

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA

Kabir elohim Isreal v. State of Arizona, et al.

No. CV-24-02712-PHX-DLR (D. Ariz. Mar. 23, 2026) · No. No. CV-24-02712-PHX-DLR · Decided March 24,
2026

OPINION

Isreal

PER CURIAM.

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6 IN THE UNITED STATES DISTRICT COURT

7 FOR THE DISTRICT OF ARIZONA

8 9 Kabir elohim Isreal, No. CV-24-02712-PHX-DLR 10 Plaintiff, ORDER 11 v. 12 State of
Arizona, et al., 13 Defendants. 14 15 16 Before the Court are the following: 17 1. The Report and
Recommendation (“R&R”) of Magistrate Judge Metcalf 18 recommending that the Court dismiss
Defendants State of Arizona and Officers 19 Papale, Armstrong, Barrera-Diaz, Wilcox, Lopez,
Ibarra, Roselli, Liniger, 20 Knueppel, Tarango, Perez-Cortex, Parada, and Gerbich without
prejudice due to 21 Plaintiff’s failure to serve them. (Doc. 107.) 22 2. Plaintiff’s motion asking for
reassignment of this case to the undersigned. (Doc. 23 113.) 24 3. Plaintiff’s motion asking the
Court to “recognize and preserve all previously 25 stated claims against the voluntarily dismissed
parties under the ‘relation-back’ 26 doctrine of Rule 15(c)(1)[.]” (Doc. 121.) 27 4. The R&R
recommending that Plaintiff’s motion to stay this case on certain terms 28 dictated by him (Doc.
109) be denied, that this case nonetheless be stayed 1 pending the completion of Plaintiff’s
criminal prosecution in Maricopa County 2 Superior Court, and that Defendant’s second motion
for sanctions (Doc. 131) be 3 denied without prejudice to it being reasserted following termination
of the stay. 4 (Doc. 144.) 5 5. The R&R recommending that this case be dismissed without
prejudice due to 6 Plaintiff’s failure to prosecute. (Doc. 147.) 7 For reasons explained below, the
Court will (1) adopt the R&R regarding the dismissal of 8 certain defendants for lack of service,
(2) deny Plaintiff’s motion for reassignment of his 9 case, (3) deny Plaintiff’s motion asking the
Court to render an advisory opinion about 10 whether the relation-back doctrine would govern
hypothetical future amendments to his 11 complaint, (4) adopt the R&R regarding Plaintiff’s
motion for a stay and Defendant’s 12 second motion for sanctions, and (5) not adopt the R&R
recommending that this case be 13 dismissed due to Plaintiff’s failure to prosecute. 14 I.
Dismissal of unserved defendants (Doc. 107) 15 The R&R recommends that the Court dismiss
Defendants State of Arizona and 16 Officers Papale, Armstrong, Barrera-Diaz, Wilcox, Lopez,
Ibarra, Roselli, Liniger, 17 Knueppel, Tarango, Perez-Cortex, Parada, and Gerbich because
Plaintiff did not serve 18 them. The Court will not adopt the R&R with respect to Defendants
State of Arizona and 19 Officers Barrera-Diaz, Wilcox, Ibarra, Liniger, Knueppel, Tarango, Perez-

