

UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF CALIFORNIA

Reed v. Buckel

Reed · No. 3:24-cv-0179-MMA-AHG · Decided March 25, 2025

SUMMARY

The United States District Court for the Southern District of California dismissed Mychal Reed’s prisoner civil rights action without prejudice. The court held that dismissal was warranted for failure to state a claim and failure to prosecute after Reed failed to file a required second amended complaint.

CASE DETAILS

COURT	United States District Court for the Southern District of California
WRITING FOR THE COURT	Michael M. Anello
JURISDICTION	United States District Court for the Southern District of California
DECIDED	March 25, 2025
DOCKET	3:24-cv-0179-MMA-AHG
DISPOSITION	dismissed
PROCEDURAL POSTURE	Prisoner civil-rights action under 42 U.S.C. § 1983 dismissed sua sponte by the district court after the plaintiff failed to file a second amended complaint by the court-ordered deadline and indicated that he no longer wished to pursue the action.
STANDARD OF REVIEW	The court applied the discretionary Rule 41(b) dismissal standard and weighed the Ninth Circuit's five-factor test for failure to prosecute or failure to comply with a court order.
PRECEDENTIAL VALUE	unpublished district court order; nonprecedential

TOPICS

- prisoners rights
- section 1983
- motions to dismiss
- civil procedure
- remedies

PRACTICE AREAS

- Civil procedure
- prisoner civil rights
- federal pleading
- failure to prosecute
- remedies

QUESTIONS PRESENTED

1. Whether the court could dismiss the action under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with the court's order requiring a second amended complaint.
2. Whether dismissal without prejudice was appropriate after weighing the Ninth Circuit's five factors governing dismissal for failure to prosecute or failure to comply with a court order.
3. Whether the action should be dismissed for failure to state a claim under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b).

HOLDINGS

1. A district court may sua sponte dismiss an action under Federal Rule of Civil Procedure 41(b) when a plaintiff fails to prosecute or fails to comply with the Federal Rules or a court order, including by failing to respond to an order requiring amendment after being warned that noncompliance could result in dismissal.
2. Dismissal was appropriate because the public interest in expeditious resolution, the court's need to manage its docket, and the availability of less drastic alternatives favored dismissal; the public policy favoring resolution on the merits did not weigh against dismissal, and the absence of defendant participation did not defeat dismissal.
3. The action was dismissed without prejudice for failure to state a claim upon which relief may be granted under 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), in addition to dismissal for failure to prosecute.

KEY QUOTATIONS

“This Court has discretion to sua sponte dismiss a case for lack of prosecution or failure to comply with a court order.” (at 2)

“Weighing these factors, the Court finds entry of a final judgment of dismissal is appropriate.” (at 3)

“For the foregoing reasons, the Court DISMISSES this civil action without prejudice based on Plaintiff’s failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), and for failure to prosecute by failing to file an amended complaint as required by the Court’s October 24, 2024 order.” (at 4)

FACTUAL BACKGROUND

Reed, a prisoner proceeding pro se, filed a civil-rights action against A. Buckel, S. Steadman, T. Martinez, and B. Colon. After the court dismissed his original and first amended complaints, it granted leave to file a second amended complaint by December 8, 2024 and warned that failure to amend could result in final dismissal. Reed did not amend or seek an extension and instead filed a December 13, 2024 opposition stating that he believed further amendment would be futile and that he would pursue justice in higher courts.

PROCEDURAL HISTORY

Mychal Reed filed a pro se § 1983 action and later obtained leave to proceed in forma pauperis. The court dismissed the original complaint for failure to comply with Federal Rule of Civil Procedure 8 and failure to state a claim, then dismissed the first amended complaint and granted leave to amend certain claims. Reed did not file

a second amended complaint or request an extension; instead, he filed an opposition stating that he intended to seek relief in higher courts. The court entered a final judgment dismissing the action without prejudice for failure to state a claim and failure to prosecute.

DISPOSITION

dismissed

CASES CITED

- Lira v. Herrera, 427 F.3d 1164, 1169 (9th Cir. 2005)
- Henderson v. Duncan, 779 F.2d 1421, 1423 (9th Cir. 1986)
- Edwards v. Marin Park, 356 F.3d 1058, 1065 (9th Cir. 2004)
- Pagtalunan v. Galaza, 291 F.3d 639, 642 (9th Cir. 2002)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61 (9th Cir. 1992)
- Yourish v. California Amplifier, 191 F.3d 983, 990 (9th Cir. 1999)
- Nevijel v. North Coast Life Insurance Co., 651 F.2d 671, 674 (9th Cir. 1981)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1227 (9th Cir. 2006)
- Hernandez v. City of El Monte, 138 F.3d 393, 399 (9th Cir. 1998)

OPINION

Reed v. Buckel

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 11 MYCHAL REED, Case No.: 3:24-cv-0179-MMA-AHG

