

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 01-13664
Non-Argument Calendar

D.C. Docket No. 99-14027-CV-DLG

<p>FILED U.S. COURT OF APPEALS ELEVENTH CIRCUIT</p> <p>OCT 16 2002</p> <p>THOMAS K. KAHN CLERK</p>
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MARCELLUS M. MASON, JR.,

Plaintiff-Appellant,

versus

HEARTLAND LIBRARY COOPERATIVE, et al.

Defendants-Appellees.

Appeal from the United States District Court for the
Southern District of Florida

(October 16, 2002)

Before BIRCH, BLACK, and MARCUS, Circuit Judges.

PER CURIAM:

Marcellus Mason, proceeding pro se, appeals the district court's dismissal of his fourth amended complaint against Heartland Library Cooperative ("Heartland"), Highlands County Board of County Commissioners ("Highlands

County”), and Hardee County Board of County Commissioners (“Hardee County”) (collectively, “Heartland”).¹ Mason argues that the district court erred in dismissing his amended complaint for his failure to comply with the court’s orders. Because the record shows that Mason clearly disregarded the court’s orders, even when threatened with dismissal of his complaint, and a lesser sanction would not suffice, we AFFIRM.

I. BACKGROUND

Mason was terminated from his employment with Heartland which provided library services to a number of counties in Florida. Following Mason’s termination, the Sebring Public Library imposed a “no trespass” warning against him based on his alleged threats and harassing conduct against the library’s employees, volunteers, and visitors. His complaint and amended complaints were dismissed in part with prejudice and in part without prejudice subject to

¹ In his fourth amended complaint, Mason sought relief on 27 counts. R8-321-63-73. He maintained that his termination was racially motivated despite the defendants’ claims of “insubordination,” *id.* at 5, and that his behavior was “violent or confrontational.” *Id.* at 14. The magistrate judge recommended dismissal of many of the counts, including some which were previously dismissed by the district court. R11-435-1. The magistrate judge noted that “it is obvious [that Mason] does not adhere to this Court’s previous Orders directing that the Local Rules and the Federal Rules of Civil Procedure be complied with in respect to seeking amendments of his Complaint, adding causes of action or otherwise.” *Id.* at 1-2. The magistrate judge recommended that Mason be permitted to proceed on “breach of contract . . . and [42 U.S.C.] § 1983 action . . . in respect to his employment contract and employment relationship with the Defendants.” *Id.* at 4. The district judge adopted the magistrate judge’s recommendations. R11-466.

amendment. R5-192. After Mason amended his complaint and Heartland answered, Heartland moved to enjoin Mason from contacting them, their officials and employees directly via e-mail and facsimile transmissions because it interfered with their work and defied their written requests that he either cease and desist or use regular mail. R5-199. On 19 June 2000, the magistrate judge issued a discovery order prohibiting Mason from contacting the defendants or their employees “regarding any matter related to this case” and directing Mason to “correspond only with Defendants’ counsel.” R5-201-1. On 6 July 2000, Heartland renewed their motion based on Mason’s continued contact with them via e-mail and for contempt and sanctions. They alleged that Mason had indicated that he was free to contact them about anything outside of the complaint and submitted copies of 20 emails and a letter sent by Mason to employees which concerned a trespass issue alleged in his complaint. R6-234, Exs. B, C. In response, Mason admitted sending some of the e-mails but denied sending others. On 25 July 2000, the magistrate judge granted Heartland’s motion, and “prohibited Mason from contacting [Heartland or their employees] regarding any matter related to this case” or other cases in which they were named as defendants, and ordered Mason to “correspond only with [their] counsel.” R6-246-1-2. The magistrate judge denied the request for contempt and sanctions, but noted that

“any future violations” could result in sanctions “including a recommendation of dismissal with prejudice as to all claims.” Id. at 2.

Mason moved for clarification of and to rescind the magistrate judge’s order, arguing that it made it impossible for him to request public records like other Florida citizens. On 15 August 2000, the magistrate judge denied both motions, and explained in the denial of the motion for clarification that “any [further] violations of the order will result in the imposition of sanctions or dismissal with prejudice as to all plaintiff’s claims.” R7-279, 281.² The district court denied Mason’s appeal, finding that the magistrate judge’s Orders were not clearly erroneous. R10-407-2.

