

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

Civil Case No. 11-cv-02697-REB-KMT

THERESA L. DOWLING,

Plaintiff,

v.

BLACK AND McDONALD/CUSTOM LIGHTING SERVICES,

Defendant.

**ORDER OVERRULING OBJECTIONS TO AND ADOPTING
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Blackburn, J.

This matter is before me on the **Recommendation of United States Magistrate Judge** [#84]¹ filed August 2, 2012. I adopt the recommendation and dismiss this lawsuit with prejudice as a sanction for the plaintiff's failure to prosecute and failure to comply with the duly issued orders of the court.

No objections the recommendation have been filed by the parties. Therefore, I review the recommendation only for plain error. **See *Morales-Fernandez v.***

Immigration & Naturalization Service, 418 F.3d 1116, 1122 (10th Cir. 2005).² Finding

¹ “[#84]” is an example of the convention I use to identify the docket number assigned to a specific paper by the court's electronic case filing and management 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. In addition, because plaintiff is proceeding *pro se*, I have construed his pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

no error, much less plain error, I find and conclude that the recommendation of the magistrate judge should be approved and adopted.

The plaintiff is proceeding *pro se*. Thus, I have construed her pleadings more liberally and held them to a less stringent standard than formal pleadings drafted by lawyers. **See *Erickson v. Pardus***, 551 U.S. 89, 94, 127 S. Ct. 2197, 2200, 167 L.Ed.2d 1081 (2007); ***Andrews v. Heaton***, 483 F.3d 1070, 1076 (10th Cir. 2007); ***Hall v. Bellmon***, 935 F.2d 1106, 1110 (10th Cir. 1991) (citing ***Haines v. Kerner***, 404 U.S. 519, 520-21, 92 S.Ct. 594, 595-96, 30 L.Ed.2d 652 (1972)).

The recommendation is detailed and well-reasoned. The magistrate judge details the plaintiff's repeated and unexcused failures to communicate with opposing counsel, participate in the orderly development of the case, and timely respond to orders duly issued by the court. She appropriately considered the relevant factors that inform the decision whether to dismiss a case with prejudice as a sanction for such habitual failures. **See *Ehrenhaus v. Reynolds***, 965 F.2d 916, 921 (10th Cir. 1992). Given the history of this case, I concur with the magistrate that no sanction short of a dismissal with prejudice will be efficacious to prevent further abuses by the plaintiff in the future.

Therefore, I find and conclude that the arguments advanced, authorities cited, and findings of fact, conclusions of law, and recommendation proposed by the magistrate judge should be approved and adopted.

THEREFORE, IT IS ORDERED as follows:

1. That the **Recommendation of United States Magistrate Judge** [#84] filed August 2, 2012, is **APPROVED AND ADOPTED** as an order of this court;
2. That claims of the plaintiff are **DISMISSED WITH PREJUDICE** as a sanction

for the unexcused failure to prosecute and failure to comply with the orders of the court;

3. That the **Defendant's Motion for Leave To File Surreply To Plaintiff's Unopposed Amended Response To the Order To Show Cause** [#82] filed July 25, 2012, is **DENIED** as moot;

4. That judgment **SHALL ENTER** in favor of the defendant, Black and McDonald / Custom Lighting Services, against the plaintiff, Theresa L. Dowling, on all claims for relief and causes of action asserted in this case;

5. That under 28 U.S.C. § 1915(a)(3), I certify that any appeal from the recommendation [#84] and this order would not be taken in good faith and, therefore, any appeal from the recommendation and this order may not be taken *in forma pauperis*;

6. That if the plaintiff files a notice of appeal, she must pay the full \$455.00 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit; and

7. That 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 February 25, 2013, at Denver, Colorado.

BY THE COURT:



Robert E. Blackburn
United States District Judge