

UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF
CALIFORNIA

Evans v. Cisneros

Evans · No. 1:22-cv-01238-KES-BAM (PC) · Decided April 1, 2025

SUMMARY

The court recommends dismissing Cleveland Evans’s § 1983 and RLUIPA action without prejudice for failure to obey a court order and failure to prosecute. The recommendation follows Plaintiff’s failure to submit a non-prisoner in forma pauperis application after being ordered and warned that noncompliance could result in dismissal.

CASE DETAILS

COURT	United States District Court for the Eastern District of California
WRITING FOR THE COURT	Barbara A. McAuliffe
JURISDICTION	United States District Court for the Eastern District of California
DECIDED	April 1, 2025
DOCKET	1:22-cv-01238-KES-BAM (PC)
DISPOSITION	dismissed
PROCEDURAL POSTURE	Findings and recommendations by a magistrate judge recommending dismissal without prejudice for failure to obey a court order and failure to prosecute.
STANDARD OF REVIEW	The court applied the Ninth Circuit's five-factor test for dismissal for failure to prosecute or failure to obey a court order: the public interest in expeditious resolution, the court's need to manage its docket, prejudice to defendants, the policy favoring disposition on the merits, and the availability of less drastic sanctions.
PRECEDENTIAL VALUE	Unpublished, nonprecedential magistrate judge findings and recommendations
PARTIES	Cleveland Evans v. Cisneros, et al.

TOPICS

- sanctions
- civil procedure
- section 1983
- prisoners rights
- civil rights

PRACTICE AREAS

Civil procedure

Prisoner civil rights

Federal courts

Sanctions and dismissal

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice because plaintiff failed to obey the court's order requiring a non-prisoner in forma pauperis application or payment of the filing fee.
2. Whether dismissal without prejudice was warranted under the factors governing dismissal for failure to prosecute and failure to obey a court order.

HOLDINGS

1. A district court may dismiss an action, including without prejudice, when a party fails to prosecute, fails to obey a court order, or fails to comply with applicable local rules, subject to consideration of the governing dismissal factors.
2. Dismissal without prejudice was appropriate because plaintiff failed to comply with the court's order, the first three dismissal factors favored dismissal, the merits factor provided little support in light of plaintiff's conduct, and lesser sanctions were inadequate.

KEY QUOTATIONS

“In determining whether to dismiss an action, the Court must consider several 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.” (at 2)

“Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court order and for Plaintiff’s failure to prosecute this action.” (at 3)

FACTUAL BACKGROUND

Evans, a former state prisoner proceeding pro se and in forma pauperis, asserted First Amendment claims under 42 U.S.C. § 1983 and claims under RLUIPA. After he was released from custody, defendants sought revocation of his prisoner in forma pauperis status. The court ordered Evans to submit a non-prisoner in forma pauperis application within thirty days or otherwise address the filing fee, expressly warning that failure to comply could result in dismissal. Although the order was re-served after Evans changed his address, he did not respond by the deadline or otherwise communicate with the court.

PROCEDURAL HISTORY

Evans brought a pro se, in forma pauperis civil-rights action under 42 U.S.C. § 1983. After Evans was released from custody, defendants moved to revoke his prisoner in forma pauperis status, and the court directed him to submit a non-prisoner in forma pauperis application or otherwise comply with the filing-fee requirements. The court re-served that order after Evans changed his address and warned that noncompliance would result in

dismissal. Evans missed the deadline and did not otherwise communicate with the court, leading the magistrate judge to recommend dismissal without prejudice.

DISPOSITION

dismissed

CASES CITED

- Thompson v. Housing Authority, 782 F.2d 829, 831 (9th Cir. 1986)
- Ghazali v. Moran, 46 F.3d 52, 53-54 (9th Cir. 1995)
- Ferdik v. Bonzelet, 963 F.2d 1258, 1260-61, 1262 (9th Cir. 1992)
- Malone v. U.S. Postal Service, 833 F.2d 128, 130-33 (9th Cir. 1987)
- Henderson v. Duncan, 779 F.2d 1421, 1423-24 (9th Cir. 1986)
- Carey v. King, 856 F.2d 1439, 1440 (9th Cir. 1988)
- Anderson v. Air West, 542 F.2d 522, 524 (9th Cir. 1976)
- Pagtalunan v. Galaza, 291 F.3d 639, 643 (9th Cir. 2002)
- In re Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006)
- Wilkerson v. Wheeler, 772 F.3d 834, 838-39 (9th Cir. 2014)
- Baxter v. Sullivan, 923 F.2d 1391, 1394 (9th Cir. 1991)

OPINION

(PC) Evans v. Cisneros

PER CURIAM.

