

# APPENDIX A

## UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

Everett McKinley Dirksen United States Courthouse  
Room 2722 - 219 S. Dearborn Street  
Chicago, Illinois 60604



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## FINAL JUDGMENT

March 5, 2020

Before: DIANE S. SYKES, Circuit Judge  
DAVID F. HAMILTON, Circuit Judge  
MICHAEL Y. SCUDDER, Circuit Judge

No. 19-3075	MIKHAIL TSUKERMAN, Plaintiff - Appellant  v.  WESTERN COMMUNITY UNIT SCHOOL DISTRICT NO. 12, Defendant - Appellee
<b>Originating Case Information:</b>	
District Court No: 3:16-cv-03214-SEM-TSH Central District of Illinois District Judge Sue E. Myerscough	

The judgment of the District Court is **AFFIRMED**, with costs, in accordance with the decision of this court entered on this date.

form name: c7\_FinalJudgment(form ID: 132)

**NONPRECEDENTIAL DISPOSITION**  
To be cited only in accordance with Fed. R. App. P. 32.1

**United States Court of Appeals**

For the Seventh Circuit  
Chicago, Illinois 60604

Submitted March 4, 2020\*

Decided March 5, 2020

Before

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-3075

MIKHAIL S. TSUKERMAN  
*Plaintiff-Appellant,*

*v.*

WESTERN COMMUNITY UNIT  
SCHOOL DISTRICT NO. 12  
*Defendant-Appellee.*

Appeal from the United States District  
Court for the Central District of Illinois.

No. 16-3214

Sue M. Myerscough,  
*Judge.*

**ORDER**

A year after voluntarily dismissing a discrimination case against his former employer, Mikhail Tsukerman, a Jewish man in his fifties and a former high school math teacher, refiled the case. The district court stayed the proceedings until Tsukerman paid the employer's expenses from the former litigation and, when he did not pay, dismissed the case for want of prosecution. Because the court did not abuse its

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\* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

No. 19-3075

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discretion in imposing costs or dismissing the case when Tsukerman refused to pay, we affirm the judgment.

Tsukerman's tenure teaching at Western Community Unit School District lasted only two years. In his second year, he witnessed two anti-Semitic incidents. Someone carved swastikas onto the walls of his classroom, and months later a student gave a Nazi salute in his class. Western suspended the student who saluted but never caught the other offender. At the end of the school year, Western did not renew Tsukerman's contract, citing several poor evaluations for his classroom management and teaching.

Tsukerman sued Western for discrimination based on his age and religion. After discovery and briefing on Western's motion for summary judgment, Tsukerman (through counsel) voluntarily dismissed the case without prejudice under Federal Rule of Civil Procedure 41(a)(1)(A)(ii). The stipulation for dismissal expressly reserved Western's right under Rule 41(d) to recover its costs from the earlier litigation if Tsukerman refiled the case. Tsukerman's counsel also told him that, if he refiled the lawsuit (which counsel advised against), counsel's firm would not represent him and the court could stay the proceedings until Tsukerman paid Western's prior costs.

Less than a year after the dismissal, Tsukerman (now pro se) moved to reopen the case and amend his complaint. On Western's motion, the district court stayed the proceedings until Tsukerman paid Western's costs from the previous litigation. *See* FED. R. Civ. P. 41(d). Tsukerman asked the court to "waive" payment because he is indigent, but the court denied his request. After three months without payment, the court ordered Tsukerman to explain why the case should not be dismissed for want of prosecution. He responded by reiterating the merits of his claims and underscoring his "willingness, readiness and ability to prosecute this case ... once the unjust and oppressive obstacle in the form of ... \$3524 is removed." Concluding that Tsukerman was unwilling to pay and that nothing justified reconsidering the stay, the district court dismissed the case with prejudice for want of prosecution. FED. R. Civ. P. 41(b).

On appeal, Tsukerman argues that the district court was wrong to dismiss his case for want of prosecution because he is indigent and cannot afford to cover Western's expenses from the prior litigation. According to Tsukerman, courts should have to consider a plaintiff's ability to pay, along with the other factors (including their good faith and the merits of the claim) listed in *Hummel v. S.E. Rykoff*, 634 F.2d 446, 453 (9th Cir. 1980), when considering whether to require payment of costs under Rule 41(d). And Tsukerman insists that, under those factors, the district court abused its discretion

in ordering costs here because he is indigent, he brings the action in good faith, and his attorney dismissed the case without Tsukerman's permission.

Tsukerman is incorrect. We have held that "courts can bar *future* suits as a sanction to ... pay past court costs ... even if the litigant is indigent." *Gay v. Chandra*, 682 F.3d 590, 594 (7th Cir. 2012). Rule 41 specifically empowers courts to "stay the proceedings" of the new suit until the plaintiff pays the past court costs whenever a plaintiff who previously dismissed an action files another "based on or including the same claim against the same defendants." Thus, as we concluded in a case involving costs under this rule, a plaintiff's "inability to pay ... does not allow him to side-step the dictates of Rule 41." *Esposito v. Piatrowski*, 223 F.3d 497, 502 (7th Cir. 2000).

