Adams v. Nankervis
902 F.2d 1578 (Table)
C.A.9 (Alaska),1990.
May 10, 1990
902 F.2d 1578 (Table), 1990 WL 61990 (9th Cir.(Alaska))
Unpublished Disposition
NOTICE: THIS IS AN UNPUBLISHED OPINION.

(The Court's decision is referenced in a "Table of Decisions Without Reported Opinions" appearing in the Federal Reporter. Use FI CTA9 Rule 36-3 for rules regarding the citation of unpublished opinions.)

United States Court of Appeals, Ninth Circuit.
Willie ADAMS, Plaintiff-Appellant,
v.
Officer NANKERVIS; Officer Ekker; Officer Hansen; Officer Coronell; Michael Todd; Randy March, Captain, Defendants-Appellees.
No. 89-35511.
Submitted May 8, 1990. [FN*]
Decided May 10, 1990.

Appeal from the United States District Court for the District of Alaska; Senior District Judge James A. von der Heydt, Presiding.
D.Alaska
AFFIRMED.

Before EUGENE A. WRIGHT, POOLE and BRUNETTI, Circuit Judges.

MEMORANDUM [FN**]

*1 We must decide whether dismissal of the pro se appellant's cause of action was proper under Federal Rules of Civil Procedure 11, 26(g), and 37(b). We affirm the dismissal and award costs and attorney fees to the appellees.

FACTS

Willie Adams, a pro se litigant, brought a § 1983 civil rights action against several members of the Juneau police department and Michael Todd. He alleged that defendants conspired to deprive him of his civil rights. He also alleged that the defendants ambushed, tortured, kidnapped, took hostage of, and enslaved him. He sought injunctions and 20 million dollars in unspecified damages from each named defendant.

Throughout the litigation, the plaintiff served the court and parties with pleadings, moving papers and other documents that contained abusive, foul, and threatening language. His answers to interrogatories were evasive and made incoherent references to government officials and international figures.

The defendants moved to strike the responses and for an order to show cause why plaintiff should not be held in contempt for attempting to evade discovery. Plaintiff was ordered to show cause why he should not be held in contempt of court for abusing the judicial process. The court warned him that his misconduct could result in imposition of sanctions including dismissal of his action.

Plaintiff continued his abusive conduct. He filed a "Writ of Habaus (sic) Corpus to Challenge this Court for Cause" in response to the Court's order. The district court found "[p]laintiff's response to the order to show cause evidences continued abuse of the judicial process in direct disregard for and disobedience to the court's order." Memorandum and Order of Dismissal. The court ordered plaintiff's cause dismissed

with prejudice in its entirety under Federal Rules of Civil Procedure 11, 26(g), and 37(b).

DISCUSSION

We review for abuse of discretion dismissals under Federal Rules of Civil Procedure 26 and 37. *Nilson, Robbin v. Louisiana Hydroelec.,* 854 F.2d 1538, 1546 (9th Cir.1988) (reviewing imposition of discovery sanctions). Our review of orders imposing sanctions under Rule 11 follows these guidelines: facts relied upon by the district court to establish a violation of the rule are reviewed under the clearly erroneous standard, the legal conclusion that the facts constitute a violation of the rule is reviewed de novo, and the appropriateness of the sanction imposed is reviewed for an abuse of discretion. *King v. Idaho Funeral Service Association,* 862 F.2d 744, 747 (9th Cir.1988). We consider first the discovery abuses.

Rule 26(g) is designed to curb discovery abuse by imposing an affirmative duty to engage in pretrial discovery in a responsible manner. The rule encourages imposition of sanctions for violations. Fed.R.Civ.P. 26(g), advisory committee notes. Rule 26(g) provides that a party signing a request, response, or objection certify that it is "not interposed for any improper purpose, such as to harass or cause unnecessary delay." Fed.R.Civ.P. 26(g). Whether discovery is reasonable is a matter for the trial court to decide using an objective standard and based on the totality of circumstances. *Id.,* advisory committee notes.

**2* Rule 11 provides similar encouragement for imposing sanctions for abuses in pleadings, motions, and other papers. The commentary to Rule 11 indicates that:

> Greater attention by the district courts to pleadings and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics ... [S]candalous or indecent matter, which is itself strong indication that an improperpurpose underlies the pleading, motion, or other paper ... [are] may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

Fed.R.Civ.P. 11, advisory committee notes.

