

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Robert E. Blackburn**

Civil Case No. 10-cv-01522-REB-MEH

DAVID ROTHE,

Plaintiff,

v.

NATIONAL CITY BANK,

Defendant.

**ORDER ADOPTING RECOMMENDATION OF THE
UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is matter before me on the **Recommendation To Dismiss For Failure To Prosecute** [#29]¹ filed November 16, 2010. The magistrate judge recommends that this case be dismissed based on the plaintiff's failure to prosecute. No objections to the recommendation have been filed and, therefore, I review it only for plain error. *See Morales-Fernandez v. Immigration & Naturalization Service*, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding no error, much less plain error, in the magistrate judge's recommended disposition, I find and conclude that the recommendation should be approved and adopted.

I summarize briefly the history of this case as detailed in the recommendation and otherwise in the record. The plaintiff initiated this action on June 28, 2010. With

¹ “[#29]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's case management and electronic case filing system (CM/ECF). I use this convention throughout this order.

² This standard pertains even though plaintiff is proceeding *pro se* in this matter. *Morales-Fernandez*, 418 F.3d at 1122.

his complaint, the plaintiff filed petitions for **Petition For Temporary Restraining Order** [#2] and **Petition For Temporary Injunction** [#3]. On June 30, 2010, the Magistrate Judge recommended that the motion for temporary restraining order be denied for plaintiff's failure to demonstrate irreparable harm. *See Recommendation on Petition For Temporary Restraining Order* [#8]. The plaintiff has not provided to defense counsel the information necessary for the completion of a proposed scheduling order, even though he was directed to do so by the magistrate judge. The plaintiff failed to file a response to the pending motion to dismiss [#20], and he failed to respond to the court's order to show cause [#28] directing him to show cause why this case should not be dismissed for plaintiff's failure to prosecute. In short, dismissal of this case under FED. R. CIV. P. 41(b), based on the plaintiff's failure to prosecute, is appropriate. I concur with the magistrate judge's recommendation that this case be dismissed with prejudice as a sanction for the plaintiff's failure to comply with the applicable rules and the orders of this court, and for the plaintiff's failure to prosecute this case.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation on Petition For Temporary Restraining Order** [#8] filed June 30, 2010, is **APPROVED AND ADOPTED** as an order of this court;
2. That the **Recommendation To Dismiss For Failure To Prosecute** [#29] filed November 16, 2010, is **APPROVED AND ADOPTED** as an order of this court;
3. That the plaintiff's **Petition For Temporary Restraining Order** [#2] filed June 28, 2010, is **DENIED**;
4. That under FED. R. CIV. P. 41(b), this action is **DISMISSED WITH**

PREJUDICE based on the plaintiff's failure to prosecute this action;

5. That all pending motions, including [#3], and [#20] are **DENIED** as moot;

6. That **JUDGMENT SHALL ENTER** in favor of the defendant, National City Bank, against the plaintiff, David Rothe; and

7. That the defendant is **AWARDED** its costs to be taxed by the Clerk of the Court under FED. R. CIV. P. 54(d)(1) and D.C.COLO.LCivR 54.1.

Dated January 5, 2011, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge