

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Stevenson v. Phillips

Stevenson · No. 1:23-cv-00726-CDB · Decided June 4, 2025

OPINION

(PC) Stevenson v. Phillips

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 DAMIEN STEVENSON, Case No.: 1:23-cv-00726-CDB 12 Plaintiff, FINDINGS AND
RECOMMENDATIONS TO

DISMISS ACTION WITHOUT PREJUDICE

13 v. FOR PLAINTIFF’S FAILURE TO OBEY

LOCAL RULES AND FAILURE TO

14 B. PHILLIPS, et al., PROSECUTE

15 Defendants. 14-DAY OBJECTION DEADLINE

16 Clerk of the Court to Assign District Judge 17 18 Plaintiff Damien Stevenson is appearing pro
se and in forma pauperis in this civil rights 19 action.

20 I. INTRODUCTION

21 On April 11, 2025, this Court issued its First Screening Order. (Doc. 9.) The Court found 22
Plaintiff stated cognizable Eighth Amendment failure to protect claims against Defendants 23
Phillips and Escalera. (Id. at 4-6.) Plaintiff was served with a copy of the Court’s order by mail 24
that same date to his address of record: Damien Stevenson, P-43139, California Substance Abuse
25 Treatment Facility, P.O. Box 5244, Corcoran, CA 93212-5244. 26 On April 15, 2025, the Court
issued its Order Finding Service Appropriate. (Doc. 10.) The 27 order concerns service of
Plaintiff’s complaint pursuant to the Court’s e-service pilot program. 1 On April 17, 2025, the
California Department of Corrections and Rehabilitation (CDCR) 2 filed its Notice of E-Service
Waiver form. (Doc. 12.) 3 On April 23, 2025, the screening order was returned by the United
States Postal Service 4 (USPS) marked “Undeliverable,” “Inactive,” “Not at CSATF/SP
Corcoran,” “Moved,” and “No 5 Forwarding Address.” The following day, the service order was
returned by the USPS marked 6 “Undeliverable,” “Unable to Identify as Addressed,” “Not at
CSATF/SP Corcoran,” “Moved” 7 and “No Forwarding Address.” 8 On May 12, 2025,
Defendants filed the Waiver of Service of Summons form. (Doc. 13.)

9 II. DISCUSSION

10 Plaintiff has failed to keep the Court apprised of his current address. Therefore, the 11 undersigned will recommend this action be dismissed without prejudice. 12 Applicable Legal Standards 13 The Local Rules, corresponding with Federal Rule of Civil Procedure 11, provide, 14 “[f]ailure of counsel or of a party to comply with these Rules or with any order of the Court may 15 be grounds for the imposition by the Court of any and all sanctions authorized by statute or Rule 16 or within the inherent power of the Court.” Local Rule 110. “District courts have inherent power 17 to control their dockets” and, in exercising that power, may impose sanctions, including dismissal 18 of an action. *Thompson v. Housing Auth., City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). 19 A court may dismiss an action based on a party’s failure to prosecute an action, obey a court 20 order, or comply with local rules. See, e.g., *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 21 1992) (dismissal for failure to comply with a court order to amend a complaint); *Malone v. U.S. 22 Postal Service*, 833 F.2d 128, 130-31 (9th Cir. 1987) (dismissal for failure to comply with a court 23 order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986) (dismissal for failure to 24 prosecute and to comply with local rules). 25 Local Rule 182(f) provides that a “pro se party is under a continuing duty to notify the 26 Clerk and all other parties of any change of address Absent such notice, service of documents 27 at the prior address of the ... pro se party shall be fully effective.” Further, Local Rule 183(b) 1 as to his or her current address. If mail directed to a plaintiff in propria persona by the Clerk is 2 returned by the U.S. Postal Service, and if such plaintiff fails to notify the Court and opposing 3 parties within thirty (30) days thereafter of a current address, the Court may dismiss the action 4 without prejudice for failure to prosecute.” (Emphasis omitted.) 5 “In determining whether to dismiss an action for lack of prosecution, the district court is 6 required to weigh several factors: (1) the public’s interest in expeditious resolution of litigation; 7 (2) the court’s need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public 8 policy favoring disposition of cases on their merits; and (5) the availability of less drastic 9 sanctions.” *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988) (internal quotation marks & 10 citation omitted). These factors guide a court in deciding what to do and are not conditions that 11 must be met in order for a court to take action. In re Phenylpropanolamine (PPA) Products 12 Liability Litigation, 460 F.3d 1217, 1226 (9th Cir. 2006) (citation omitted). 13 Analysis 14 Here, Plaintiff has failed to file a notice of change of address or to otherwise advise the 15 Court of his current address. As noted above, according to the Court’s docket, Plaintiff’s address 16 of record is “California Substance Abuse Treatment Facility, P.O. Box 5244, Corcoran, CA 17 93212-5244.” All orders issued by the Court since May 11, 2023, have been served at that 18 address. On April 23 and April 24, 2025, mail directed to Plaintiff was returned to the Court 19 marked “Undeliverable,” “Not at CSATF/SP Corcoran,” “Moved,” and “No Forwarding 20 Address.” A recent search of the CDCR’s California Incarcerated Records and Information 21 Search (CIRIS) tool using Plaintiff’s full name and CDCR number revealed “No Results.”¹ 22 Because Plaintiff has failed keep the Court apprised of his current address, this action is subject to 23 dismissal. Given the Court’s inability to communicate with Plaintiff, there

