 302(c)(21). See 28 U.S.C. § 636(b)(1). 1 prejudice
pursuant to Federal Rule of Civil Procedure 41(b). (Id.) On January 29, 2025, the court 2 re-served
another copy of the January 13, 2025 order on plaintiff’s updated address of record. 3 Plaintiff has
not filed an opposition, statement of non-opposition, or otherwise responded 4 to the court’s order.
This action should be dismissed for plaintiff’s failure to prosecute and failure 5 to comply with the

court's orders and the local rules. 6 Legal Standard 7 An individual proceeding without an attorney is bound by the Federal Rules of Civil 8 Procedure and all other applicable law. Local Rule 183(a); see also *King v. Atiyeh*, 814 F.2d 565, 9 567 (9th Cir. 1987) ("Pro se litigants must follow the same rules of procedure that govern other 10 litigants") (overruled on other grounds). A district court may impose sanctions, including 11 involuntary dismissal of a plaintiff's case pursuant to Federal Rule of Civil Procedure 41(b), 12 where that plaintiff fails to prosecute his or her case or fails to comply with the court's orders, the 13 Federal Rules of Civil Procedure, or the court's local rules. See *Chambers v. NASCO, Inc.*, 501 14 U.S. 32, 44 (1991) *Hells Canyon Preservation Council v. U.S. Forest Serv.*, 403 F.3d 683, 689 15 (9th Cir. 2005); Local Rule 183(a). 16 Before dismissing this case for failure to prosecute, the court weighs the following five 17 factors: 18 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the 19 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic alternatives. 20 21 *Ferdik*, 963 F.2d at 1260-61; accord *Pagtalunan v. Galaza*, 291 F.3d 639, 642-43 (9th Cir. 2002). 22 Analysis 23 The first two factors weigh in favor of dismissal because this case has already been 24 delayed and is now unable to move forward due to plaintiff's failure to prosecute. For the same 25 reason, the third factor also slightly favors dismissal. With the passage of time, witnesses' 26 memories fade and evidence becomes stale. Under the fourth factor, plaintiff's failure to 27 prosecute precludes a resolution on the merits. Relevant to the fifth factor—availability of less 28 drastic alternatives—the court has attempted to avoid dismissal by cautioning plaintiff that a 1 | written opposition to the motion is required and granting further time to file the opposition. 2 || However, plaintiff has been incommunicado since the case was removed to this court. □□□□□□□□□□ 3 || failure to prosecute and failure to respond to the court's order leaves little alternative to dismissal. 4 | Based on evaluation of the *Ferdik* factors, the undersigned recommends dismissal of the case at 5 || this time.

6 RECOMMENDATIONS

7 For the reasons set forth above, it is HEREBY RECOMMENDED as follows: 8 1. This action be DISMISSED pursuant to Federal Rule of Civil Procedure 41(b); and 9 2. The Clerk of the Court be directed to CLOSE this case. 10 These findings and recommendations are submitted to the United States District Judge 11 || assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen (14) 12 || days after being served with these findings and recommendations, any party may file written 13 || objections with the court and serve a copy on all parties. Such a document should be captioned 14 || "Objections to Magistrate Judge's Findings and Recommendations." Any reply to the objections 15 || shall be served on all parties and filed with the court within seven (7) days after service of the 16 || objections. The parties are advised that failure to file objections within the specified time may 17 || waive the right to appeal the District court's order. *Turner v. Duncan*, 158 F.3d 449, 455 (9th Cir. 18 | 1998); *Martinez v. Ylst*, 951 F.2d 1153, 1156-57 (9th Cir. 1991). 19 | Dated: April 21, 2025 □□ I / dle ae

20 CAROLYNK. DELANEY

21 UNITED STATES MAGISTRATE JUDGE

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