In March 2001, Heartland moved for sanctions in the form of dismissal of the action, alleging that Mason had knowingly violated the Orders and demonstrated an intent to continue to defy the Orders. R12-511-2, 3-5. They claimed that, during the week of 5 February 2001, Mason had demanded to view his personnel file from Highlands County’s Human Resource Director Fred Carino, a named defendant in the case. Id. at 3. They stated that, on 13 and 14 February 2001, Mason also appeared at Carino’s office and demanded to view the

² The 25 July and 15 August orders are central to this appeal, and will be referred to as “the Orders.”

billing records for Highlands County's attorney and Highlands County's liability insurance documents. Id. at 3-4. They asserted that Mason made these requests of Carino without first requesting the documents from their counsel in compliance with the magistrate judge's order and became aggressive, disruptive, and threatening with Carino. Id. at 4-5. They indicated that they had produced the documents for Mason, and attached a copy of a letter from Carino to Mason reminding Mason that he was to correspond only with their counsel. R12-511, Ex. 7 at 3. They attached a copy of an e-mail apparently sent by Mason in which he explained that he would file a criminal complaint against Carino if he was denied any requested documents and expressed his belief that the county had "waived" its rights under the Orders as a result of Carino's conversations with Mason and letter. R12-511, Ex. 7 at 1-2. Heartland also moved to compel Mason to respond to their interrogatories, in which they requested information regarding his "computers, computer Internet service providers, e-mail names and Internet Provider ("IP") addresses." R12-532-1. Mason denied Heartland's allegations, but also argued that their motion should be denied because the district court lacked jurisdiction over Florida public records and he had statutory and constitutional rights to access them. R12-526-2-3. He requested an evidentiary hearing on the motion for sanctions. R14-608.

Mason moved to vacate the Orders and argued that a Highlands County employee had violated the Orders by sending requested records directly to him. R12-509, 515. The magistrate judge denied the motions, noting that Mason had already appealed the Orders to the district court. R12-524. Mason also moved to clarify the Orders, but this motion was also denied. R12-527, 528.

On 27 March 2001, the magistrate judge ordered Mason to respond by 6 April 2001 “addressing the authenticity of all e-mails purportedly sent by him” attached to Heartlands’ motion for contempt. R14-602. In response, Mason objected that the Orders were void because the magistrate judge lacked jurisdiction or authority, and again moved to clarify the Orders. R14-632-5-6, R14-633. He did not address the authenticity of the e-mails.

On 6 April 2001, Heartland again moved for sanctions in the form of dismissal because Mason had “repeatedly personally contacted [by e-mail] supervisory employees and/or individual Defendants” in the case since the magistrate judge’s 27 March order. R14-646-3. Heartland attached copies of 11 e-mails. R14-646, Ex. 1. On 10 April 2001, the magistrate judge noted that a show cause hearing was scheduled for 9 May 2001 on Heartland’s motion for sanctions and Mason’s failure to respond, and granted Mason’s motion for an evidentiary hearing. R14-649.

On 16 April 2001, Heartland moved for a determination of the sufficiency of Mason's response to their requests for interrogatories, in which they "requested that [Mason] admit or deny whether he authored several e-mails" and "sends e-mails to [them] utilizing certain names and IP addresses," and requested an order compelling a response. R15-661-1-2, 9. Mason responded by arguing that Heartland's interrogatories requested irrelevant information, and moved to stay the show cause hearing pending a writ of mandamus to this court regarding the Orders.³ R15-662, 666. On 23 April 2001, the magistrate judge denied the motion to stay and ordered Mason to respond to Heartland's request for admissions "within eleven [] days" and warned that Mason's "failure to comply with this order will result in the imposition of sanctions including, but not limited to, dismissal of this action." R15-680.

On 7 May 2001, Mason filed a notice stating that he would be unable to attend the 9 May show cause hearing because he lacked transportation to make the 80-mile trip from his residence to the courthouse. R15-704. Although "not unsympathetic" to Mason's transportation problems, the magistrate judge noted that Mason had filed the lawsuit and was responsible for "find[ing] the means to attend the hearing." R16-707-1. The magistrate judge continued the hearing until

³ We denied Mason's petition for writ of mandamus, In re Mason, No. 01-15754.

23 May 2001, ordered Mason to show cause why his complaint should not be dismissed, and stated that “[n]o further continuances or notices of unavailability will be considered.” Id. at 2. Mason responded to the show cause order on 21 May 2001, arguing that the motion for sanctions should be denied because the Orders upon which Heartland relied were void. R17-738-3. He claimed that “[a]ny and all communications [he] may have had with the defendants and their counsel [we]re perfectly legal and well within the law” and stated that he would not participate in any show cause hearing on the motion for sanctions. Id. at 3, 12. He commented that, although the court might “now consider [Mason] in contempt of [the O]rders,” he would continue to contact Heartland “pursuant to the First Amendment . . . and not pursuant to any order of a Magistrate Judge” and would not abide by a court order “that attempts to impose conditions upon [him] to pursue public records under Florida law.” Id. at 12, 13. Mason did not appear at the hearing on 23 May 2001. R17-766-5.

