

NOT FOR PUBLICATION

FILED

UNITED STATES COURT OF APPEALS

OCT 24 2022

FOR THE NINTH CIRCUIT

MOLLY C. DWYER, CLERK  
U.S. COURT OF APPEALS

CHRISTOPHER PYLE,

Plaintiff-Appellant,

v.

CITY OF REDONDO BEACH POLICE  
DEPARTMENT, a California Public Entity;  
et al.,

Defendants-Appellees.

No. 21-56318

D.C. No.

2:19-cv-09433-ODW-FFM

MEMORANDUM\*

Appeal from the United States District Court  
for the Central District of California  
Otis D. Wright II, District Judge, Presiding

Submitted October 18, 2022\*\*  
Pasadena, California

Before: HIGGINSON,\*\*\* CHRISTEN, and BUMATAY, Circuit Judges.

Christopher Pyle appeals the district court's order and judgment dismissing

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\* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

\*\* The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

\*\*\* The Honorable Stephen A. Higginson, United States Circuit Judge for the U.S. Court of Appeals for the Fifth Circuit, sitting by designation.

his complaint for failure to prosecute under Rule 41(b) of the Federal Rules of Civil Procedure. Pyle also moves for remand to the district court. We have jurisdiction under 28 U.S.C. § 1291 and, for the following reasons, we deny the motion to remand and affirm the district court's judgment.

Pyle sued the City of Redondo Beach Police Department (RBPD), two named RBPD officers, and various Doe defendants, alleging that the officers injured him by using excessive force against him during an encounter in Redondo Beach, California. On October 8, 2021, RBPD and the named officers filed a Rule 41(b) motion to dismiss Pyle's complaint for failure to prosecute, citing various discovery derelictions and contending that Pyle had failed to prosecute or otherwise participate in the litigation. The motion was set for hearing on November 15, 2021. Under local rules, Pyle's opposition to the motion was due on October 25, 2021. C.D. Cal. R. 7-9. Pyle filed no opposition or response to the motion, and on October 26, the moving defendants filed a notice of Pyle's failure to oppose.

Then, on November 2, 2021, defendants filed a motion to continue the case deadlines for substantive motions, including motions for summary judgment. Defendants explained that their summary-judgment deadline fell before the hearing date of their pending motion to dismiss and that they sought to "retain their right to file a motion for summary judgment if the motion to dismiss [were] denied."

On November 3, 2021, the court granted defendants' unopposed Rule 41(b) motion to dismiss and denied the motion to continue as moot. Final judgment dismissing Pyle's case without prejudice issued the following day. On appeal, Pyle argues that the district court abused its discretion when it granted defendants' motion to dismiss.

1. We review a district court's grant of a Rule 41(b) motion to dismiss for failure to prosecute for abuse of discretion. *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 650 (9th Cir. 1991). Before granting a Rule 41(b) motion, the district court must consider five factors: "(1) the public's interest in expeditious resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to defendants/respondents; (4) the availability of less drastic alternatives; and (5) the public policy favoring disposition of cases on their merits." *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

2. On appeal, Pyle does not argue that these 41(b) criteria weighed against dismissal, nor does he otherwise take issue with the substance of the district court's order. Pyle instead contends that, rather than rule on the motion to dismiss, the district court should have granted defendants' motion to continue, which he characterizes as a motion to continue the hearing date of the motion to dismiss. Specifically, Pyle represents that RBPD and the named officers moved for a two-month continuance of their motion's November 15 hearing date, which would have

in turn extended Pyle's time to file an opposition to the motion. Pyle argues that it was error for the court to grant the motion to dismiss, rather than grant the also-pending motion to continue the hearing date and defer its ruling until the extended deadline.

But defendants filed no such motion. As described above, defendants in their motion to continue sought to extend their substantive motions deadline until after resolution of their pending motion to dismiss. They did not, as Pyle contends, file a self-defeating motion to continue the hearing date of their motion to dismiss, thereby giving Pyle more time to oppose their motion. Pyle's repeated assertions to the contrary are inaccurate. Tellingly, Pyle failed to file a reply brief and hence has not contested appellees' representation that they did not file a motion to continue the hearing date. Pyle's mischaracterization of the record does not warrant reversal of the district court's order and judgment.

