

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
ILLINOIS**

DeAndre K. Davis v. Garret Leposky and Brian Evinger

Davis · No. 3:24-cv-01717-GCS · Decided March 18, 2026

OPINION

FOR THE SOUTHERN DISTRICT OF ILLINOIS DEANDRE K. DAVIS,)) Plaintiff,)) vs.)
Case No. 3:24-cv-01717-GCS) GARRET LEPOSKY,) and) BRIAN EVINGER,)) Defendant.
) MEMORANDUM & ORDER SISON, Magistrate Judge: On December 10, 2025, Defendants
filed a motion for summary judgment. (Doc. 59).

As a result of Plaintiff’s failure to respond to the motion for summary judgment, the Court, on January 14, 2026, directed Plaintiff to respond to the motion on or before February 11, 2026. (Doc. 61). The Court also warned Plaintiff that the failure to respond may result in the Court dismissing the case for failure to prosecute. *Id.* As of February 11, 2026, Plaintiff did not respond to the motion for summary judgment.

Hence, the Court issued a Show Cause Order directing Plaintiff to Show Cause in writing why his case should not be dismissed for failure to prosecute. (Doc. 62). As of this date, Plaintiff has not responded to the Show Cause Order and has not responded to the motion for summary judgment. Federal Rule of Civil Procedure 41(b) provides that “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to the Seventh Circuit has indicated that a district court commits legal error “when it dismisses a suit ‘immediately after the first problem, without exploring other options or saying why they would not be fruitful.’” *Sroga v. Huberman*, 722 F.3d 980, 982 (7th Cir.

2013) (quoting *Johnson v. Chicago Bd. of Educ.*, 718 F.3d 731, 732-733 (7th Cir. 2013)). The Seventh Circuit has suggested that in addition to warning the plaintiff, the court must consider essential factors such as “the frequency and egregiousness of the plaintiff’s failure to comply with other deadlines, the effect of the delay on the court’s calendar, and the prejudice resulting to the defendants.” *Id.* (citing *Kruger v. Apfel*, 214 F.3d 784, 786-787 (7th Cir.

2000)). Here, Plaintiff failed to follow Court Orders by failing to respond to the Court’s Show Cause Order dated January 13, 2026, (Doc. 62), and the Court’s Order dated January 14, 2026, ordering Plaintiff to respond to the summary judgment motion. (Doc. 61).

The Court has 160 cases on its docket, and if the Court permits this case to drag on further waiting for Plaintiff to respond, it will detrimentally impact the efficient and timely handling of its other

cases. Accordingly, the Court DISMISSES with prejudice this action pursuant to Rule 41(b). See FED. R. CIV. PROC. 41(b); see generally *James v. McDonald's Corp.*, 417 F.3d 672, 681 (7th Cir. 2005). The case is CLOSED, and the Clerk of Court is DIRECTED to enter judgment accordingly. In an abundance of caution, and noting Plaintiff's pro se status, the Court informs Plaintiff as follows. Plaintiff has two means of contesting this order: he may either request this Court review this order, or he may appeal the order to the Seventh Circuit Court of Appeals. to alter or amend the judgment under Federal Rule of Civil Procedure 59(e).

Plaintiff must file the motion within twenty-eight (28) days of the entry of judgment; the deadline cannot be extended. See FED. R. CIV. PROC. 59(e); 6(b)(2). The motion must also comply with Rule 7(b)(1) and state with sufficient particularity the reason(s) that the Court should reconsider the judgment. See *Elustra v. Mineo*, 595 F.3d 699, 707 (7th Cir. 2010); *Talano v. Northwestern Medical Faculty Foundation, Inc.*, 273 F.3d 757, 760 (7th Cir.

2001). See also *Blue v. Hartford Life & Acc. Ins. Co.*, 698 F.3d 587, 598 (7th Cir. 2012) (stating that a party must establish either manifest error of law or fact, or that newly discovered evidence precluded entry of judgment in order to prevail on a Rule 59(e) motion) (citation and internal quotation marks omitted). So long as the Rule 59(e) motion is in proper form and timely submitted, the 30- day clock for filing a notice of appeal will be tolled.

See FED. R. APP. PROC. 4(a)(4). The clock will start anew once the undersigned rules on the Rule 59(e) motion. See FED. R. APP. PROC. 4(a)(1)(A), (a)(4), (a)(4)(B)(ii). However, if the Rule 59(e) motion is filed outside the 28-day deadline or "completely devoid of substance," the motion will not toll the time for filing a notice of appeal; it will expire 30 days from the entry of judgment.

Carlson v. CSX Transp., Inc., 758 F.3d 819, 826 (7th Cir. 2014); *Martinez v. Trainor*, 556 F.2d 818, 819– 820 (7th Cir. 1977). Again, this deadline can be extended only on a written motion by Plaintiff showing excusable neglect or good cause.

In contrast, if Plaintiff chooses to go straight to the Seventh Circuit, he must file a notice of appeal from the entry of judgment or order appealed from within 30 days. See FED. R. APP. PROC. 4(a)(1)(A) (emphasis added).

The deadline can be extended for a short time only if Plaintiff files a motion showing excusable neglect or good cause for missing the deadline and asking for an extension of time. See FED. R. App. PRoc. 4(a)(5)(A), (C). See also *Sherman v. Quinn*, 668 F.3d 421, 424 (7th Cir. 2012) (explaining the good cause and excusable neglect standards); *Abuelyaman v. Illinois State University*, 667 F.3d 800, 807 (7th Cir.

2011) (explaining the excusable neglect standard). Plaintiff may appeal to the Seventh Circuit by filing a notice of appeal in this Court. See FED. R. App. PROC. 3(a). The current cost of filing an appeal with the Seventh Circuit is \$605.00.

The filing fee is due at the time the notice of appeal is filed. See FED. R. APP. PROC. 3(e). If Plaintiff cannot afford to pay the entire filing fee up front, he must file a motion for leave to appeal in forma pauperis (“IFP motion”). See FED. R. APP. PROC. 24(a)(1).

The IFP motion must set forth the issues Plaintiff plans to present on appeal. See FED. R. App. PROC. 24(a)(1)(C). IT IS SO ORDERED. DATED: March 18, 2026. Seth, habe s signed by ©. Sse Date: 2026.03.18 13:11:37 -05'00' GILBERTC.SISON sis United States Magistrate Judge Page 4 of 4