

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Tyson Dell Anderson v. Ryan Thornell, et al.

Tyson Dell Anderson v. Ryan Thornell, No. CV-25-1325-PHX-DJH (JFM) (D. Ariz. Dec. 9, 2025) (report and recommendation) · No. CV-25-1325-PHX-DJH (JFM) · Decided December 9, 2025

OPINION

Thornell

PER CURIAM.

1 2 3 4 5

6 UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

7 Tyson Dell Anderson, 8 Plaintiff CV-25-1325-PHX-DJH (JFM) -vs- 9 Ryan Thornell, et al.,
Defendants. Report & Recommendation 10 11 Plaintiff commenced this action by filing his
Complaint (Doc. 1) on April 21, 2025. 12 Plaintiff asserts medical care claims (arising from
Plaintiff's psychiatric care) against 12 13 named defendants and one fictitiously named defendant.
On August 22, 2025 the Court 14 ordered (Doc. 13) Plaintiff to complete and return packets for
service on defendants. 15 Those service packets were to be returned within twenty-one days. 16
Plaintiff did not do so, and on September 24, 2025, Plaintiff was ordered to either 17 return his
completed service packets or show cause why the case should not be dismissed 18 for failure to
prosecute. (Order 9/24/25, Doc. 15.) Plaintiff responded (Doc. 17) asking 19 for an extension of
30 to 45 days, or until after his anticipated release on December 31, 20 2025, to allow him to
gather the required information and to have access to a computer. 21 Given the time already
allowed, and the expected ordinary delays following a 22 release, the Court was not inclined to
delay until after release. Plaintiff was, however, 23 given through November 3, 2025 to provide
his service packets. (Order 10/7/25, Doc. 17.) 24 Plaintiff was cautioned: "Plaintiff should not
anticipate further extensions." 25 Plaintiff did not comply, and on November 13, 2025 Plaintiff
was ordered to 26 "either: (1) return completed service packets as previously ordered; or (2) file a
response 27 to this order showing cause why this case should not be dismissed for failure to
prosecute." 1 To date Plaintiff has not done so, and the deadline for Plaintiff to respond to the 2
Order to Show Cause expired on November 20, 2025.¹

3 Rule 41(b) of the Federal Rules of Civil Procedure provides that "[i]f the plaintiff

4 fails to prosecute or to comply with these rules or a court order, a defendant may move to 5
dismiss the action." In *Link v. Wabash Railroad Co.*, 370 U.S. 626, 629-31 (1962), the 6 Supreme
Court recognized that a federal district court has the inherent power to dismiss a 7 case sua sponte
for failure to prosecute, even though the language of Rule 41(b) of the 8 Federal Rules of Civil
Procedure appears to require a motion from a party. Moreover, in 9 appropriate circumstances, the
Court may dismiss a complaint for failure to prosecute even 10 without notice or hearing. *Id.* at

633. Because dismissal is a harsh penalty, however, it is appropriate only in extreme circumstances of unreasonable delay. *Hernandez v. City of El Monte*, 138 F.3d 393, 400 (9th Cir. 1998). In determining whether Plaintiff's failure to prosecute warrants dismissal of the case, the Court must weigh the following five 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 the defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the availability of less drastic sanctions." *Carey*, 856 F.2d at 1440 (quoting *Henderson v. Duncan*, 779 F.2d 1421, 1423 (9th Cir. 1986)). The appellate courts "may affirm a dismissal where at least four factors support dismissal, or where at least three factors 'strongly' support dismissal." *Hernandez*, 138 F.3d at 399 (citations omitted). "The first two of these factors favor the imposition of sanctions in most cases, while the fourth factor cuts against a default or dismissal sanction. Thus the key factors are prejudice and availability of lesser sanctions." *Wanderer v. Johnson*, 910 F.2d 652, 656 (9th Cir. 1990). Here, this case has been effectively stopped from progressing in any manner since

August 22, 2025, the date of the Service Order (Doc. 13) due to Plaintiff's failure to return Plaintiff was transferred to a different prison unit, and his copy of the Order to Show Cause was returned undeliverable on the next day. It was immediately resent to Plaintiff's completed service packets, and such failure precludes a resolution of his claims on the merits by forestalling service on Defendants. Thus the first, second, and fourth factors call for dismissal. Regarding the third factor, Defendants will likely eventually suffer prejudice from Plaintiff's delays as a result of impacts on their ability to garner evidence to support any defenses. With regard to the fifth factor, less drastic sanctions, the courts consider whether the court has discussed or tried alternatives, or warned the plaintiffs of the chance of dismissal. *Hernandez*, 138 F.3d at 401. Here, Plaintiff has been warned in the service Order (Doc. 13 at 15), the original Order to Show Cause (Doc. 15), the extension Order (Doc. 17), and the current Order to Show Cause (Doc. 19) of possible dismissal of his case for failure to return service packets. Despite those cautions, Plaintiff has failed to respond to the Court, provide the service packets, or to seek extensions of time to do so. This suggests that further admonitions or threats of litigation related sanctions are unlikely to be effective. Given Plaintiff's in forma pauperis status (see Order, Doc. 12, granting IFP application), monetary sanctions are also unlikely to be effective. However, Rule 41(b) provides that a dismissal for failure to prosecute operates as an adjudication upon the merits "[u]nless the court in its order for dismissal otherwise specifies." In the instant case, the undersigned finds that a dismissal with prejudice would be unnecessarily harsh, and the lesser sanction of dismissing the complaint and action without prejudice is appropriate. IT IS THEREFORE RECOMMENDED: (A) The reference of this case to the magistrate judge be WITHDRAWN. (B) Plaintiff's Complaint (Doc. 1) and this action be DISMISSED WITHOUT PREJUDICE.

EFFECT OF RECOMMENDATION

26 This recommendation is not an order that is immediately appealable to the Ninth 27 l Appellate Procedure, should not be filed until entry of the district court's judgment. 2 However, pursuant to Rule 72, Federal Rules of Civil Procedure, the parties shall 3 || have fourteen (14) days from the date of service of a copy of this recommendation within 4 || which to file specific written objections with the Court. Thereafter, the parties have 5 || fourteen (14) days within which to file a response to the objections. Failure to timely file 6 || objections to any findings or recommendations of the Magistrate Judge will be considered 7 || a waiver of a party's right to de novo consideration of the issues, see United States v. 8 || Reyna-Tapia, 328 F.3d 1114, 1121 (9th Cir. 2003) (en banc), and will constitute a waiver 9 || of a party's right to appellate review of the findings of fact in an order or judgment entered 10 || pursuant to the recommendation of the Magistrate Judge, Robbins v. Carey, 481 F.3d 1143, 11 || 1146-47 (9th Cir. 2007). 12 In addition, the parties are cautioned Local Civil Rule 7.2(e)(3) provides that 13 || "[u]nless otherwise permitted by the Court, an objection to a Report and Recommendation || issued by a Magistrate Judge shall not exceed ten (10) pages." 15 16]! Dated: December 9, 2025 _ AL le 17 Jp PP R25 Dismiss FTP SvePis.doex United States Magistrate Judge 18 19 20 21 22 23 24 25 26 27 28