FILED
United States Court of Appeals
Tenth Circuit

October 5, 2023

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

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ANDY T.L. WILLIAMSON,

Plaintiff - Appellant,

v.

LEAVENWORTH COUNTY, KANSAS; LEAVENWORTH COUNTY, KANSAS SHERIFF'S DEPARTMENT; JANE DOE, Officer; JOHN DOES, Officers, 1-4,

Defendants - Appellees.

No. 23-3010
(D.C. No. 2:21-CV-02558-DDC-RES)
(D. Kan.)

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**ORDER AND JUDGMENT***

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Before **HOLMES**, Chief Judge, **HARTZ**, and **PHILLIPS**, Circuit Judges.

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Andy T.L. Williamson appeals the district court's order dismissing his complaint with prejudice under Fed. R. Civ. P. 41(b). Exercising jurisdiction under 28 U.S.C. § 1291, we affirm.

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* After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of this appeal. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument. This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

## I. BACKGROUND

In November 2021, Mr. Williamson filed a complaint under 42 U.S.C. § 1983 asserting several claims for the alleged violation of his constitutional rights in connection with a traffic stop and arrest. He sought more than $50 million in damages against Leavenworth County, Kansas, the Leavenworth County Sheriff's Department, and law-enforcement officers Jane and John Doe, I-IV, including $25 million in punitive damages and $25 million for emotional-distress damages. The magistrate judge granted Mr. Williamson's motion to proceed without prepayment of fees.

In January 2022 the magistrate judge ordered the parties to meet and confer by March 11, and thereafter for defendants to submit the "Report of Parties Planning Meeting and Rule 26 Initial Disclosures to the Court by March 16, 2022." R. at 29. The court also set a telephone scheduling conference for March 25 at 9:00 a.m. The order was sent to Mr. Williamson at the mailing address he provided the court.

Defendants' counsel attempted to confer with Mr. Williamson, but he never responded. When the court did not receive the report and initial disclosures by the March 16 deadline, it emailed the parties and ordered them to submit the documents no later than March 21. According to the magistrate judge, the court's email to Mr. Williamson "bounced." *Id.* "Defendants informed the Court that they also had not been able to contact [Mr. Williamson]," and produced a copy of a letter sent to him in late January requesting to meet and confer. *Id.* Defendants timely submitted their Rule 26 disclosures; but Mr. Williamson never submitted any disclosures.

On March 25 the court attempted to conduct the scheduling conference. Although defendants appeared through counsel, Mr. Williamson failed to appear. Because Mr. Williamson had failed to obey the court's orders, the magistrate judge court ordered Mr. Williamson to show cause by April 25 why the judge should not recommend dismissal for failure to prosecute.

In response to the show-cause order, Mr. Williamson gave three reasons to excuse his noncompliance. First, he started having problems with mail delivery in January 2022 and "changed his mailing address." R. at 32. Second, having "had the same email for over a decade, . . . [there was no reason] why the court or anyone else would have email bouncing back." *Id.* He suggested that the court did not have his email address on file and if the court sent an email that "bounced," it could not have expected him to "respond to something that wasn't received." *Id.* Last, Mr. Williamson alleged that as soon as he learned that he had a different court hearing on March 25 that conflicted with the scheduling conference, he contacted the clerk's office and "left a detail[ed] message on 3/24/2022 explaining why he would not be available for the hearing on March 25, 2022." R. at 33.

Although the magistrate judge said that Mr. Williamson's "response [did] not excuse [his] failure to" comply with the court's orders, the judge would "not recommend dismissal of [the] case at this time"; but the judge warned "that any further failure to fully comply with the Court's orders could result in the Magistrate Judge recommending dismissal of this case." R. at 39. In a separate order the judge set a scheduling conference for May 24 and ordered the parties to meet and confer by

May 10. Also, Mr. Williamson was ordered to submit his Rule 26(a) initial disclosures by May 17.

On June 7 defendants served a set of interrogatories and a request for production of documents. When Mr. Williamson failed to respond, counsel sent an email on July 18 asking him to provide his responses within seven days. Mr. Williamson responded in a July 26 email stating that he was "currently without resource[s] to send the requested [discovery responses]," and would try to send them the next day. R. at 77.

