NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted January 16, 2024*
Decided January 25, 2024

Before

DIANE S. SYKES, *Chief Judge*

MICHAEL B. BRENNAN, *Circuit Judge*

DORIS L. PRYOR, *Circuit Judge*

No. 23-1137

MARQUISE HOLLERWAY,
Plaintiff-Appellant,

v.

ROBERT SPIEGEL, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 18 C 5360

Franklin U. Valderrama,
Judge.

O R D E R

Marquise Hollerway appeals the dismissal of his suit for want of prosecution after he missed status hearings, did not respond to discovery requests, and failed to appear for his deposition. The district judge did not abuse his discretion in dismissing

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

the case after permissibly finding that Hollerway had ignored his obligations; thus, we affirm.

Hollerway sued Robert Spiegel and Mark Zawila, officers for the Chicago Police Department, alleging that they arrested him in violation of his rights under the Fourth Amendment. *See* 42 U.S.C. § 1983. Because Hollerway had a related criminal case pending in state court, the magistrate judge stayed this case until that matter concluded, and he lifted the stay in January 2022. At a status hearing in March 2022—which Hollerway did not attend—the magistrate judge scheduled another status hearing for June 9, set a discovery deadline of August 31, and in a written order told Hollerway about resources available to help him with discovery. A few weeks later, on April 5, Hollerway attended a hearing on the defendants' motion for a protective order, but for three months after this hearing neither the defendants nor the court heard from Hollerway.

During those three months, defense counsel sent Hollerway discovery requests (responses due on May 31), a notice of deposition (set for June 22), and two emails reminding him of the deposition. He did not respond to the requests, attend the deposition, or otherwise contact defense counsel. He also missed the status hearing on June 9. Defendants moved to compel Hollerway to answer the written discovery and to sit for his deposition. At a hearing on this motion—which Hollerway also missed—the magistrate judge ordered Hollerway to respond to the defendants' first set of interrogatories and to arrange a date for his deposition by July 27. The magistrate judge warned that, if Hollerway disobeyed the order, he intended to recommend the case be dismissed for want of prosecution. Hollerway did not comply, and the magistrate judge recommended dismissal.

The district judge gave the parties 14 days to object to the recommendation of dismissal. *See* FED. R. CIV. P. 72(b)(2). Hollerway did not object. Rather, within the 14-day period he filed an unattested "Motion for Attorney Representation." In it, he sought a court-recruited attorney, stating that he is homeless and jobless, that his cell phone was "destroyed," and that he lost access to his mailbox. And he offered to come to the court weekly to check the docket. On December 15, the district judge adopted the magistrate judge's recommendation and dismissed the case for want of prosecution.

Hollerway filed two documents on January 13, 2023 (29 days after the entry of judgment): a notice of appeal and a motion to vacate the judgment. In the motion, he repeated that as of the previous August he did not have a cell phone or mailing address,

but he acquired both since then, he checked the court's docket weekly, and he did everything "within his power" to litigate the case. The district judge construed the motion as one under Rule 59(e) of the Federal Rules of Civil Procedure and denied it. He explained that Hollerway's asserted problems (lack of cellphone and mailbox) did not adequately excuse his failure to communicate with the court during the months of his apparent abandonment of the case.

On appeal, Hollerway urges that the district court should not have dismissed his case. We first observe that our review is limited to the dismissal order. Hollerway filed his notice of appeal within 30 days of this order; thus, that appeal is timely. *See* FED. R. APP. P. 4(a)(1). But Hollerway moved to vacate the dismissal one day after the 28-day window set by Rule 59(e) of the Federal Rules of Civil Procedure (a limit the court cannot extend, even by one day, *see* FED. R. CIV. P. 6(b)(2)). Although the district judge treated that motion under Rule 59(e), it was not a timely Rule 59(e) motion; therefore we must treat it under Rule 60(b). *See Banks v. Chicago Bd. of Educ.*, 750 F.3d 663, 666–67 (7th Cir. 2014). And because Hollerway did not timely file another notice of appeal (or an equivalent filing, *see Nartey v. Franciscan Health Hosp.*, 2 F.4th 1020, 1024 (7th Cir. 2021)), after the district judge denied his post-judgment motion, we may not review that denial. *See Krivak v. Home Depot U.S.A., Inc.*, 2 F.4th 601, 604 (7th Cir. 2021) (quoting *Bowles v. Russell*, 551 U.S. 205, 214 (2007)).

Regarding the dismissal, we review for abuse of discretion a district judge's dismissal for failure to prosecute, and we reverse only if no reasonable person could agree with the decision. *Moffitt v. Illinois State Bd. of Educ.*, 236 F.3d 868, 872–73 (7th Cir. 2001). Further, when a district judge receives a recommendation from a magistrate judge to dismiss a case, the district judge decides de novo any portion to which the dissatisfied party has "properly objected," FED. R. CIV. P. 72(b)(3), and need only assess for clear error any unobjected-to findings, *United States v. Gibson*, 958 F.3d 661, 662 (7th Cir. 2020). A complete failure to object can waive in our court any appellate review of the recommendation. *Id.*

Under these standards, Hollerway's appellate challenge fails. First, he never properly objected to the recommendation to dismiss. His only timely response was a request to recruit an attorney for him. And that filing did not even mention the

recommendation, much less object to it.[1] We may therefore deem waived any challenge in this court to the recommendation. *Id.*; *Johnson v. Zema Systems Corp.*, 170 F.3d 734, 739 (7th Cir. 1999). But even when viewed through the lens of clear error, the recommendation to dismiss based on a finding of case abandonment is sound. The record amply shows that, when the magistrate judge recommended dismissal, Hollerway had failed to prosecute his case because he inexplicably missed three court hearings and—despite a court order—ignored his discovery duties. Such disregard of his case justified its dismissal. *See* FED. R. CIV. P. 41(b); *Salata v. Weyerhaeuser Co.*, 757 F.3d 695, 700 (7th Cir. 2014) (dismissal justified where plaintiff missed multiple status hearings and did not comply with discovery obligations).

We recognize that Hollerway asserted in his motion to recruit counsel that, after his cell phone was "destroyed" and mailbox became inaccessible, he was unable to receive word from the defendants and the court. But these assertions did not compel the district judge to exercise his discretion, *see Schur v. L.A. Weight Loss Ctrs., Inc.*, 577 F.3d 752, 760–61 (7th Cir. 2009), to excuse Hollerway's apparent abandonment of his case and refuse to dismiss it. For one thing, Hollerway did not specify when those events occurred in relation to his string of missed deadlines and obligations and whether those events caused his failures. For another, he did not attest under the penalties of perjury to the truth of his assertions. Finally, he acknowledged that he could come to court weekly to check on the docket. Yet never at any time before the magistrate judge recommended dismissal did he come to the court to tell it about his communication difficulties. Given Hollerway's failure to communicate with the court in a way that he admits was available to him, the district judge was not required to reject the magistrate judge's recommendation to dismiss the case.

AFFIRMED

---

[1] In his discretion, the district judge could have generously construed Hollerway's motion for representation as an objection to the dismissal recommendation. *See Otis v. Demarasse*, 886 F.3d 639, 644 (7th Cir. 2018) (describing how filings by pro se litigants may be liberally construed). But, for the reasons we explain in this order, even a liberal reading of Hollerway's motion as an objection would not have required the district judge to exercise his discretion to reject the magistrate judge's recommendation.