CDCR #AE9821

12

ORDER DISMISSING CIVIL

Plaintiff,

13 ACTION FOR FAILURE TO STATE

vs. A CLAIM AND FAILURE TO

14

PROSECUTE

15 A. BUCKEL, S. STEADMAN, T.

16 MARTINEZ, B. COLON,

17 Defendants. 18

19 20 On January 25, 2024, Plaintiff Mychal Reed, a prisoner confined at California 21 State
Prison, Los Angeles County and proceeding pro se, filed a civil rights action 22 pursuant to 42

U.S.C. § 1983. Doc. No. 1. After initially denying Reed's request to proceed in forma pauperis (IFP) and dismissing the case, Reed filed a supported IFP motion and the case was reopened. On May 14, 2024, the Court granted the IFP motion and dismissed the complaint for failure to comply with Federal Rule of Civil Procedure 8 and for failure to state a claim. Doc. No. 10. With the Court's leave, Reed filed a first amended complaint on June 6, 2025. Doc. No. 11. The Court screened the first amended complaint and, on October 24, 2024, dismissed it sua sponte for failure to state a claim. Doc. No. 12. The Court granted Reed leave to file a second amended complaint as to some of his claims. See *id.* His amended pleading was due no later than December 8, 2024. See *id.* at 10. In the same order, the Court informed Reed that if he failed to timely amend, the Court would enter a final judgment of dismissal based on his failure to state a claim and his failure to prosecute in compliance with the court order requiring amendment. *Id.* at 10–11 (citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005)) (“If a plaintiff does not take advantage of the opportunity to fix his complaint, a district court may convert the dismissal of the complaint into dismissal of the entire action.”). Instead of filing a second amended complaint, on December 13, 2024, Reed filed an “Opposition” to the Court's October 24, 2024 dismissal order. Doc. No. 13. In it, Reed states he is dissatisfied with the dismissal of several of his claims. *Id.* at 1. He states he “believes (rightfully) that it would be futile to present this court additional facts . . . and/or to attempt to seek justice in this court.” *Id.* at 3. Instead, he states he “will seek/pursue justice in the higher courts.” *Id.* The Court construes Reed's filing as expressing his intent not to file a second amended petition. Indeed, the deadline to amend has now long passed and Plaintiff has not filed an amended complaint or sought an extension of time to do so. And in light of the document filed by Plaintiff on December 13, 2024, it is apparent he no longer wishes to pursue this action. See Doc. No. 13. This Court has discretion to sua sponte dismiss a case for lack of prosecution or failure to comply with a court order. *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986); see also Fed. R. Civ. P. 41(b) (providing for involuntary dismissal for failure to prosecute or comply with the federal rules or court order). When a plaintiff fails to “respond to the court's ultimatum[,] either by amending the complaint or by indicating to the court that [he] will not do so[,]” dismissal under Rule 41(b) is appropriate. *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004). “In determining whether to dismiss a claim for failure to prosecute or failure to comply with a court order, the Court must weigh the following factors: (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 defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits.” *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992)). Because the Court previously informed Reed of his need to timely amend and he has not only failed to do so, but also expressed his desire to no longer prosecute his case in this Court, factors one, two and four weigh in favor of dismissal. See *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir.

1999) (“[T]he public’s interest in expeditious resolution of litigation always favors dismissal.”); 9 Pagtalunan, 291 F.3d at 642 (“The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management and the public interest.”); Nevijel v. North Coast Life Insurance Co., 651 F.2d 671, 674 (9th Cir. 1981) (stating a court is not required to exhaust all alternatives prior to dismissal). Factor five does not weigh against dismissal. See *In re Phenylpropanolamine (PPA) Prod. Liab. Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) (noting the public policy favoring disposition on the merits does not weigh against dismissal where plaintiff’s “conduct impedes progress in that direction”). Only factor three does not weigh in favor of dismissal. See 17 Pagtalunan, 291 F.3d at 642 (stating that where defendants have not appeared, “[w]e have previously recognized that pendency of a lawsuit is not sufficiently prejudicial in and of itself to warrant dismissal”). Weighing these factors, the Court finds entry of a final judgment of dismissal is appropriate. See *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (“We may affirm a dismissal where at least four factors support dismissal, or where at least three factors ‘strongly’ support dismissal.”) (internal citation omitted) (quoting *Ferdik*, 24 963 F.2d at 1263).

25 CONCLUSION

26 For the foregoing reasons, the Court **DISMISSES** this civil action without prejudice based on Plaintiff’s failure to state a claim upon which relief may be granted pursuant to 28 U.S.C. §§ 1915(e)(2)(B) and 1915A(b), and for failure to prosecute by 1 || failing to file an amended complaint as required by the Court’s October 24, 2024 order. 2 || The Court **DIRECTS** the Clerk of Court to enter a final judgment of dismissal and close 3 || this case. 4 **IT IS SO ORDERED.** 5 Dated: March 25, 2025

7 HON. MICHAEL M. ANELLO

g United States District Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 4 oe