

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

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

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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 23 proceed in forma pauperis
(IFP) and dismissing the case, Reed filed a supported IFP 24 motion and the case was reopened.
On May 14, 2024, the Court granted the IFP motion 25 and dismissed the complaint for failure to
comply with Federal Rule of Civil Procedure 8 26 and for failure to state a claim. Doc. No. 10.
With the Court's leave, Reed filed a first 27 amended complaint on June 6, 2025. Doc. No. 11.
The Court screened the first amended 28 complaint and, on October 24, 2024, dismissed it sua
sponte for failure to state a claim. 1 Doc. No. 12. The Court granted Reed leave to file a second
amended complaint as to 2 some of his claims. See id. His amended pleading was due no later
than December 8, 3 2024. See id. at 10. In the same order, the Court informed Reed that if he
failed to timely 4 amend, the Court would enter a final judgment of dismissal based on his failure
to state a 5 claim and his failure to prosecute in compliance with the court order requiring 6

amendment. *Id.* at 10–11 (citing *Lira v. Herrera*, 427 F.3d 1164, 1169 (9th Cir. 2005) 7 (“If a plaintiff does not take advantage of the opportunity to fix his complaint, a district 8 court may convert the dismissal of the complaint into dismissal of the entire action.”)). 9 Instead of filing a second amended complaint, on December 13, 2024, Reed filed 10 an “Opposition” to the Court’s October 24, 2024 dismissal order. Doc. No. 13. In it, 11 Reed states he is dissatisfied with the dismissal of several of his claims. *Id.* at 1. He 12 states he “believes (rightfully) that it would be futile to present this court additional facts . 13 . . and/or to attempt to seek justice in this court.” *Id.* at 3. Instead, he states he “will 14 seek/pursue justice in the higher courts.” *Id.* The Court construes Reed’s filing as 15 expressing his intent not to file a second amended petition. 16 Indeed, the deadline to amend has now long passed and Plaintiff has not filed an 17 amended complaint or sought an extension of time to do so. And in light of the document 18 filed by Plaintiff on December 13, 2024, it is apparent he no longer wishes to pursue this 19 action. See Doc. No. 13. This Court has discretion to sua sponte dismiss a case for lack 20 of prosecution or failure to comply with a court order. *Henderson v. Duncan*, 779 F.2d 21 1421, 1423 (9th Cir. 1986); see also Fed. R. Civ. P. 41(b) (providing for involuntary 22 dismissal for failure to prosecute or comply with the federal rules or court order). When 23 a plaintiff fails to “respond to the court’s ultimatum[,], either by amending the complaint 24 or by indicating to the court that [he] will not do so[,]” dismissal under Rule 41(b) is 25 appropriate. *Edwards v. Marin Park*, 356 F.3d 1058, 1065 (9th Cir. 2004). 26 “In determining whether to dismiss a claim for failure to prosecute or failure to 27 comply with a court order, the Court must weigh the following factors: (1) the public’s 28 interest in expeditious resolution of litigation; (2) the Court’s need to manage its docket; 1 (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic 2 alternatives; and (5) the public policy favoring disposition of cases on their merits.” 3 *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002) (citing *Ferdik v. Bonzelet*, 963 4 F.2d 1258, 1260–61 (9th Cir. 1992)). Because the Court previously informed Reed of his 5 need to timely amend and he has not only failed to do so, but also expressed his desire to 6 no longer prosecute his case in this Court, factors one, two and four weigh in favor of 7 dismissal. See *Yourish v. California Amplifier*, 191 F.3d 983, 990 (9th Cir. 1999) (“[T]he 8 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 10 the delay in a particular case interferes with docket management and the public 11 interest.”); *Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671, 674 (9th Cir. 1981) 12 (stating a court is not required to exhaust all alternatives prior to dismissal). Factor five 13 does not weigh against dismissal. See *In re Phenylpropanolamine (PPA) Prod. Liab.* 14 *Litig.*, 460 F.3d 1217, 1227 (9th Cir. 2006) (noting the public policy favoring disposition 15 on the merits does not weigh against dismissal where plaintiff’s “conduct impedes 16 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 18 have previously recognized that pendency of a lawsuit is not sufficiently prejudicial in 19 and of itself

to warrant dismissal”). 20 Weighing these factors, the Court finds entry of a final judgment of dismissal is 21 appropriate. See *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998) (“We 22 may affirm a dismissal where at least four factors support dismissal, or where at least 23 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 27 prejudice based on Plaintiff’s failure to state a claim upon which relief may be granted 28 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