On 31 May 2001, the magistrate judge recommended that Mason’s complaint be dismissed based on findings that Mason had “intentionally and continually violated” the court’s orders and had “indicated that his intention not to abide by . . . and to continue filing pleadings in total disregard of” the court’s orders. Id. at 7. After reciting the text of some of the e-mails received by

Heartland from Mason, which included “racist” comments, the magistrate judge noted that the “e-mails were a significant discovery issue which needed to be addressed before” the court would permit Heartland to access “private information from [Mason’s] e-mail providers.” *Id.* at 4. Mason objected to the magistrate judge’s report and recommendation, but the district judge adopted the magistrate judge’s recommendation, granted Heartland’s motion for sanctions in the form of dismissal, and dismissed Mason’s remaining claims with prejudice. R18-783, 791. Mason’s motion for reconsideration was denied. Mason timely appealed.⁴

On appeal, Mason argues that the magistrate’s discovery orders enjoined him without legal authority and violated his First Amendment and Florida state-law rights to petition Florida government officials and to request public records.

⁴ This appeal is actually Mason’s fifth appeal in this case. Nos. 00-10395, 00-16064, and 02-10868, were dismissed for want of prosecution and Nos. 01-11850 and 01-11903 were dismissed for lack of jurisdiction.

Following the district court’s dismissal of his case, Mason filed a series of motions seeking clarification of the orders, the dismissal, and his appeal. The district court denied these motions, finding them “without merit” and attempts “to protract the litigation.” R19-874-2. Finding that Mason was acting in bad faith, the district court subsequently enjoined Mason from filing any further pleadings in this case and the 11 other cases that he filed against the defendants relating to his employment. R19-878. The district court, *sua sponte*, set a hearing to “address proper procedure and the conduct of the parties during this litigation.” R19-884. Although the hearing was continued at Mason’s request, he failed to appear and the district court *sua sponte* issued an order finding that Mason’s letters and pleadings to the court evidenced “a mission to harass and intimidate” and notifying Mason that any “further misbehavior shall result in contempt proceedings.” R19-885, 886, 892, 895-5, 10; R19-900-7. Mason appeared after he was ordered to show cause why he should not be held in criminal contempt and warned that an arrest warrant could be issued if he failed to appear. R19-900, 905. Contempt proceedings were subsequently filed against Mason. *See United States v. Mason*, No. 02-14020 (S.D. Fla.) (contempt proceedings pending in the district court).

Mason contends that the e-mails that became the focus of the discovery dispute were irrelevant to any claim or defense in the case, and that the district court acknowledged this. Mason claims that he denied the authenticity of the e-mails, but that the magistrate judge “authenticated them anyway.” Mason argues that the magistrate judge failed to make the necessary findings that the defendants were prejudiced by the e-mails and that sanctions lesser than dismissal would suffice. Mason also raises issues that relate to non-sanction matters, e.g., the dismissal of individual defendants from the second consolidated amended complaint, the dismissal of claims from his fourth consolidated amended complaint, the denial of his motions to disqualify the district court and magistrate judges, and the merits of his complaint.

II. DISCUSSION

We review a district court’s dismissal pursuant to Federal Rule of Civil Procedure Rule 41(b) for abuse of discretion. Goforth v. Owens, 766 F.2d 1533, 1535 (11th Cir. 1985). “Courts of justice are universally acknowledged to be vested, by their very creation, with power to impose silence, respect, and decorum, in their presence, and submission to their lawful mandates.” Anderson v. Dunn, 19 U.S. (6 Wheat.) 204, 227 (1821). Although the “outright dismissal of a lawsuit . . . is a particularly severe sanction” for conduct by a litigant that abuses the

judicial process, it is within a federal court's inherent power. Chambers v. NASCO, Inc., 501 U.S. 32, 45, 111 S. Ct. 2123, 2133 (1991) (holding that district court did not abuse its discretion when it imposed sanctions under its inherent power, even though the conduct was sanctionable under the Federal Rules of Civil Procedure).

