

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Scott v. Heredia

Scott · No. 1:24-cv-01067-KES-CDB · Decided March 10, 2025

SUMMARY

The United States District Court for the Eastern District of California ordered Plaintiffs to show cause why sanctions, including dismissal of unserved Defendants or the action, should not be imposed for failure to prosecute and comply with service-related orders. The Court continued the mandatory scheduling conference to April 16, 2025, and directed Plaintiffs to serve the order on Defendants and file proof of service. The order is dated March 10, 2025.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	March 10, 2025
DOCKET	1:24-cv-01067-KES-CDB
DISPOSITION	other
PROCEDURAL POSTURE	The court issued an order to show cause why sanctions, including dismissal, should not be imposed because plaintiffs had not served defendants or filed proofs of service, continued the mandatory scheduling conference, and directed plaintiffs to serve the order.
PRECEDENTIAL VALUE	Unknown
PARTIES	Desirae Scott, Johnathan Williams, S.W., a minor, D.W., a minor v. Antonia Heredia, Dizander Guerrero, Bisola Awaye, Maria Tinoco, Maira Puente, Ashley Bryant, Carole Allen, Desire Lopez, Cynthia Bertrand, Fatima Dee

TOPICS

- service of process
- sanctions
- civil procedure

PRACTICE AREAS

- civil procedure
- civil rights

QUESTIONS PRESENTED

1. Whether plaintiffs should be required to show cause why sanctions, including dismissal of unserved defendants or the action, should not be imposed for failure to prosecute and comply with the court's service-related orders.
2. Whether the court should continue the mandatory scheduling conference and require plaintiffs to serve the order and file proof of service.

HOLDINGS

1. The court may impose sanctions, including dismissal, under its inherent power to control its docket when a party fails to comply with court rules or court orders.
2. If a defendant is not served within 90 days after the complaint is filed, the court must dismiss the action without prejudice as to that defendant or order service within a specified time; absent good cause, failure to comply requires dismissal of an unserved defendant.

KEY QUOTATIONS

“If a defendant is not served within 90 days after the complaint is filed, the court - on motion or on its own after notice to the plaintiff - must dismiss the action without prejudice against that defendant or order that service be made within a specified time.” (at 2)

“Based on the foregoing, IT IS HEREBY ORDERED that within three (3) days of entry of this order, Plaintiffs SHALL show cause in writing why sanctions should not be imposed – including dismissal of any unserved Defendant or this action in its entirety – for Plaintiffs’ failure to prosecute, failure to serve the summonses and complaint in a timely manner, and failure to promptly file proof of service.” (at 3)

FACTUAL BACKGROUND

Plaintiffs filed a complaint and later a first amended complaint naming ten defendants. After summonses were issued, the court directed plaintiffs to diligently pursue service and promptly file proofs of service, warning that failure could result in sanctions or dismissal of unserved defendants. As of the order, plaintiffs had filed no proofs of service or explanation, and no defendant had appeared. The Rule 4(m) service deadline was set to expire on March 11, 2025.

PROCEDURAL HISTORY

Plaintiffs filed the action on September 7, 2024, proceeded in forma pauperis, and filed a first amended complaint on December 10, 2024. Summonses were issued, and the court ordered plaintiffs to diligently pursue service and file proofs of service. No proofs of service were filed, no explanation for the failure was submitted, and no defendant appeared. The court ordered plaintiffs to show cause within three days, continued the scheduling conference to April 16, 2025, and required service of the order on defendants.

DISPOSITION

other

CASES CITED

- *Bautista v. Los Angeles County*, 216 F.3d 837, 841 (9th Cir. 2000)

OPINION

1 2 3 4 5 6 7 8 UNITED STATES DISTRICT COURT 9 EASTERN DISTRICT OF
CALIFORNIA 10 11 DESIRAE SCOTT, et al., Case No. 1:24-cv-01067-KES-CDB 12
Plaintiffs, ORDER TO SHOW CAUSE WHY SANCTIONS SHOULD NOT BE IMPOSED 13 v.
FOR PLAINTIFFS' FAILURE TO PROSECUTE THIS ACTION AND TO 14 ANTONIA
HEREDIA, et al., COMPLY WITH THE COURT'S ORDERS 15 Defendants. ORDER
CONTINUING THE MANDATORY SCHEDULING 16 CONFERENCE TO APRIL 16, 2025,
AT 9:00 A.M.

