

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF
TEXAS, FORT WORTH DIVISION

Kevin D. Askey v. City of Ft. Worth, et al.

Civil Action No. 4:25-cv-00604-O-BP · No. 4:25-cv-00604-O-BP · Decided February 25, 2026

SUMMARY

The document is a magistrate judge’s Findings, Conclusions, and Recommendation in Askey v. City of Fort Worth, et al. The magistrate judge recommends dismissal without prejudice under Federal Rules of Civil Procedure 4(m) and 41(b) because the plaintiff failed to return service forms, comply with court orders, and prosecute the action.

CASE DETAILS

COURT	United States District Court for the Northern District of Texas, Fort Worth Division
WRITING FOR THE COURT	Hal R. Ray, Jr.
JURISDICTION	United States District Court for the Northern District of Texas, Fort Worth Division
DECIDED	February 25, 2026
DOCKET	4:25-cv-00604-O-BP
DISPOSITION	other
PROCEDURAL POSTURE	Findings, conclusions, and recommendation by a United States magistrate judge recommending sua sponte dismissal without prejudice for failure to prosecute, failure to comply with court orders, and failure to effect service.
STANDARD OF REVIEW	A court may dismiss an action sua sponte under Rule 41(b) for failure to prosecute or failure to comply with a court order; the recommendation is subject to review by the district judge under 28 U.S.C. § 636(b)(1)(B) and Federal Rule of Civil Procedure 72(b)(1).
PRECEDENTIAL VALUE	nonprecedential
PARTIES	Kevin D. Askey v. City of Ft. Worth, Other defendants

TOPICS

- service of process
- sanctions
- civil procedure

PRACTICE AREAS

civil procedure

civil rights

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute and failure to comply with the Court's orders.
2. Whether dismissal was warranted under Federal Rule of Civil Procedure 4(m) because Plaintiff failed to effect service within the applicable ninety-day period.

HOLDINGS

1. The action was subject to sua sponte dismissal without prejudice under Federal Rule of Civil Procedure 41(b) because Plaintiff failed to comply with the Court's order to return the summons forms and failed to prosecute his case.
2. Dismissal without prejudice was warranted under Federal Rule of Civil Procedure 4(m) because the ninety-day period for effecting service had expired and Plaintiff had not completed the required steps to permit service.

KEY QUOTATIONS

“Rule 41(b) permits a court to dismiss an action sua sponte for failure to prosecute or follow orders of the court.”

“This authority flows from a court’s inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars.”

FACTUAL BACKGROUND

Kevin D. Askey filed a pro se complaint against the City of Fort Worth and ten other defendants on June 9, 2025. After screening, the Court authorized service and directed Askey to complete and return summons forms, but the forms were twice returned as undeliverable. Although the Clerk later updated Askey's address and resent the forms, Askey still had not returned them approximately three weeks later and had not sought an extension or otherwise prosecuted the case.

PROCEDURAL HISTORY

Plaintiff filed a pro se civil-rights complaint and was granted leave to proceed in forma pauperis. After judicial screening, the Court authorized service and repeatedly directed Plaintiff to complete and return summons forms, but mailed forms were returned as undeliverable and Plaintiff did not return the forms after the Clerk updated his address and resent them. The magistrate judge recommended dismissal without prejudice under Federal Rules of Civil Procedure 4(m) and 41(b), subject to objections and review by the district judge.

DISPOSITION

other

CASES CITED

- McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir. 1988)
- Link v. Wabash R.R. Co., 370 U.S. 626, 629-31 (1962)
- Douglass v. United Services Auto. Ass'n, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), modified by statute on other grounds, 28 U.S.C. § 636(b)(1)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS
FORT WORTH DIVISION KEVIN D. ASKEY, § § Plaintiff, § § v. § Civil Action No. 4:25-cv-00604-O-BP § CITY OF FT. WORTH, et al., § § Defendants. § FINDINGS, CONCLUSIONS, AND RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE On June 9, 2025, pro se Plaintiff Kevin D. Askey filed a complaint against the City of Fort Worth and ten other defendants.