Upon motion of a defendant, a district court may dismiss a complaint based on the plaintiff's failure to comply with the court's orders or the federal rules. Fed. R. Civ. P. 41(b). Although "dismissal of an action with prejudice 'is a sanction of last resort, applicable only in extreme situations,'" Jones v. Graham, 709 F.2d 1457, 1458 (11th Cir. 1983) (per curiam) (citation omitted), a Rule 41(b) dismissal "is appropriate where there is [1] a clear record of 'willful' contempt and [2] an implicit or explicit finding that lesser sanctions would not suffice." Gratton v. Great Am. Communications, 178 F.3d 1373, 1374 (11th Cir. 1999) (per curiam). In dismissing a case under Rule 41(b), a district court may consider a "long pattern of conduct which amounted to want of prosecution and several failures by [the] plaintiff[] to obey court rules and orders." Jones, 709 F.2d at 1462. Because a Rule 41(b) "dismissal must, at a minimum, be based on evidence of willful delay[,] simple negligence does not warrant dismissal. McKelvey v. AT&T Tech., Inc., 789 F.2d 1518, 1520 (11th Cir. 1986) (per curiam). Where the

litigant has been warned that disregard of an order may lead to dismissal, we have generally not found a subsequent dismissal an abuse of discretion. Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989).

In this case, Mason repeatedly exhibited disregard and contempt for the magistrate judge's orders and the district court's authority to control the litigants before it. See R6-234 at Attachs. B, C; R11-435-1; R14-632-5; R14-652 at 1-5; R19-900-7. Moreover, the magistrate judge and district court attempted to clarify with Mason that the Orders were not injunctions, but rather necessary for the orderly litigation of the case. It is significant that the defendants continued to produce records upon Mason's request, despite his clear violation of the Orders, and reminded him to contact the defendants via their counsel. It is also significant that Mason admitted sending e-mail to former defendant Carl Cool on 14 July 2000, after the magistrate had issued the 19 June 19 2000 order, and admitted that he had requested billing records directly from Highlands County.

In recommending the dismissal with prejudice of Mason's complaint, the magistrate judge properly reviewed the entire record and identified Mason's continued disregard for the court's orders and rules. See Jones, 709 F.2d at 1462. Despite the magistrate judge's warnings that Mason was not to contact the defendants directly and that his violation of the Orders could result in the

dismissal of the action, the record shows that Mason continued to directly contact with the defendants. When the magistrate judge attempted to resolve the issue of the authenticity of the e-mails, which Mason either denied or stated had nothing to do with matters related to the complaint, Mason failed to respond to the magistrate judge's order that he respond. When the magistrate judge granted Mason's request for an evidentiary hearing to resolve the e-mail dispute, Mason did not appear and instead filed a notice that he would not appear in which he stated that he did not believe that the magistrate judge had the legal authority to conduct such a hearing. Therefore, the district court did not err when it found that Mason had shown willful contempt for the magistrate judge's orders. See Gratton, 178 F.3d at 1374.

Although the district court did not make an explicit finding that a sanction less than dismissal with prejudice would have sufficed, it is unclear what lesser sanction would have been more appropriate in this situation. It is noteworthy that the magistrate judge had been flexible in first ordering Mason to address the issue of the authenticity of the e-mails in a written response, and later granting his request to confront the defendants' witnesses at an evidentiary hearing and continuing the hearing when Mason indicated that he could not attend. The magistrate judge warned Mason on several occasions that a failure to comply with the court's orders could result in the dismissal of his case. Moreover, despite the

closure of the case by the district court, Mason's continual filing of motions with the court addressing matters previously settled prompted the district court to prohibit Mason from further filings without explicit permission and initiate criminal contempt proceedings. Therefore, the record supports the district court's implicit finding that a sanction less than dismissal of the action with prejudice would have had no effect. See Gratton, 178 F.3d at 1374.

In sum, the district court properly exercised its discretion under Rule 41(b) to impose respect and submission to its lawful orders. See Chambers, 501 U.S. at 45, 111 S. Ct. at 2133; Anderson, 19 U.S. at 227. Because the record: (1) shows a clear record of disregard for court orders by Mason, even when threatened with the prospect of dismissal; and (2) supports an implicit finding that a lesser sanction would not have sufficed, the district court did not abuse its discretion in dismissing Mason's action with prejudice pursuant to Rule 41(b). See Gratton, 178 F.3d at 1374; Moon, 863 F.2d at 837.

III. CONCLUSION

Upon review of the record, we find that the district court did not abuse its discretion. Therefore, we affirm the district court's dismissal of Mason's action with prejudice.

AFFIRMED.