

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  
DISTRICT OF NEVADA

DERICK BISHOP,  
  
Plaintiff,  
  
v.  
  
SEAN ALEXANDER, et al.,  
  
Defendants.

Case No. 3:18-cv-00030-MMD-CBC  
ORDER

This is a pro se civil rights action filed pursuant to 42 U.S.C. § 1983 by a former state prisoner. On December 3, 2018, this Court issued an order denying Plaintiff's application to proceed in forma pauperis as a prisoner as moot because Plaintiff was no longer incarcerated. (ECF No. 6.) The Court ordered Plaintiff to file a fully complete application to proceed in forma pauperis for non-prisoners or pay the full filing fee of \$400.00 within thirty days from the date of that order. (Id.) The thirty-day period has now expired, and Plaintiff has not filed an application to proceed in forma pauperis for non-prisoners, paid the full filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and "[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal" of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party's failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53-54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260-61 (9th Cir. 1992) (affirming dismissal for failure to comply with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court apprised of address);

1 Malone v. U.S. Postal Service, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for  
2 failure to comply with court order); Henderson v. Duncan, 779 F.2d 1421, 1424 (9th Cir.  
3 1986) (affirming dismissal for lack of prosecution and failure to comply with local rules).

4 In determining whether to dismiss an action for lack of prosecution, failure to obey  
5 a court order, or failure to comply with local rules, the court must consider several factors:  
6 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to  
7 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring  
8 disposition of cases on their merits; and (5) the availability of less drastic alternatives.  
9 See Thompson, 782 F.2d at 831; Henderson, 779 F.2d at 1423-24; Malone, 833 F.2d at  
10 130; Ferdik, 963 F.2d at 1260-61; Ghazali, 46 F.3d at 53.

11 Here, the Court finds that the first two factors, the public's interest in expeditiously  
12 resolving this litigation and the Court's interest in managing the docket, weigh in favor of  
13 dismissal. The third factor, risk of prejudice to Defendants, also weighs in favor of  
14 dismissal, since a presumption of injury arises from the occurrence of unreasonable delay  
15 in filing a pleading ordered by the court or prosecuting an action. See Anderson v. Air  
16 West, 542 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring  
17 disposition of cases on their merits—is greatly outweighed by the factors weighing in favor  
18 of dismissal discussed herein. Finally, a court's warning to a party that his failure to obey  
19 the court's order will result in dismissal satisfies the "consideration of alternatives"  
20 requirement. Ferdik, 963 F.2d at 1262; Malone, 833 F.2d at 132-33; Henderson, 779 F.2d  
21 at 1424. The Court's order requiring Plaintiff to file an application to proceed in forma  
22 pauperis for non-prisoners or pay the full filing fee within thirty days expressly stated: "IT  
23 IS FURTHER ORDERED that, if Plaintiff fails to timely comply with this order, the Court  
24 shall dismiss this case without prejudice." (ECF No. 6 at 2.) Thus, Plaintiff had adequate  
25 warning that dismissal would result from his noncompliance with the Court's order to file  
26 an application to proceed in forma pauperis for non-prisoners or pay the full filing fee  
27 within thirty days.


28 It is therefore ordered that this action is dismissed without prejudice based on

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

Plaintiff's failure to file an application to proceed in forma pauperis for non-prisoners or pay the full filing fee in compliance with this Court's December 3, 2018, order.

The Clerk of Court is directed to enter judgment accordingly and close this case.

DATED THIS 11<sup>th</sup> day of January 2019.

  
\_\_\_\_\_  
MIRANDA M. DU  
UNITED STATES DISTRICT JUDGE