ECF No. 1. On the same day, Askey filed a motion for leave to proceed in forma pauperis (ECF No. 2) and a motion for the U.S. Marshals to serve the defendants (ECF No. 4). The Court granted the motion for leave to proceed in forma pauperis on June 11, 2025 and withheld service of process pending judicial screening under 28 U.S.C. § 1915(e)(2). ECF No. 7.

On November 5, 2025, the Court completed judicial screening and granted Askey's motion for the U.S. Marshals to serve defendants. ECF No. 8. In the same order, the Court directed the Clerk to send the relevant summons forms AO-440 and Form USM-285s to the address Askey listed on the docket for Askey to complete and resend to the Clerk. Id. On December 3, 2025, the package the Clerk sent to Askey containing the forms returned as undeliverable.

ECF No. 9. By Order dated January 15, 2026, the Court directed the Clerk to resend the package to Askey and ordered Askey to return the forms to the Clerk on or before February 13, 2026. ECF No. 10. On February 3, 2026, the package again returned as undeliverable. ECF No. 11.

On February 4, 2026, in the pursuit of attempting one last time to contact Askey, the Court directed the Clerk to call Askey at the phone number listed on the docket and have him verify or update his address. ECF No. 12. Askey did not answer, but the Clerk left a voicemail.

The next day, Askey returned the Clerk's call, and the Clerk updated Askey's address. On February 6, 2026, the Clerk resent the package to Askey. Now, some three weeks later, Askey still has not returned the summons forms to the Court. Rule 41(b) permits a court to dismiss an action sua sponte for failure to prosecute or follow orders of the court. McCullough v. Lynaugh, 835 F.2d 1126, 1127 (5th Cir.

1988). This authority flows from a court's inherent power to control its docket, prevent undue delays in the disposition of pending cases, and avoid congested court calendars. Link v. Wabash R.R. Co., 370 U.S. 626, 629-31 (1962).

To date, Plaintiff has not complied with the Court's orders, sought an extension of time to do so, or otherwise attempt to prosecute his own case. Accordingly, this case is subject to dismissal for failure to comply with a court order and for lack of prosecution under Rule 41(b).

The Court previously specifically ordered Askey to return the forms to the Clerk by February 13, 2026, ECF No. 10, and he did not comply. Further, the ninety-day period to effect service after a plaintiff files a complaint has long since expired. See Fed. R. Civ. P. 4(m).

Because of these circumstances, the undersigned RECOMMENDS that Chief United States District Judge Reed O'Connor DISMISS without prejudice Askey's case for failure to prosecute and failure to comply with the Court's orders under Federal Rules of Civil Procedure 4(m) and 41(b). A copy of these findings, conclusions, and recommendation shall be served on all parties in the manner provided by law.

Any party who objects to any part of these findings, conclusions, and recommendation must file specific written objections within 14 days after being served with a copy. See 28 U.S.C. § 636(b)(1)(B) and Fed. R. Civ. P. 72(b)(1).

To be specific, an objection must identify the specific finding or recommendation to which objection is made, state the basis for the objection, and specify the place in the magistrate judge's findings, conclusions, and recommendation where the disputed determination is found. An objection that merely incorporates by reference or refers to the briefing before the magistrate judge is not specific.

Failure to file specific written objections will bar the aggrieved party from appealing the factual findings and legal conclusions of the magistrate judge that are accepted or adopted by the district 6 court, except upon grounds of plain error. See *Douglass v. United Services Auto. Ass'n*, 79 F.3d 1415, 1417 (5th Cir. 1996) (en banc), modified by statute on other grounds, 28 U.S.C. § 636(b)(1) (extending the time to file objections to 14 days).

SIGNED on February 25, 2026. Hal R. Ray, Jr. UNITED STATES MAGISTRATE JUDGE