Cortex, Parada, 20 and Gerbich because Plaintiff has since voluntarily dismissed his claims against those 21 defendants. (Doc. 120.) The R&R therefore is moot as to them. 22 Regarding the remaining unserved defendants, Plaintiff objects on three grounds. 23 First, he claims Officers Lopez, Armstrong, and Roselli should not be dismissed because 24 they “have received actual notice via represented by counsel for the City of Mesa.” (Doc. 25 122 at 1.) Second, he contends that his failure to serve “was due in part to overlapping 26 deadlines, multiple active motions, and pending court decisions on protective orders and 27 evidence issues.” (Id.) Third, he argues that service on the Mesa Police Chief Ken Cost 28 1 constitutes adequate service on “the intended officers under his command.” (Id. at 2.) 2 Plaintiff’s objections are overruled. 3 First, Federal Rule of Civil Procedure 4 requires Plaintiff to serve each of the 4 defendants he has named. Indeed, the Court advised Plaintiff of his service obligations in 5 an order dated December 4, 2024. (Doc. 8 at 3 (“Plaintiff must either serve each unserved 6 Defendant or seek a waiver of service for each Defendant.”).) Service on the City of Mesa 7 does not constitute service on Officers Lopez, Armstrong, and Roselli. 8 Second, Plaintiff has not shown that his failure to serve was the result of excusable 9 neglect. Plaintiff vaguely claims that his failure to serve was due to “overlapping 10 deadlines,” and various pending motions, but he fails to explain how any of these other 11 motions or deadlines impacted his service obligations or efforts. To the contrary, the Court 12 advised Plaintiff of his service obligations, the relevant service deadlines, and the 13 consequences of failing to timely serve. (Doc. 8.) What’s more, as reflected in the R&R, 14 Plaintiff “has not sought summonses or made any other identifiable effort to complete 15 service on these defendants,” nor did he respond to the Court’s order directing him to show 16 cause why these defendants should not be dismissed for lack of service. (Doc. 107 at 1.) 17 This history shows an inexcusable lack of diligence on Plaintiff’s part. 18 Finally, it is of no moment that Plaintiff allegedly served Chief Cost.1 Chief Cost is 19 not a defendant in this action, and he does not have authority to accept service on behalf of 20 other unnamed defendants simply because he is their supervisor. See *Drake v. City of Eloy*, 21 No. CV-14-00670-PHX-DGC, 2014 WL 3421038, at *2 (D. Ariz. July 14, 2014). 22 For these reasons, Plaintiff’s objections are overruled, and the Court adopts the 23 R&R as it pertains to Officers Papale, Lopez, Armstrong, and Roselli, who shall be 24 dismissed without prejudice pursuant to Rule 4(m). 25 II. Reassignment (Doc. 113) 26 Plaintiff has filed a “Motion to Remove Referral to Magistrate Judge and Reassign 27 to Presiding District Judge.” (Doc. 113.) In that motion, Plaintiff argues that his case should 28 1 As Defendant notes, “it is impossible for Plaintiff to have served Chief Cost because . . . a summons has never been issued in this case.” (Doc. 125 at 2.) 1 be reassigned because (1) he did not consent under Federal Rule of Civil Procedure 2 73(b)(1) to have his case presided over by a magistrate judge and (2) Magistrate Judge 3 Metcalf is biased against him and in favor of Defendants. (Id. at 1-2.) Magistrate Judge 4 Metcalf liberally construed Plaintiff’s motion as including both a request to terminate the 5 referral to a magistrate judge (which must be addressed by the undersigned) and a request 6 that Magistrate Judge Metcalf recuse pursuant to 28 U.S.C. § 455 (which Magistrate

