UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

MICHAEL CLARK,

Plaintiff,

v.

OFFICER GUERRERO,

Defendant.

2:09-CV-141 JCM (PAL)

ORDER

Presently before the court is plaintiff's motion seeking reconsideration of this court's dismissal order. (Doc. #97). Defendants have not filed a response.

On December 30, 2011, pursuant to Local Rule 41-1, this court dismissed the case due to plaintiff's failure to prosecute his case for over 270 days. However, plaintiff has now brought to the court's attention that he filed a motion to set trial in this matter on December 21, 2011, the final day before the case became subject to dismissal. Accordingly, this court should not have dismissed the motion pursuant to Local Rule 41-1.

The court notes that the docket in this case reflects that the parties engaged in very little pretrial motion practice. The court's docket does not reflect any discovery having taken place. Further, the plaintiff had failed to file any documents in this action for nearly a year. It was not until the very last day before this case was to be decided that plaintiff requested a trial be calendared. Taken together, these facts make it unlikely that this case is prepared for trial. Under these conditions, the court finds that plaintiff's motion for trial may actually be an attempt to establish an intent to prosecute the case before the Rule 41-1 deadline expired.

James C. Mahan
U.S. District Judge

While this court should not have dismissed the action due to Local Rule 41-1, it is equally inappropriate to set a case for trial where the plaintiff has failed to properly prepare the case.

Therefore,

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that plaintiff's motion seeking reconsideration (doc. #97) be, and the same hereby is, GRANTED.

IT IS THEREFORE ORDERED that this court's previous order dismissing the case (doc. #96) be, and the same hereby is, VACATED and the case re-opened.

IT IS FURTHER ORDERED that the defendants file any opposition to plaintiff's motion for trial (doc. #95) by Friday, April 27, 2012.

DATED April 13, 2012.

James C. Mahan

UNITED STATES DISTRICT JUDGE