

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Alexanne Marie Danis v. Berry

Danis v. Berry · No. 1:23-cv-00152-KES-GSA (PC) · Decided September 16, 2025

OPINION

Berry

PER CURIAM.

1 2 3 4 5 6

7 UNITED STATES DISTRICT COURT

8 EASTERN DISTRICT OF CALIFORNIA

9

10 ALEXANNE MARIE DANIS, No. 1:23-cv-00152-KES-GSA (PC)

11 Plaintiff, ORDER ADOPTING FINDINGS AND

RECOMMENDATIONS

12 v. Doc. 14

13 BERRY,

14 Defendant. 15

16 Plaintiff is a state prisoner proceeding pro se and in forma pauperis in this civil rights 17 action
pursuant to 42 U.S.C. § 1983. The matter was referred to a United States magistrate judge 18
pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302. 19 Plaintiff filed this action on January
27, 2023. Doc. 1. On March 12, 2025, the assigned 20 magistrate judge issued a minute order
ordering plaintiff to file a notice of current address with 21 the Court. Doc. 10. On April 3, 2025,
that order was returned to the Court marked “Paroled. 22 Return to Sender. Attempted – Not
Known. Unable to Forward.” Doc. 11. However, the 23 envelope also listed: “Forward to: 10
Gilmore Rd., Red Bluff, CA 96080.” Id. The “forward to” 24 information appeared to have been
provided by California Department of Corrections and 25 Rehabilitation staff. The Court then re-
served the March 12 minute order, Doc. 10, on plaintiff at 26 the Red Bluff address. The re-served
order was not returned to the Court, but plaintiff again 27 failed to respond to the order. 28 On
June 5, 2025, the magistrate judge ordered plaintiff to show cause why it should not be 1
recommended that this action be dismissed for failure to keep the Court apprised of her current 2
address. Doc. 12. As an alternative to show cause, plaintiff was afforded the opportunity to file a 3
notice of current address or to file a notice of voluntary dismissal of this matter. Id. at 3. Plaintiff 4
failed to respond to the order in any capacity. 5 On June 30, 2025, the magistrate judge issued
findings and recommendations 6 recommending that this action be dismissed for failure to obey
court orders. Doc. 14. 7 Specifically, the magistrate judge found that the relevant factors—that is,

the public's interest in 8 expeditious resolution of litigation; the court's need to manage its docket; the risk of prejudice to 9 the defendants; the public policy favoring disposition of cases on their merits; and the availability 10 of less drastic sanctions—weigh in favor of dismissing the case without prejudice as a sanction 11 for plaintiff's failure to obey court orders and failure to comply with the local rules. *Id.* at 3–6 12 (applying *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 133 (9th Cir. 1987) (failure to comply with 13 a court order)); see also *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986) (failure to 14 prosecute); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (failure to prosecute based on 15 noncompliance with local rule). The findings and recommendations were served on plaintiff and 16 contained notice that any objections thereto were to be filed within fourteen days after service.

17 Doc. 14 at 6. To date plaintiff has not filed objections to the findings and recommendations, and

18 the time to do so has passed. 19 In accordance with the provisions of 28 U.S.C. § 636(b)(1), the Court has conducted a de 20 novo review of this case. Having carefully reviewed the file, the Court finds that the conclusion 21 that the relevant factors support dismissal of this case without prejudice for failure to obey court 22 orders and failure to comply with Local Rule 183(b) is supported by the record. 23 As the findings and recommendations correctly note, the first two factors weigh in favor 24 of dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“The public's 25 interest in expeditious resolution of litigation always favors dismissal.”). The public's interest in 26 expeditious resolution of litigation and the Court's need to manage its docket weigh in favor of 27 dismissal because the Court cannot effectively manage its docket, nor can the litigation be 28 expeditiously resolved, as plaintiff has failed to keep the Court apprised of her current address. 1 | See *Carey*, 856 F.2d at 1441 (“A party, not the district court, bears the burden of keeping the 2 | court apprised of any changes in his mailing address.”). 3 As to the third factor, the risk of prejudice to the defendant also weighs in favor of 4 | dismissal, given that unreasonable delay in a case gives rise to a presumption of injury to the 5 | defendant. See, e.g., *Anderson v. Air W., Inc.*, 542 F.2d 522, 524 (9th Cir. 1976); see also *Carey*, 6 | 856 F.2d at 1440, 1441 (rejecting argument that an approximately two-month delay was not 7 | unreasonable where plaintiff failed to keep court apprised of current address). While the fourth 8 | consideration, that public policy favors disposition of cases on their merits, generally weighs 9 | against dismissal, here it lends little support “to a party whose responsibility it is to move a case 10 | toward disposition on the merits but whose conduct impedes progress in that direction.” In re 11 | *Phenylpropanolamine (PPA) Products Liab. Litig.*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citations 12 | omitted). 13 Finally, there is little else available to the Court that would constitute a satisfactory lesser 14 || sanction given the Court's apparent inability to communicate with plaintiff. See, e.g., *Gaston v.* 15 | *Marean*, 2020 WL 4059200, at *3 (E.D. Cal. July 20, 2020) (“[G]iven the Court's apparent 16 | inability to communicate with Plaintiff, there are no other reasonable alternatives available to 17 | address Plaintiff's failure to prosecute this action.”). Without plaintiff

having updated her current 18 | address, this matter cannot be prosecuted, nor can it be disposed of on its merits. 19 Accordingly: 20 1. The findings and recommendations issued June 30, 2025, Doc. 14, are adopted; 21 2. This matter is dismissed without prejudice for failure to obey court orders and 22 failure to comply with Local Rule 183(b); and 23 3. The Clerk of the Court is directed to close this case. 24 25

26 | IT IS SO ORDERED. _

27 Dated: _ September 15, 2025 4h

3g UNITED STATES DISTRICT JUDGE