are no other reasonable 24 alternatives available to address Plaintiff's failure to obey the Local Rules and failure to 25 prosecute. Thus, the first and second factors — the expeditious resolution of litigation and the 26 Court's need to manage its docket — weigh in favor of dismissal. Carey, 856 F.2d at 1440. 27 1 <https://ciris.mt.cdcr.ca.gov/results?lastName=stevenson&firstName=damien>; <https://ciris.mt.cdcr.ca.gov/> 1 The third factor, risk of prejudice to defendant, also weighs fairly in favor of dismissal 2 since a presumption of injury arises from the occurrence of unreasonable delay in prosecuting an 3 action. See *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). Here, Defendants have filed 4 the e-service waiver form, and their responsive pleading is due to be filed no later than June 16, 5 2025. (See Doc. 13.) However, these proceedings are essentially at a standstill because of 6 Plaintiff's failure to keep the Court and Defendants apprised of his current address. Plaintiff has 7 unreasonably delayed the prosecution of this action since at least April 23, 2025, 2 when mail 8 directed to Plaintiff was returned to the Court as undeliverable. Thus, the third factor also weighs 9 in favor of dismissal. Carey, 856 F.2d at 1440-41. 10 The fourth factor usually weighs against dismissal because public policy favors 11 disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 643 (9th Cir. 2002). However, 12 "this factor lends little support to a party whose responsibility it is to move a case toward 13 disposition on the merits but whose conduct impedes progress in that direction." In re PPA, 460 14 F.3d at 1228. Plaintiff has not moved this case forward toward disposition on the merits. It is his 15 responsibility to do so. Instead, Plaintiff has stopped communicating with the Court altogether 16 and has failed to comply with this Court's Local Rules. More than 30 days have passed since the 17 USPS returned both the screening order and the service order marked undeliverable, yet Plaintiff 18 has failed to file a notice of change of address in compliance with Local Rule 183(b). Therefore, 19 the fourth factor — the public policy favoring disposition of cases on their merits — also weighs 20 in favor of dismissal. Carey, 856 F.2d at 1440. 21 Finally, the Court's warning to a party that failure to obey the court's orders will result in 22 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262. 23 Here, in the First Informational Order in Prisoner/Civil Detainee Civil Rights Case issued May 24 11, 2023, Plaintiff was advised that failure to comply with the Federal Rules of Civil Procedure 25 26 2 The Court notes that prior to its April 2025 screening order, the last order issued by the Court was served to Plaintiff on May 15, 2023. (See Doc. 7.) Therefore, the Court assesses that Plaintiff was released from the California 27 Substance Abuse Treatment Facility sometime between May 2023 and April 2025, a period of nearly two years. Hence, Plaintiff could have delayed prosecution of this action as early as May 2023 by failing to keep the Court 1 and this Court's Local Rules "will be grounds for imposition of sanctions which may include 2 dismissal of the case. Local Rule 110; Fed. R. Civ. P. 41(b)." (See Doc. 4 at 1.) That Order further 3 advised: "A pro se plaintiff must keep the Court and opposing parties informed of the party's 4 correct current address. Local Rule 182(f). If a party moves to a different address without filing 5 and serving a notice of change of address, documents served at a party's old address of record 6 shall be deemed