Judge 7 Metcalf would address). (Doc. 119.) 8 Magistrate Judge Metcalf denied Plaintiff's motion to the extent it sought recusal. 9 (Doc. 141.) In that order, Magistrate Judge Metcalf explained (correctly) that he had not 10 been assigned to "preside" over Plaintiff's case. Instead, the presiding district judge had 11 referred the case to him for all non-dispositive pretrial proceedings under 28 U.S.C. § 12 636(b)(1). (Doc. 8.) Plaintiff's consent is not required for such referrals, and Plaintiff 13 identifies no instance in which Magistrate Judge Metcalf exceeded the scope of the referral 14 by ruling on a dispositive matter (as opposed to submitting recommendations on dispositive 15 matters for the presiding district judge to consider). Magistrate Judge Metcalf also 16 thoroughly addressed and rejected Plaintiff's accusations of bias. Though Plaintiff might 17 be dissatisfied with some of Magistrate Judge Metcalf's rulings and recommendations, 18 adverse rulings alone are insufficient to demonstrate judicial bias. See *Liteky v. United* 19 *States*, 510 U.S. 540, 555 (1994). 20 Against this backdrop, the Court finds no basis for withdrawing the reference to 21 Magistrate Judge Metcalf. Plaintiff's motion to remove the reference (Doc. 113) is denied, 22 and this matter remains referred to Magistrate Judge Metcalf for all pretrial proceedings as 23 authorized under § 636(b)(1). 24 III. Relation back (Doc. 121) 25 As previously noted, Plaintiff voluntarily dismissed without prejudice his claims 26 against Defendants State of Arizona and Officers Barrera-Diaz, Wilcox, Ibarra, Liniger, 27 Knueppel, Tarango, Perez-Cortex, Parada, and Gerbich. (Doc. 120.) Separately, Plaintiff 28 filed a motion titled "Motion to Preserve Claims Under Rule 15 Relation-Back Doctrine," 1 which, at bottom, asks the Court to issue an advisory ruling that if Plaintiff chooses at some 2 future point to amend his complaint in this case to reassert claims against the voluntarily 3 dismissed defendants, those amendments will relate back to the date of his original 4 complaint for statute of limitations purposes. (Doc. 121.) This motion is denied because it 5 is not appropriate for the Court to issue advisory opinions on hypothetical future scenarios. 6 If Plaintiff one day amends his complaint to reassert claims against any of the voluntarily 7 dismissed defendants, and if in response those defendants assert a statute of limitations 8 defense, the Court can address the relation-back doctrine at that point. But unless and until 9 that occurs, it is premature for the Court to opine whether any hypothetical statute of 10 limitations defense would be successful. Plaintiff's motion for such a ruling is denied. 11 IV. Stay (Doc. 144) 12 In this case, Plaintiff brings various civil rights claims arising out of a traffic stop. 13 According to the parties' case management report, Plaintiff is currently being prosecuted 14 for weapons misconduct and driving under the influence arising from the same facts. 15 Accordingly, Magistrate Judge Metcalf ordered the parties to show cause why this case 16 should not be dismissed under *Heck v. Humphrey*, 512 U.S. 477 (1994) or stayed under 17 *Younger v. Harris*, 401 U.S. 37 (1971). (Doc. 85.) Defendant responded by affirming that 18 Plaintiff's criminal prosecution in Maricopa County Superior Court is ongoing and that 19 this matter should be stayed until that prosecution concludes. (Doc. 97.) Plaintiff did not 20 respond to the order to show cause. Instead, he filed a motion requesting that his case be 21 stayed pending the disposition of the state court criminal proceedings, but also insisting on 22 various conditions to

the stay, such as granting him unilateral authority to terminate it. 23 (Doc. 109.) 24 Magistrate Judge Metcalf has issued an R&R recommending that the Court (1) deny 25 Plaintiff's motion to stay to the extent it seeks to impose various conditions on the stay, (2) 26 sua sponte stay this case pending the outcome of Plaintiff's state court criminal case, (3) 27 rule on Plaintiff's motion for reassignment, motion regarding the relation-back doctrine, 28 and the R&R regarding unserved defendants, and (4) deny Defendant's sanctions motion 1 without prejudice to Defendant reasserting the motion, if appropriate, after the stay is lifted. 2 (Doc. 144.) 3 Plaintiff has filed an objection to the R&R (Doc. 148), but as the Court understands 4 the objection, Plaintiff does not oppose the recommendations. Plaintiff agrees that this 5 matter should be stayed. He also withdraws his request for unilateral authority to terminate 6 the stay. Finally, he does not oppose the recommendation that the Court rule on his motion 7 for reassignment, motion regarding the relation-back doctrine, and objections to the R&R 8 regarding the underserved defendants. He just asks the Court to rule in his favor. 9 As explained above, the Court adopts the R&R regarding dismissal of the unserved 10 defendants, denies Plaintiff's motion for reassignment, and denies Plaintiff's motion 11 regarding the relation-back doctrine. With those issues resolved, all that remains is the 12 issue of the stay—an issue upon which all parties agree. Accordingly, the Court will adopt 13 the R&R and stay this case pending the completion of Plaintiff's criminal prosecution in 14 Maricopa County Superior Court Cause No. CR 2024-006869. 15 V. Dismissal for failure to prosecute (Doc. 147) 16 On August 11, 2025, mail from the Clerk of the Court to Plaintiff was returned 17 undeliverable, reflecting that Plaintiff was "NOT KNOWN." In the Notice to Self- 18 Represented Litigant issued October 8, 2024, Plaintiff was cautioned: "You must 19 immediately notify the Court of any change of address. Local Rule of Civil Procedure 20 83.3(d)." (Doc. 3 at 5.) Plaintiff has not filed a notice of change of address. Accordingly, 21 Magistrate Judge Metcalf issued an order directing Plaintiff to either file a notice of change 22 of address or a response showing cause why the case should not be dismissed for failure to 23 prosecute. (Doc. 146.) Plaintiff failed to do either by the deadline provided, even though 24 the record showed that Plaintiff's copy of the order to show cause had not been returned as 25 undeliverable. Given Plaintiff's failure to respond, Magistrate Judge Metcalf has 26 recommended dismissal without prejudice for failure to prosecute. (Doc. 147.) 27 Plaintiff subsequently filed a document titled "Reply in Support of Motion to Stay 28 Proceedings and Remove Referral to Magistrate Judge" (Doc. 151), which the Court 1 liberally construes, in part, as an objection to the R&R. In the objection, Plaintiff affirms 2 that his address has not changed, that the isolated returned-mail issue must have been a 3 clerical postal error not attributable to him, that he has received all subsequent documents, 4 and that he has every intention of prosecuting this case. 5 Given Plaintiff's assertions that his address has not changed and that he intends to 6 prosecute his case, the Court will not adopt the R&R. However, to date Plaintiff has 7 demonstrated a pattern of ignoring orders to show cause issued by Magistrate Judge 8 Metcalf, only to later object when orders or R&Rs are unfavorable to him. Indeed, the 9 undersigned previously admonished

