

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

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’Donahy, 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 11 responsibility it is to move a case toward disposition on the merits but whose conduct impedes 12 progress in that direction," which is the case here. In re Phenylpropanolamine (PPA) Products 13 Liability Litigation, 460 F.3d 1217, 1228 (9th Cir. 2006) (citation omitted). 14 Finally, the Court's warning to a party that failure to obey the court's order will result in 15 dismissal satisfies the "considerations of the alternatives" requirement. *Ferdik*, 963 F.2d at 1262; 16 *Malone*, 833 at 132–33; *Henderson*, 779 F.2d at 1424. The Court's February 4, 2025 order 17 expressly warned Plaintiff that his failure to comply with the Court's order would result in 18 dismissal of this action. (ECF No. 46.) Thus, Plaintiff had adequate warning that dismissal could 19 result from his noncompliance. 20 Additionally, at this stage in the proceedings there is little available to the Court that 21 would constitute a satisfactory lesser sanction while protecting the Court from further 22 unnecessary expenditure of its scarce resources. Plaintiff has not paid the filing fee, or would be 23 proceeding in forma pauperis in this action, apparently making monetary sanctions of little use, 24 and the preclusion of evidence or

witnesses is likely to have no effect given that Plaintiff has 25 ceased litigating his case. 26 III. Recommendation 27 Accordingly, the Court finds that dismissal is the appropriate sanction and HEREBY 28 RECOMMENDS that this action be dismissed, without prejudice, for failure to obey a Court 1 order and for Plaintiff's failure to prosecute this action. 2 These Findings and Recommendation will be submitted to the United States District Judge 3 assigned to the case, pursuant to the provisions of Title 28 U.S.C. § 636(b)(1). Within fourteen 4 (14) days after being served with these Findings and Recommendation, Plaintiff may file written 5 objections with the Court. The document should be captioned "Objections to Magistrate Judge's 6 Findings and Recommendation." Objections, if any, shall not exceed fifteen (15) pages or 7 include exhibits. Exhibits may be referenced by document and page number if already in 8 the record before the Court. Any pages filed in excess of the 15-page limit may not be 9 considered. The parties are advised that failure to file objections within the specified time may 10 result in the waiver of the "right to challenge the magistrate's factual findings" on 11 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)). 13 IT IS SO ORDERED. 14 15 Dated: April 1, 2025 /s/ Barbara A. McAuliffe _
UNITED STATES MAGISTRATE JUDGE
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