3. To the extent that Pyle argues that the district court should have waited until the November 15 hearing date before ruling on the motion to dismiss, this argument too lacks merit. Pyle's opposition deadline expired nine days before the district court ruled on the motion to dismiss. Under the Local Rules for the Central District of California, the district court "may decline to consider any memorandum or other document not filed within the deadline set by . . . local rule." C.D. Cal. R. 7-12. Moreover, a party's "failure to file any required document . . . within the

deadline, may be deemed consent to the granting . . . of the motion.” *Id.*

Accordingly, that the court granted defendants’ motion before the hearing date is of no moment for Pyle, whose opportunity to oppose the motion had long since expired. The district court therefore did not abuse its discretion in considering the motion to dismiss unopposed and granting it before the hearing date. *See Ghazali v. Moran*, 46 F.3d 52, 54 (9th Cir. 1995) (affirming the district court’s grant of defendants’ motion to dismiss following plaintiff’s failure to file an opposition by the deadline set by local rules).

4. Nor does Pyle’s belated explanation of his inactivity warrant reversal of the district court. Pyle attaches to his appellate brief a declaration by his counsel, attesting that the reason she did not file an opposition to defendants’ motion to dismiss was because she was experiencing unexpected health issues at the time. *See Decl.* ¶ 2. But Pyle did not raise this issue before the district court, by affidavit or otherwise, before filing this appeal. Pyle’s argument regarding his counsel’s incapacity is therefore not properly before this court. *See In re Mercury Interactive Corp. Sec. Litig.*, 618 F.3d 988, 992 (9th Cir. 2010) (“Although no bright line rule exists to determine whether a matter [h]as been properly raised below, an issue will generally be deemed waived on appeal if the argument was not raised sufficiently for the trial court to rule on it.” (internal quotation marks omitted)). And even if it were, it is unavailing. Pyle does not attempt to explain

how or why his counsel's health issues prevented her entirely from communicating with her co-counsel, opposing counsel, or the court, about the need for a continuance of Pyle's opposition deadline.

5. Finally, while Pyle does not challenge the district court's assessment of the five 41(b) factors, we find no error in this regard. The district court fairly concluded that, given Pyle's failure to participate in the litigation, the 41(b) factors—particularly those concerning the public interest in expediency and judicial economy—favored granting the defendants' motion. Considering the record as a whole, and faced with no specific arguments from Pyle on this front, we do not find that the district court abused its discretion in finding that the circumstances favored dismissal. *See Pagtalunan*, 291 F.3d at 643 (finding no abuse of discretion where the first three 41(b) factors favored dismissal, and the other two factors weighed against dismissal). The district court did not abuse its discretion in granting the defendants' motion to dismiss for failure to prosecute.

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6. On October 13, 2022, Pyle filed a motion in the district court asking the court to entertain a Rule 60(b) motion for relief from the judgment, on the basis of his counsel's health problems. The district court docketed a minute entry setting the motion for hearing. Because the district court is without jurisdiction to rule on such a motion absent a remand from this court, *Scott v. Younger*, 739 F.2d 1464,

1466 (9th Cir. 1984)), Pyle has now moved for remand to the district court. The motion is denied. Pyle waited over five months after filing his opening appellate brief to initiate 60(b) briefing in the district court, and he sought remand from this court on the very day his appeal was submitted for decision. Pyle offers no explanation for this delay, and his belated motions duplicate, nearly verbatim, sections of his appellate brief. Because briefing on appeal has long since ended, because the appeal is otherwise ready for disposition, and because counsel's inactivity is the subject of this appeal, the court denies Pyle's request to remand to the district court. Jurisdiction to consider a post-judgment motion will be restored in the district court once mandate has issued from this court. *Gould v. Mut. Life Ins. Co. of N.Y.*, 790 F.2d 769, 773 (9th Cir. 1986) (citing *Standard Oil Co. of Cal. v. United States*, 429 U.S. 17 (1976)).

The order and judgment of the district court are **AFFIRMED**. Pyle's motion to remand is **DENIED**.