Finally, Rule 37(b)(2) directs the court to impose sanctions where a party fails to comply with a court order. If a party fails to obey a court order, the court may make an order "striking out pleadings or parts thereof ... or dismissing the action or proceeding or any part thereof." Fed.R.Civ.P. 37(b)(2).

The district court did not abuse its discretion in dismissing the plaintiff's case under any of these rules. The plaintiff's harassing and menacing answers were irresponsible and violated Rule 26(g). [FN1] The inflammatory and indecent language in almost every pleading, motion, and paper filed by the plaintiff violate Rule 11's ban on abusive tactics. [FN2] Finally, the appellant disobeyed a court order to show cause by filing a "Writ of Habaus (sic) Corpus to Challenge this Court for Cause" in violation of Rule 37(b). [FN3] The sanction of dismissal is available under all three rules and, in this case, appropriate.

We recognize that pro se litigants, especially prisoners, must be given special solicitude. Although we hold a pro se litigant's pleadings to a less stringent standard than we do formal pleadings drafted by a lawyer, *Haines v. Kerner,* 404 U.S. 519, 520, *rehearing denied,* 405 U.S. 948 (1972), no court need tolerate the use of obscene, indecent, and scandalous pleadings. *See, e.g., McDonald v. Head Criminal Court Supervisor Officer,* 850 F.2d 121 (2d Cir.1988). Although dismissal was a drastic sanction, it was certainly appropriate. [FN4]

The appellees seek costs and attorney fees incurred in defending this appeal because of its frivolous nature. We may award them under Federal Rules of Appellate Procedure 38 and 39. Although we are reluctant to assess attorney fees and costs against a pro se litigant, the facts of this case require such an award. *See Wood v. McEwen,* 644 F.2d 797, 802 (9th Cir.1981), *cert. denied,* 455 U.S. 942 (1982).

A reasonable pro se litigant, under similar circumstances, would have recognized the need to refute the grounds for the district court's dismissal. *See* *Patterson v. Aiken,* 841 F.2d 386, 387 (11th Cir.1988). This appellant never argued that the court's dismissal was wrong. Instead, he merely reiterated the merits of his case. The appellant did not address his abusive conduct, the grounds for the district court's dismissal. While we give pro se litigants special consideration, "pro se filings do not serve as an impenetrable shield, for one acting pro se has no license to harass others, clog the judicial machinery with meritless litigation, and abuse already over-loaded court dockets." *Id.* at 387 (citation omitted). This appeal was frivolous and we award attorney fees and costs to the appellees in an amount to be fixed by the district court.

**3* AFFIRMED.

FN* The panel unanimously finds this case suitable for submission without oral argument. Fed.R.App.P. 34(a); Ninth Circuit Rule 34-4.

FN** This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

FN1. Appellant answered that Ronald Reagan, Mikhail Gorbachev and Yassar Arafat, among others, had knowledge of his case. He also indicated that the United Nations General Assembly and the United States Supreme Court both claim to have heard him make statements pertaining to his case.

FN2. For example, in his brief in support of his "motion to show cause of actions", the appellant queried "Where does this court get off threatening to hold me in contempt ... This court is itself in contempt...." *See* attachments to ER 21.

FN3. In his "Writ of Habaus (sic) Corpus to Challenge this Court for Cause" the plaintiff explained his answers: "The plaintiff has in fact written to leaders all over the world, so that they may very well shoot you white dogs like you should have been done the day you were born." He also

indicated that "the plaintiff has been wanting to dump the beggar blood sucking United States and become a citizen of another country since the day he was born." *See* attachments to ER 21. Pursuant to this last statement, he filed a "Norice (sic) of Intent to Denounce Citizenship" elaborating that he wished to expose "the corrupt and diseased mentality of the American anglican ... to the world, so that they can double team up on your kidnapper ass and extinct you from the face of the otherwise decent, earth." *See* Record at Doc. 49.

FN4. Because we find that the district court did not abuse its discretion in dismissing the appellant's cause of action, we need not address the appellant's arguments as to the merits of his case.

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