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8 UNITED STATES DISTRICT COURT

9 EASTERN DISTRICT OF CALIFORNIA

10 11 CLEVELAND EVANS, Case No. 1:22-cv-01238-KES-BAM (PC) 12 Plaintiff, FINDINGS
AND RECOMMENDATIONS TO

DISMISS ACTION, WITHOUT PREJUDICE,

13 v. FOR FAILURE TO OBEY COURT ORDER

AND FAILURE TO PROSECUTE

14 CISNEROS, et al., (ECF No. 46) 15 Defendants.

FOURTEEN (14) DAY DEADLINE

16 17 I. Background 18 Plaintiff Cleveland Evans (“Plaintiff”) is a former state prisoner
proceeding pro se and in 19 forma pauperis in this civil rights action pursuant to 42 U.S.C. § 1983.
This action proceeds on 20 Plaintiff’s second amended complaint on First Amendment claims
against Defendants 21 O’Donahy, R. Moua, F. Barraza Hernandez, and L. Ruiz-Montalvo, and
on RLUIPA claims 22 against Defendants O’Donahy and A. Rodriguez. 23 On January 31,

2025, all Defendants, with the exception of Defendant O'Donaughy, filed 24 a motion to revoke Plaintiff's in forma pauperis status on the ground that Plaintiff has been 25 released from custody since initiating this action. (ECF No. 45.) Defendants argued that Plaintiff 26 is currently proceeding in forma pauperis under 28 U.S.C. § 1915(b)(1)'s prisoner provision, and 27 now that he is no longer incarcerated, he must file an updated affidavit to proceed IFP as a non- 28 prisoner under the general provisions of 28 U.S.C. § 1915(a)(1) or pay the filing fee. (Id.) 1 The Court stayed briefing on Defendants' motion and directed Plaintiff to file an 2 application to proceed in forma pauperis for a non-prisoner within thirty (30) days of service of 3 the order. (ECF No. 46.) Plaintiff was warned that failure to comply with the Court's order 4 would result in dismissal of this action, without prejudice, for failure to prosecute and failure to 5 comply with a court order. (Id.) Following Plaintiff's February 12, 2025 notice of change of 6 address, the Court's order was re-served on Plaintiff on February 13, 2025. (ECF No. 47.) 7 Plaintiff's response was therefore due on or before March 18, 2025. The deadline has expired, 8 and Plaintiff has failed to respond to the Court's order or otherwise communicate with the Court. 9

II. Failure to Prosecute and Failure to Obey a Court Order 10

A. Legal Standard 11

Local Rule 110 provides that "[f]ailure . . . of a party to comply with these Rules or with 12 any order of the Court may be grounds for imposition by the Court of any and all sanctions . . . 13 within the inherent power of the Court." District courts have the inherent power to control their 14 dockets and "[i]n the exercise of that power they may impose sanctions including, where 15 appropriate, . . . dismissal." *Thompson v. Hous. Auth.*, 782 F.2d 829, 831 (9th Cir. 1986). A 16 court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, 17 failure to obey a court order, or failure to comply with local rules. See, e.g., *Ghazali v. Moran*, 46 18 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 19 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply with an order requiring 20 amendment of complaint); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130–33 (9th Cir. 1987) 21 (dismissal for failure to comply with court order). 22 In determining whether to dismiss an action, the Court must consider several factors: 23 (1) the public's interest in expeditious resolution of litigation; (2) the Court's need to manage its 24 docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring disposition of 25 cases on their merits; and (5) the availability of less drastic sanctions. *Henderson v. Duncan*, 779 26 F.2d 1421, 1423 (9th Cir. 1986); *Carey v. King*, 856 F.2d 1439, 1440 (9th Cir. 1988). 27 /// 28 ///

1 B. Discussion 2

Here, Plaintiff's application to proceed in forma pauperis for a non-prisoner is overdue 3 and he has failed to comply with the Court's order. The Court cannot effectively manage its 4 docket if Plaintiff ceases litigating his case. Thus, the Court finds that both the first and second 5 factors weigh in favor of dismissal. 6 The third factor, risk of prejudice to defendant, also weighs in favor of dismissal, since a 7 presumption of injury arises from the occurrence of unreasonable delay in prosecuting an action. 8 *Anderson v. Air W.*, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor usually weighs against 9 dismissal because public policy favors disposition on the merits. *Pagtalunan v. Galaza*, 291 F.3d 10 639, 643 (9th Cir. 2002).

However, “this factor lends little support to a party whose responsibility it is to move a case toward disposition on the merits but whose conduct impedes progress in that direction,” which is the case here. In *re* Phenylpropanolamine (PPA) Products Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). Finally, the Court’s warning to a party that failure to obey the court’s order will result in dismissal satisfies the “considerations of the alternatives” requirement. *Ferdik*, 963 F.2d at 1262; *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court’s February 4, 2025 order expressly warned Plaintiff that his failure to comply with the Court’s order would result in dismissal of this action. (ECF No. 46.) Thus, Plaintiff had adequate warning that dismissal could result from his noncompliance. Additionally, at this stage in the proceedings there is little available to the Court that would constitute a satisfactory lesser sanction while protecting the Court from further unnecessary expenditure of its scarce resources. Plaintiff has not paid the filing fee, or would be proceeding in forma pauperis in this action, apparently making monetary sanctions of little use, and the preclusion of evidence or witnesses is likely to have no effect given that Plaintiff has ceased litigating his case. III. Recommendation Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court order and for Plaintiff’s failure to prosecute this action. These Findings and Recommendation will be submitted to the United States District Judge assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen (14) days after being served with these Findings and Recommendation, Plaintiff may file written objections with the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and Recommendation.” Objections, if any, shall not exceed fifteen (15) pages or include exhibits. Exhibits may be referenced by document and page number if already in the record before the Court. Any pages filed in excess of the 15-page limit may not be considered. The parties are advised that failure to file objections within the specified time may result in the waiver of the “right to challenge the magistrate’s factual findings” on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 838–39 (9th Cir. 2014) (citing *Baxter v. Sullivan*, 12 923 F.2d 1391, 1394 (9th Cir. 1991)). IT IS SO ORDERED. Dated: April 1, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
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