

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Foster v. Henderson and Wheeler

Foster · No. 25-4047-DDC-RES · Decided November 26, 2025

SUMMARY

The United States District Court for the District of Kansas dismissed without prejudice Jeremy Foster’s remaining claims against Brian Henderson and Ty Wheeler. The court relied on deficiencies under Federal Rule of Civil Procedure 8, failure to effect service under Rule 4(m), and Foster’s failure to respond to an order to show cause, constituting failure to prosecute under Rule 41(b).

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	Daniel D. Crabtree
JURISDICTION	United States District Court for the District of Kansas
DECIDED	November 26, 2025
DOCKET	25-4047-DDC-RES
DISPOSITION	dismissed
PROCEDURAL POSTURE	The district court sua sponte dismissed the plaintiff’s remaining claims without prejudice under Federal Rule of Civil Procedure 41(b) after plaintiff failed to respond to an order to show cause concerning pleading and service deficiencies.
STANDARD OF REVIEW	Abuse of discretion applies to a district court’s Rule 41(b) dismissal; a dismissal without prejudice may be entered without adherence to particular procedures when based on failure to prosecute or failure to comply with procedural rules or a court order.
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; persuasive rather than precedential.
PARTIES	Jeremy Foster v. Brian Henderson, Ty Wheeler

TOPICS

- motions to dismiss
- pleadings
- service of process
- civil procedure
- civil rights

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether the court could dismiss the remaining claims under Rule 41(b) for failure to comply with Rule 8's pleading requirements.
2. Whether the court could dismiss the claims under Rule 41(b) and Rule 4(m) for failure to timely serve Henderson and Wheeler.
3. Whether the court could dismiss the remaining claims under Rule 41(b) because plaintiff failed to respond to the order to show cause.

HOLDINGS

1. A failure to satisfy Rule 8 may support dismissal under Rule 41(b), and plaintiff's allegations against Henderson and Wheeler were insufficient because they did not state when or how the defendants violated plaintiff's rights, how plaintiff was injured, or why plaintiff was entitled to relief.
2. Rule 4(m) authorized dismissal without prejudice of the claims against Henderson and Wheeler because plaintiff failed to serve them within 90 days after filing the Second Amended Complaint, after receiving notice that the service failure could support dismissal.
3. A plaintiff's failure to respond to a court's order to show cause may support dismissal under Rule 41(b), and plaintiff's failure to respond supplied an independent basis for dismissing the remaining claims.

KEY QUOTATIONS

"A district court may dismiss an action sua sponte 'if the plaintiff fails to prosecute or to comply with these procedural rules or a court order.'" (Rule 41(b) discussion)

"If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." (Rule 4(m) discussion)

FACTUAL BACKGROUND

Plaintiff Jeremy Foster asserted remaining claims against Brian Henderson and Ty Wheeler. The court concluded that the Second Amended Complaint did not adequately allege when or how either defendant violated plaintiff's rights, how plaintiff was injured, or why plaintiff was entitled to relief. The defendants also had not been properly served within 90 days, and plaintiff failed to respond to the court's order to show cause.

PROCEDURAL HISTORY

The court previously dismissed many defendants and identified deficiencies in the claims against Henderson and Wheeler under Rules 8 and 4(m). It ordered plaintiff to show cause within 14 days why the remaining claims should not be dismissed. Plaintiff did not respond, so the court dismissed the remaining claims without prejudice and directed the Clerk to enter judgment and close the case.

DISPOSITION

dismissed

CASES CITED

- Davis v. Miller, 571 F.3d 1058, 1060 (10th Cir. 2009)
- AdvantEdge Bus. Grp. v. Thomas E. Mestmaker & Assocs., Inc., 552 F.3d 1233, 1236 (10th Cir. 2009)
- Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1161, 1162 (10th Cir. 2007)
- Dorn v. Avery, No. 20-cv-01883-RM-KLM, 2022 WL 1302004, at *2 (D. Colo. Apr. 4, 2022)
- Folse v. Wilson, No. CIV 17-0387 JB/SMV, 2017 WL 6734181, at *4 (D.N.M. Dec. 31, 2017)

OPINION

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS JEREMY FOSTER, Plaintiff, Case No. 25-4047-DDC-RES v. BRIAN HENDERSON and TY WHEELER, Defendants. MEMORANDUM AND ORDER The court recently entered an Order dismissing many of the defendants in this case. Doc. 174.