Finding Mr. Williamson's response inadequate, counsel contacted the court to request a telephone conference to address his failure to respond to discovery. The magistrate judge set a discovery conference for August 9. Immediately before the August 9 conference, Mr. Williamson served his responses, which counsel asserted "were virtually devoid of substantive responses and were mostly comprised of simple one-word objections." R. at 49. At the conference the court ordered counsel, by August 16, to "send a letter to [Mr. Williamson] addressing [the deficiencies in his] discovery responses." R. at 44. Counsel was also directed to meet and confer with Mr. Williamson on August 26 about his responses. Noting that Mr. Williamson "has not complied with court-ordered deadlines," the court warned him during the hearing "that he must comply with all deadlines going forward and that continued failures to meet court deadlines could result in sanctions, including dismissal of his lawsuit with prejudice." *Id.*

As ordered by the magistrate judge, counsel wrote to Mr. Williamson about his discovery responses and provided copies of the discovery rules. And on August 26 counsel and Mr. Williamson spoke by telephone about the outstanding discovery. According to counsel, Mr. Williamson said that he would continue to object to certain requests but would provide some documents and substantive responses by August 29. When Mr. Williamson failed to supplement his responses, defendants filed their motion to dismiss on September 2.

In his response in opposition Mr. Williamson argued that defendants' assertions were untrue, that counsel had failed "to resolve issues via phone," R. at 69, and that the August 9 conference was unnecessary because he told counsel in a July email "that he was out of the country and the laptop he had was damaged therefore limiting his ability to respond to requested discovery while outside of the country and that he would provide responses on **August 3rd, 2022**," R. at 67. He also suggested that counsel misrepresented what happened at the August 26 conference because he never agreed to provide any substantive responses or documents; and he contended that the parties understood there was a discovery dispute and that the court needed to get involved to settle disagreements but defendants instead moved to dismiss.

In December 2022, when Mr. Williamson had not provided any updated discovery responses, defendants renewed their motion to dismiss. The district court granted the motion and dismissed the case with prejudice.

## II. DISCUSSION

### A. Standard of Review

"This Court reviews for an abuse of discretion a district court's decision to dismiss an action for failure to prosecute." *Ecclesiastes 9:10-11-12, Inc. v. LMC Holding Co.*, 497 F.3d 1135, 1143 (10th Cir. 2007). "An abuse of discretion occurs when a district court makes a clear error of judgment or exceeds the bounds of permissible choice in the circumstances." *Id.* (brackets and internal quotation marks omitted).

### B. Legal Framework

Rule 41(b) states, "If the plaintiff fails to prosecute or to comply with [the Federal Rules of Civil Procedure] or a court order, a defendant may move to dismiss the action or any claim against it." District courts have "very broad discretion to use sanctions where necessary" to ensure "the expeditious and sound management of the preparation of cases for trial." *Lee v. Max Int'l, LLC*, 638 F.3d 1318, 1320 (10th Cir. 2011) (internal quotation marks omitted). "Determination of the correct sanction . . . is a fact-specific inquiry that the district court is best qualified to make." *Ehrenhaus v. Reynolds*, 965 F.2d 916, 920 (10th Cir. 1992).

"We have identified a non-exhaustive list of factors that a district court ordinarily should consider in determining whether to dismiss an action with prejudice under Rule 41(b)." *Ecclesiastes*, 497 F.3d at 1143. The listed factors are "(1) the degree of actual prejudice to the other party; (2) the amount of interference with the judicial process; (3) the litigant's culpability; (4) whether the court warned the party

in advance that dismissal would be a likely sanction for noncompliance; and (5) the efficacy of lesser sanctions." *Id*., citing *Ehrenhaus*, 965 F.2d at 921).

**C. Analysis**

The district court acted within its discretion when, after considering each of the *Ehrenhaus* factors, it determined that the complaint should be dismissed with prejudice. As for the first factor, defendants were prejudiced. In *Jones v. Thompson*, 996 F.2d 261, 264 (10th Cir. 1993), we held that prejudice can arise from "delay and mounting attorney's fees." The reputational harm that comes from being named as a defendant in ongoing litigation has also been recognized as prejudice. *See Ehrenhaus*, 965 F.2d at 921.

Here, Mr. Williamson unquestionably delayed the litigation and defendants incurred unnecessary attorney's fees while defending themselves against allegations of unconstitutional conduct in federal court. Between November 2021, when the complaint was filed, and December 2022, when the complaint was dismissed, Mr. Williamson did nothing to move the case forward; instead, he ignored the court's orders and stonewalled discovery. And although the district court recognized that the prejudice was "mitigated . . . by the minimal advocacy required of the parties," it nonetheless found that "[t]his factor . . . favors dismissal," although "not overwhelmingly so." R. at 87.