Plaintiff about this very issue when it denied an earlier R&R recommending dismissal due to Plaintiff's failure to respond to an order to show cause. (Doc. 74.) The undersigned warned Plaintiff that if he "continues to not comply with the Court's orders moving forward, he may face sanctions, including the dismissal of his case." (Id. at 3.) This pattern must stop. Plaintiff once again is advised he must carefully review any orders this Court issues and comply with them. This includes orders to show cause. If this Court issues an order to show cause, Plaintiff must respond to it. He cannot ignore it and complain later when adverse consequences flow from his failure to comply. Plaintiff may face sanctions, including the dismissal of his case, for failure to comply with Court orders. What's more, if this pattern continues, it will be harder for this Court to find that Plaintiff's failures are excusable, increasing the likelihood that a dismissal sanction will issue. IT IS ORDERED that R&R recommending dismissal of certain unserved defendants (Doc. 107) is ADOPTED IN PART. The claims against Officers Papale, Lopez, Armstrong, and Roselli are DISMISSED WITHOUT PREJUDICE pursuant to Rule 4(m).

IT IS FURTHER ORDERED that Plaintiff's motion for reassignment (Doc. 113) is DENIED. IT IS FURTHER ORDERED that Plaintiff's motion regarding the relation-back doctrine (Doc. 121) is DENIED. IT IS FURTHER ORDERED that the R&R at Doc. 144 is ACCEPTED as follows:

1. Plaintiff's motion to stay, subject to various conditions, (Doc. 109) is DENIED.
2. This matter nonetheless is STAYED pending the completion of Plaintiff's 5 criminal prosecution in Maricopa County Superior Court Cause No. CR 2024- 006869, as follows:
 - a. The unexpired deadlines under the Preliminary Scheduling Order are VACATED to be reset by further order, including the deadline for settlement discussions and a report thereon, completion of the deposition of Plaintiff, completion of discovery by service of supplemental disclosures and responses to discovery, discovery motions, dispositive motions, and final preliminary motions.
 - b. Any unexpired deadlines for service of responses to discovery are VACATED.
 - c. The service of further discovery requests is STAYED.
 - d. The filing of motions without leave of court, other than motions to terminate this stay, is STAYED.
3. Defendant shall file on or before the first day of every calendar quarter a status report advising the Court of the status of Plaintiff's criminal proceeding in Maricopa County Superior Court Cause No. CR 2024-006869.
4. The parties shall jointly file with the Court a notice of completion of Plaintiff's criminal prosecution in Maricopa County Superior Court Cause No. CR 2024- 006869, including the nature of the completion, within 30 days of such completion.
5. Defendant's Second Motion for Sanctions (Doc. 131) is DENIED WITHOUT PREJUDICE to it being reasserted following termination of the stay.
6. Defendant's Motion to Amend Schedule (Doc. 143) is DENIED as moot.

IT IS FURTHER ORDERED that the R&R at Doc. 147 recommending dismissal of this case for Plaintiff's failure to prosecute is NOT

ACCEPTED. 3 Dated this 23rd day of March, 2026. 4 5 : Los Ue 8 Seat United: States District
Judge 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 -9-

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