The court also explained its concerns that plaintiff's remaining claims—ones asserted against defendants Brian Henderson and Ty Wheeler—were subject to dismissal under Rule 8's pleading standards and Rule 4(m)'s service requirements. *Id.* at 28–29.

To give pro se plaintiff Jeremy Foster a chance to dispel these concerns, the court ordered him to show cause in writing why the court shouldn't dismiss his remaining claims under these rules. *Id.* at 29, 31. The court gave him 14 days to do so. *Id.* More than 14 days have passed, and plaintiff has failed to respond to the court's Order.

The court now dismisses plaintiff's remaining claims without prejudice under Rule 41(b). “A district court may dismiss an action sua sponte ‘if the plaintiff fails to prosecute or to comply with these procedural rules or a court order.’” Davis v. Miller, 571 F.3d 1058, 1060 (10th Cir. 2009) (quotation cleaned up) (quoting Fed. R. Civ. P. 41(b)). “When dismissing a case without prejudice, ‘a district court may, without abusing its discretion, enter such an order without attention to any particular procedures.’” AdvantEdge Bus.

Grp. v. Thomas E. Mestmaker & Assocs., Inc., 552 F.3d 1233, 1236 (10th Cir. 2009) (quoting Nasious v. Two Unknown B.I.C.E. Agents, 492 F.3d 1158, 1162 (10th Cir. 2007)). Three separate bases support this Rule 41(b) dismissal: Rule 8, Rule 4(m), and plaintiff's failure to show case. Rule 8.

As the court explained in its last Order, plaintiff's allegations against Mr. Henderson and Mr. Wheeler fall far short of the Rule 8 standard. Doc. 174 at 28–29. The Second Amended Complaint

never alleges when or how these defendants violated plaintiff's rights, how plaintiff sustained injury, or why plaintiff "is entitled to relief." Fed. R. Civ. P. 8(a)(2); Doc.

174 at 28–29. This failure to comply with Rule 8 justifies dismissal. See *Nasious*, 492 F.3d at 1161 (“[A] failure to satisfy Rule 8 can supply a basis for dismissal: Rule 41(b) specifically authorizes a district court to dismiss an action for failing to comply with any aspect of the Federal Rules of Civil Procedure.”). Rule 4(m).

The court's previous Order also concluded that plaintiff hadn't served Mr. Henderson or Mr. Wheeler properly. Doc. 174 at 7–9. More than 90 days have passed since plaintiff filed the Second Amended Complaint. And the court now has given plaintiff notice that this service failure could furnish a basis for dismissal. See Doc. 174 at 28. Rule 4(m) thus authorizes the court to dismiss the claims against the remaining defendants for failing to serve them.

Fed. R. Civ. P. 4(m) (“If a defendant is not served within 90 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time.”). Show-Cause Order.

Finally, plaintiff failed to respond to the court's show-cause order, and the time to do so now has passed. Rule 41(b) allows the court to dismiss a case for failure to comply with a court order. *Davis*, 571 F.3d at 1060.

Under this authority, the court can dismiss a case when a plaintiff fails to respond to a show-cause order. E.g., *Dorn v. Avery*, No. 20-cv- 01883-RM-KLM, 2022 WL 1302004, at *2 (D. Colo. Apr. 4, 2022); *Folse v. Wilson*, No. CIV 17-0387 JB/SMV, 2017 WL 6734181, at *4 (D.N.M. Dec. 31, 2017). Plaintiff's failure to comply with the court's order to show cause thus offers a third basis for dismissal.

To summarize, plaintiff has failed to comply with Rule 8, Rule 4(m), and the court's show-cause order. Each of these failures permits the court to dismiss his remaining claims under Rule 41(b). The court now dismisses plaintiff's remaining claims against Mr. Henderson and Mr. Wheeler without prejudice.

The court directs the Clerk to enter Judgment to this effect and close this case. IT IS THEREFORE ORDERED BY THE COURT THAT plaintiff's remaining claims are dismissed without prejudice. The court directs the Clerk of the Court to enter Judgment and close this case. IT IS SO ORDERED. Dated this 26th day of November, 2025, at Kansas City, Kansas. s/ Daniel D. Crabtree_____ Daniel D. Crabtree United States District Judge