

**United States Court of Appeals**  
**For the Eighth Circuit**

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No. 12-1809

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United States of America

*Plaintiff - Appellee*

v.

Kristin L. Dougherty

*Movant - Appellant*

Real Property located at Parcel No. 71-17A Estate Fish Bay, No. 8 Reef Bay  
Quarter, St. John, U.S. Virgin Islands, PWD No. D9-7414-T004, along with all its  
buildings, appurtenances, and improvements

*Defendant*

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Appeal from United States District Court  
for the Western District of Missouri - Kansas City

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Submitted: August 30, 2012

Filed: September 10, 2012

[Unpublished]

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Before WOLLMAN, MELLOY, and SHEPHERD, Circuit Judges.

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PER CURIAM.

In this civil forfeiture action, after claimant Kristin Dougherty filed a Federal Rule of Civil Procedure 12 motion to dismiss, the district court<sup>1</sup> granted the government's motion for voluntary dismissal without prejudice, and later denied Dougherty's motion for costs, his motion to amend the dismissal to be with prejudice, and his motions for reconsideration. Dougherty appeals, and we affirm.

First, because Dougherty had not yet filed an answer or summary judgment motion at the time that the government sought its voluntary dismissal, the dismissal operated as one under Federal Rule of Civil Procedure 41(a)(1)(A)(i) (dismissal by notice of plaintiff). Thus, the dismissal did not require a court order, and the court lacked discretion to dismiss the action with prejudice. See Fed. R. Civ. P. 41(a)(1)(B). Second, Dougherty was not a substantially prevailing party for purposes of the fee-shifting provision in 28 U.S.C. § 2465(b)(1)(A), because, among other reasons, a Rule 41(a)(1)(A)(i) voluntary dismissal without prejudice leaves the government free to refile against the property at issue. Accordingly, we affirm the district court's orders denying costs, declining to amend the judgment to be with prejudice, and denying reconsideration. See 8th Cir. R. 47B.

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<sup>1</sup>The Honorable Gary A. Fenner, United States District Judge for the Western District of Missouri.