

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
TEXAS, HOUSTON DIVISION**

Floyd Irvin Sanders Jr. v. Phillip Cash, et al.

Sanders v. Cash · No. H-25-5407 · Decided February 26, 2026

SUMMARY

The United States District Court for the Southern District of Texas recommends dismissing Floyd Irvin Sanders Jr.'s action with prejudice for failure to prosecute under Federal Rule of Civil Procedure 41(b). The recommendation is based on Sanders's failure to appear at two court-ordered hearings, failure to communicate with the court or serve defendants, and the court's finding that lesser sanctions would be futile.

OPINION

Cash

PER CURIAM.

UNITED STATES DISTRICT COURT February 26, 2026 Nathan Ochsner, Clerk

SOUTHERN DISTRICT OF TEXAS

HOUSTON DIVISION

Floyd Irvin Sanders Jr., § Plaintiff, § § v. § Civil Action H-25-5407 § Phillip Cash, et al., § Defendants. §

MEMORANDUM AND RECOMMENDATION

The court sua sponte recommends this case be DISMISSED with PREJUDICE for failure to prosecute.

1. Background

This case was set for an initial conference to be held on February 12, 2026. ECF No. 4. Notice of the hearing was mailed to the physical address that Plaintiff gave when he filed this lawsuit. Plaintiff did not appear at the initial conference. See Docket Entry dated 2/12/2026. The court then set a hearing for the Plaintiff to appear and show cause why his case should not be dismissed for want of prosecution. The order included a warning: "Failure to appear will result in a recommendation that this case be dismissed with prejudice for failure to prosecute." ECF No. 6 (emphasis in original). The order was docketed on the court's CM/ECF system. The hearing was held, and Plaintiff failed to appear. The court also notes that no defendant has been served, even though the case has now been pending for over three months.

2. Legal Standard and Analysis

Rule Federal Rule of Civil Procedure 41(b) permits involuntary dismissal of an action when "the plaintiff fails to prosecute or to comply with these rules or a court order[.]" "It is well established

that Rule 41(b) permits dismissal not only on motion of the defendant, but also on the court's own motion." *Campbell v. Wilkinson*, 988 F.3d 798, 800 (5th Cir. 2021) (clarifying that the court's power to dismiss does not extend to failure to comply with a local rule). The court's decision to dismiss under Rule 41(b) may only be reviewed for abuse of discretion. *Id.* at 801. Rule 41(b) dismissal with prejudice is "a severe sanction" that requires (1) "a clear record of delay or contumacious conduct by the plaintiff[;]" and (2) an express finding that "lesser sanctions would not prompt diligent prosecution, or the record shows that the district court employed lesser sanctions that proved to be futile." *Campbell*, 988 F.3d at 801–02 (quoting *Berry v. CIGNA/RSI-CIGNA*, 975 F.2d 1188, 1191 (5th Cir. 1992)). In most cases, the Fifth Circuit also requires proof of at least one of the following aggravating factors: (1) the delay was caused by the plaintiff and not the plaintiff's attorney; (2) the defendant was prejudiced by the delay; or (3) the delay can be characterized as intentional. *Id.* at 802 (quoting *Berry*, 975 F.2d at 1191).

3. Analysis

A. Clear Record of Delay Plaintiff is appearing pro se, so he is responsible for all efforts to prosecute this case. Plaintiff has failed to appear at two separate court settings. Other than initiating this lawsuit and requesting to proceed in forma pauperis, Plaintiff has done nothing on the case. Plaintiff has not contacted the court to provide an updated address. A copy of the noticing report from the clerk's office shows the original order setting the initial conference, the notice of resetting, and the show cause order were all sent to the Plaintiff's mailing address. See Court's Exhibit 1. These facts show a clear record of delay. B. Futility of Lesser Sanctions The court set a show cause hearing and warned Plaintiff that dismissal would result if he missed the final hearing. Plaintiff is proceeding pro se, so a financial sanction would likely be futile. There appears to be nothing the court can do to get the Plaintiff's attention on this case. There are no other steps the court can take that will prompt Plaintiff to participate. Lesser sanctions would be futile. C. Aggravating Factors Plaintiff does not have a lawyer, so any delay can only be attributed to him. The delay in this case can only be characterized as intentional. Plaintiff has failed to appear for two court-ordered hearings and has made no attempt to communicate with the court or serve defendants.

4. Conclusion

The court recommends that this case be DISMISSED with PREJUDICE for failure to prosecute. The parties have fourteen days from service of this Memorandum and Recommendation to file written objections. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72. Failure to timely file objections will preclude appellate review of factual findings or legal conclusions, except for plain error. See *Thomas v. Arn*, 474 U.S. 140, 147-49 (1985); *Rodriguez v. Bowen*, 857 F.2d 275, 276-77 (5th Cir. 1988). Signed at Houston, Texas, on February 26, 2026. 42 Saag United States Magistrate Judge