17 ORDER DIRECTING PLAINTIFFS TO 18 EFFECT SERVICE OF THIS ORDER AND TO
FILE PROOF OF SERVICE 19 FIVE-DAY DEADLINE 20 21 Plaintiffs Desirae Scott,
Johnathan Williams, and minors S.W. and D.W. through their 22 guardian ad litem Desirae Scott
(collectively, "Plaintiffs"), initiated this action with the filing of 23 a complaint on September 7,
2024. (Doc. 1).

Plaintiffs thereafter were granted status to proceed 24 in forma pauperis. (Doc. 12). Thereafter,
Plaintiffs filed the operative, first amended complaint 25 on December 10, 2024, alleging cause of
action against Defendants Antonia Heredia, 26 Dizander Guerrero, Bisola Awaye, Maria
Tinoco, Maira Puente, Ashley Bryant, Carole Allen, 27 Desire Lopez, Cynthia Bertrand, and
Fatima Dee (collectively, "Defendants").

(Doc. 13). 28 The day following Plaintiffs' filing of the first amended complaint, the Clerk of the
Court 1 issued summonses for service upon Defendants, and the Court entered an order setting a 2
mandatory scheduling conference for March 13, 2025. (Docs. 14-16).

The Court's order 3 directed Plaintiffs to "diligently pursue service of summons and complaint"
and "promptly file 4 proofs of service." (Doc. 16 at 1). The order further advised Plaintiffs that
failure to diligently 5 prosecute this action "may result in the imposition of sanctions, including
the dismissal of 6 unserved defendants." *Id.* To date, Plaintiffs have not filed proofs of service nor
any report 7 setting forth an explanation for the failure, and no Defendant has appeared in the
action.

8 Local Rule 110 provides that "[f]ailure of counsel or of a party to comply with these 9 Rules or
with any order of the Court may be grounds for imposition by the Court of any and all 10
sanctions...within the inherent power of the Court." The Court has the inherent power to control
11 its docket and may, in the exercise of that power, impose sanctions where appropriate, including
12 dismissal of the action.

Bautista v. Los Angeles Cnty., 216 F.3d 837, 841 (9th Cir. 2000). 13 In addition, Rule 4(m) of the Federal Rules of Civil Procedure provides: “If a defendant 14 is not served within 90 days after the complaint is filed, the court - on motion or on its own after 15 notice to the plaintiff - must dismiss the action without prejudice against that defendant or order 16 that service be made within a specified time.” Fed.

R. Civ. P. 4(m). Absent a showing of good 17 cause, failure to comply with Rule 4(m) requires dismissal of any unserved defendant. 18 Here, the deadline to serve defendants expires tomorrow (March 11, 2025). Absent a 19 showing of good cause, the Court is required to dismiss unserved defendants pursuant to Rule 20 4(m). 21 Conclusion and Order 22 Based on the foregoing, IT IS HEREBY ORDERED that within three (3) days of entry of 23 this order, Plaintiffs SHALL show cause in writing why sanctions should not be imposed – 24 including dismissal of any unserved Defendant or this action in its entirety – for Plaintiffs’ 25 failure to prosecute, failure to serve the summonses and complaint in a timely manner, and 26 failure to promptly file proof of service.

Filing summonses returned executed following entry of 27 this order WILL NOT relieve Plaintiffs of their obligation to respond to this order in writing. 28 IT IS FURTHER ORDERED that the scheduling conference previously set for March 13, 1 |} 2025, is CONTINUED to April 16, 2025, at 9:00 A.M. 2 And IT IS FURTHER ORDERED that Plaintiffs shall serve a copy of this order on 3 || Defendants within three (3) days of entry of this order and promptly file proof of service thereof.

4 Any failure by Plaintiffs to timely respond to this order to show cause will result in 5 || the imposition of sanctions, including a recommendation to dismiss this action. 6 || IT IS SO ORDERED. Dated: March 10, 2025 | nnd Rr 8 UNITED STATES MAGISTRATE JUDGE 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28