

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

LARRY DEAN JENT,
Appellant,
v.
NORTHERN TRUST COMPANY,
Appellee,

No. 2:14-cv-01033 KJM

ORDER

In re: LARRY DEAN JENT,
Debtor.

On September 15, 2014, the Clerk of the Bankruptcy Court notified this court that the record on appeal was incomplete in that it did not include a designation of record, statement of issues, reporter’s transcript or notice regarding the transcript. Notice, ECF No. 3.

On October 2, 2014, this court directed appellant to show cause why the appeal should not be dismissed as the result of his failure to pursue it. Order, ECF No. 4. Appellant has not responded to the order.

Before this court can dismiss the appeal for appellant’s failure to prosecute, it must weigh five factors: “(1) the public's interest in expeditious resolution of litigation; (2) the court's

1 need to manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy
2 favoring the disposition of cases on their merits; and (5) the availability of less drastic sanctions.”
3 *Moneymaker v. CoBen (In re Eisen)*, 31 F.3d 1447, 1451 (9th Cir. 1994).

4 Although the appeal has not been pending long, appellant has taken no steps to
5 proceed and has not responded to the court’s order asking for an explanation. His complete
6 failure to act suggests the case will not be pursued expeditiously. Appellant’s inaction also
7 implicates this court’s ability to manage its docket, because the court will be required to issue
8 additional administrative orders and periodically check on the status, if any, of appellant’s efforts.

9 The court does not perceive any prejudice to appellee from appellant’s failure to
10 act, but “the failure to prosecute diligently is sufficient by itself to justify a dismissal, even in the
11 absence of a showing of actual prejudice to the defendant from the failure The law presumes
12 injury from unreasonable delay.” *In re Eisen*, 31 F.3d at 1452-53 (quoting *Anderson v. Air West,*
13 *Inc.*, 542 F.2d 522, 524 (9th Cir. 1976)). Appellant has not responded to the order to show cause
14 and so has not rebutted the presumed prejudice from his delay.

15 “Although there is indeed a policy favoring disposition on the merits, it is the
16 responsibility of the moving party to move towards that disposition at a reasonable pace, and to
17 refrain from dilatory and evasive tactics.” *Morris v. Morgan Stanley & Co.*, 942 F.2d 648, 652
18 (9th Cir. 1991); *Montague v. Perez*, No. CV 13–1677–GHK(CW), 2014 WL 6841694, at *2
19 (C.D. Cal. Dec. 2, 2014). Accordingly, the policy favoring resolution of litigation on the merits
20 does not outweigh appellant’s failure to take the necessary steps to pursue his appeal.

21 Finally, the court has considered and rejected other sanctions. Appellant has done
22 nothing since he filed the notice of appeal and has ignored this court’s order, warning him of the
23 possibility of dismissal. This factor, in combination with the others considered, favors dismissal.

24 IT IS THEREFORE ORDERED that this appeal is dismissed and the case is
25 closed.

26 DATED: December 16, 2014.

27 
28 UNITED STATES DISTRICT JUDGE