Regarding the second factor—interference with the judicial process—this factor carries more weight when a party disobeys court orders. *See Ehrenhaus*, 965 F.2d at 921. It is beyond dispute that Mr. Williamson disobeyed several court orders.

At the same time, this factor carries less weight when noncompliance stems from good-faith discovery disputes, *see Ecclesiastes*, 497 F.3d at 1146, 1148, which is how Mr. Williamson frames the issue. According to Mr. Williamson, counsel should have raised his failure to provide proper responses to the discovery requests in motions to compel, not motions to dismiss. He says that he believed there was a discovery dispute that would be resolved by the court. But there was ample evidence of Mr. Williamson's interference with the judicial process when he failed to follow court orders. The district court's determination that "[t]his factor favors dismissal," was reasonable. R. at 88.

The district court also reasonably assessed Mr. Williamson's culpability. To excuse his missteps, Mr. Williamson argues that (1) he did not receive copies of the court's earliest orders because he changed his address and (2) when he received counsel's July 18 email asking about his discovery responses, he "was outside of the country (Central America, Belize, where resources were extremely minimal) and his laptop was damaged in travel." Aplt. Opening Br. at 8. These arguments are unavailing. First, Mr. Williamson was responsible for keeping the court and opposing counsel advised of his current mailing address; therefore, the alleged failure to receive the earliest orders is his fault alone. *See* D. Kan. Rule 5.1(b)(3) (requiring pro se parties to "notify the clerk of any change of address or telephone number"). Second, Mr. Williamson does not dispute that he received defendants' discovery requests on or about June 7, but he never explains why he was prevented from serving timely responses in the first instance. The fact that he was allegedly in

Belize on July 18 when counsel contacted him about his overdue responses does not address where he was or any technical difficulties before or at the time the responses were first due—nearly two weeks earlier. Nor does he explain how the responses that he eventually served were adequate under the discovery rules.

As the district court explained, "The court has routinely instructed Mr. Williamson to comply with the rules, and defendants have explained to him why his discovery responses are inadequate. The court therefore views [his] failure to cooperate as willful noncompliance—even though, at one point, it might have stemmed from misunderstanding." R. at 88; *see Klein-Becker USA, LLC v. Englert*, 711 F.3d 1153, 1159 (10th Cir. 2013) ("We have defined a willful failure as any intentional failure as distinguished from involuntary noncompliance," such as "when a party is unable to comply with a discovery order." (internal quotation marks omitted)); *see also Ehrenhaus*, 965 F.2d at 920 (dismissal may be appropriate in "cases of willful misconduct").

Concerning the fourth factor, the district court found that the magistrate judge "warned [Mr. Williamson]—more than once—that he could face dismissal if he continued to violate the court's orders. This factor therefore weighs in favor of dismissal." R. at 88-89. Mr. Williamson argues this was an abuse of discretion because "the Court is referring to alleged notices and Orders [he] never received, therefor[e] he could not respond to or follow." Aplt. Opening Br. at 8. This is incorrect. We know that Mr. Williamson received the court's show-cause order requiring him to explain why the case should not be dismissed for failure to

prosecute, because he filed a response. And during the August 9 discovery conference, the court noted Mr. Williamson's failure to comply with court-ordered deadlines, and "reminded [him] that he must comply with all deadlines going forward and that continued failures to meet court deadlines could result in sanctions." R. at 44. Thus, Mr. Williamson undoubtedly received at least two specific warnings that his case could be dismissed. (We also note that notice is not a prerequisite for dismissal. *See Ecclesiastes*, 497 F.3d at 1149.)

Finally, addressing the fifth factor—the efficacy of lesser sanctions—the district court considered a monetary sanction but determined that it would not be effective because "[t]he court . . . has granted [Mr. Williamson] IFP status and a monetary sanction would have little effect on him." R. at 89. The court also found that his noncompliance was not based on "a misunderstanding or accidental behavior," because "both the court and defendants have explained what the Rules require of him." *Id.*

For his part, Mr. Williamson argues that "IF [he] did fail to prosecute, dismissing the case was the most extreme act the Court could take." Aplt. Opening Br. at 9. But his failure to identify an appropriate lesser sanction in the district court or on appeal means that "the district court did not err in finding the non-availability of lesser sanctions." *Ecclesiastes*, 497 F.3d at 1150.

We see no abuse of discretion in the district court's dismissal as a sanction for Mr. Williamson's misconduct.

## III. CONCLUSION

The judgment of the district court is affirmed.

Entered for the Court

Harris L Hartz
Circuit Judge