received even if not actually received. ... If mail directed to a pro se plaintiff at 7 the address of record is returned by the United States Postal Service as undeliverable, the order 8 will not be reserved a second time absent a notice of change of address. If a pro se plaintiff's 9 address is not updated within sixty-three days of mail being returned as undeliverable, the case 10 will be dismissed for failure to prosecute." (Id. at 5.)³ However, as of January 1, 2025, Local Rule 11 183(b) provides that a change of address must be filed within 30 days.⁴ The undersigned finds 12 Plaintiff had adequate warning that dismissal could result from his noncompliance with this 13 Court's Local Rules or failure to update his address. Thus, the fifth factor — the availability of 14 less drastic sanctions — weighs in favor of dismissal. *Ferdik*, 963 F.2d at 1262; *Carey*, 856 F.2d 15 at 1440. 16 In sum, Plaintiff has failed to comply with this Court's Local Rules, and in doing so, has 17 failed to prosecute this action. Having weighed the equities and considered the relevant factors 18 noted above, the undersigned concludes that dismissal of the action is warranted.

19 III. CONCLUSION AND RECOMMENDATION

20 Accordingly, for the reasons stated above, the Court HEREBY RECOMMENDS that 21 this action be dismissed, without prejudice, based on Plaintiff's failure to obey the Local Rules 22 and to prosecute this action. 23 ³ A blank "Notice of Change of Address" form was also provided for Plaintiff's use. (See Doc. 4 at 7.) 24 ⁴ The Local Rules state: "These Local Rules are effective on December 1, 2009, and shall govern all actions then 25 pending or commenced thereafter." See Local Rule 100(e). Further, the Local Rules provide: "Immediately upon the adoption of these Rules or any change in these Rules, copies of the new and revised Rules shall be provided to such 26 publications and persons as the Chief Judge deems appropriate. The Clerk shall promptly notify ... other law libraries maintained by the State [like state prison law libraries] ... in the Eastern District of California. Copies shall 27 be distributed in a manner calculated to ensure maximum notification to those practicing in the Eastern District of California. A notice shall be posted prominently in the Clerk's Offices and on the Court's website." See Local Rule 1 These Findings and Recommendations will be submitted to the United States District 2 | Judge assigned to this case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 14 days 3 | after being served with a copy of these Findings and Recommendations, a party may file written 4 | objections with the Court. Local Rule 304(b). The document should be captioned, "Objections to 5 | Magistrate Judge's Findings and Recommendations" and shall not exceed 15 pages without 6 | leave of Court and good cause shown. The Court will not consider exhibits attached to the 7 | Objections. To the extent a party wishes to refer to any exhibit(s), the party should reference the 8 | exhibit in the record by its CM/ECF document and page number, when possible, or otherwise 9 | reference the exhibit with specificity. Any pages filed in excess of the 15-page limitation may be 10 | disregarded by the District Judge when reviewing these Findings and Recommendations under 28 11 | U.S.C. § 636(b)(1)(C). A party's failure to file any objections within the specified time may result 12 | in the waiver of certain rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir. 2014). 13 | IT IS SO ORDERED. "1 Dated: _ June 4, 2025 | hr

15 UNITED STATES MAGISTRATE JUDGE

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