It follows that the district court did not abuse its discretion in dismissing this case for failure to pay costs. Tsukerman knew that the court would likely order costs as a condition of refiling because his counsel warned him so, and Western expressly reserved its rights under Rule 41(d) to demand costs. Furthermore, when the court gave him a chance to explain why it should not dismiss the case based on his failure to pay, Tsukerman told the court that he would prosecute the case only if the court lifted the requirement to pay costs. That signaled to the court that he had no intent to comply with the order, even though, as we have just explained, the order was valid despite his indigency. See FED. R. CIV. P. 41(b) (dismissal is proper when plaintiff fails to comply with an order); *Esposito*, 223 F.3d at 499, 501–02 (dismissal for want of prosecution when plaintiff did not pay Rule 41(d) costs).

Accordingly, the judgement of the district court is AFFIRMED.

# APPENDIX B

## UNITED STATES DISTRICT COURT

for the

Central District of Illinois

**FILED**

OCT - 2 2019

Mikhail Tsukerman,

Plaintiff,

vs.

Western Community Unit School Dist.  
 No 12, Connie Thomas, Law Firm of  
 Becker, Hoerner, Thompson, and  
 Ysursa, and Thomas Hunter,

Defendants.

CLERK OF THE COURT  
 U.S. DISTRICT COURT  
 CENTRAL DISTRICT OF ILLINOIS

Case Number: 16-3214

**JUDGMENT IN A CIVIL CASE**

☐ **JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.

☒ **DECISION BY THE COURT.** This action came before the Court, and a decision has been rendered.


**IT IS ORDERED AND ADJUDGED** that this action is dismissed with prejudice for want of prosecution.

Dated: October 1, 2019

s/ Shig Yasunaga

Shig Yasunaga

Clerk, U.S. District Court

Approved:  /s/ Sue E. Myerscough

Sue E. Myerscough

U.S. District Judge

**Other Orders/Judgments**

Appendix B

3:16-cv-03214-SEM-TSHTsukerman v. WesternCommunity Unit School Dist No12

36,39,REFER,RULE 16

CONFERENCE HELD,STAYED

U.S. District Court

**CENTRAL DISTRICT OF ILLINOIS****Notice of Electronic Filing**

The following transaction was entered on 9/30/2019 at 11:56 AM CDT and filed on 9/30/2019

**Case Name:** Tsukerman v. Western Community Unit School Dist No 12

**Case Number:** 3:16-cv-03214-SEM-TSH

**Filer:**

**WARNING: CASE CLOSED on 09/30/2019**

**Document Number:** No document attached

**Docket Text:**

**TEXT ORDER:** On May 14, 2019, the Court entered a text order staying this case pursuant to Rule 41(d) of the Federal Rules of Civil Procedure until Plaintiff pays Western Community School District No. 12 (District) \$3,524 for expenses incurred by the District in this case. Plaintiff filed a motion asking the Court to reconsider its decision to stay the case, and the Court denied the motion by text order on May 30, 2019. To the Court's knowledge, Plaintiff has not yet paid the District for any of its expenses. At the Court's direction, Plaintiff has filed a Status Report [51] in an effort to show cause as to why the Court should not dismiss this action for want of prosecution. In the Status Report, Plaintiff neither indicates his willingness to pay the District's expenses nor makes a convincing argument that the Court should reconsider its decision to stay this case until Plaintiff pays those expenses. Accordingly, this action is DISMISSED WITH PREJUDICE for want of prosecution. Any pending motions are DENIED as MOOT, any pending deadlines are TERMINATED, and any scheduled settings are VACATED. This case is CLOSED. Entered by Judge Sue E. Myerscough on 9/30/2019. (ME, ilcd)



**3:16-cv-03214-SEM-TSH Notice has been electronically mailed to:**

Garrett P Hoerner gph@bhtylaw.com, stacy@bhtylaw.com

Thomas J Hunter tjh@bhtylaw.com, LCHaider@bhtylaw.com

**3:16-cv-03214-SEM-TSH Notice has been delivered by other means to:**

Mikhail Tsukerman

5 Delcrest Ct

# 104

St. Louis, MO 63124

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**Other Events**3:16-cv-03214-SEM-TSHTsukerman v. WesternCommunity Unit School Dist No12 CASE CLOSED on09/30/2019

36,39,CLOSED,REFER,RULE 16

CONFERENCE HELD,STAYED

**U.S. District Court****CENTRAL DISTRICT OF ILLINOIS****Notice of Electronic Filing**

The following transaction was entered on 10/2/2019 at 3:43 PM CDT and filed on 10/2/2019

**Case Name:** Tsukerman v. Western Community Unit School Dist No 12

**Case Number:** 3:16-cv-03214-SEM-TSH

**Filer:**

**WARNING: CASE CLOSED on 09/30/2019**

**Document Number:** 52

**Docket Text:**

**JUDGMENT entered. (ME, ilcd)**

**3:16-cv-03214-SEM-TSH Notice has been electronically mailed to:**

Garrett P Hoerner gph@bhtylaw.com, stacy@bhtylaw.com

Thomas J Hunter tjh@bhtylaw.com, LCHaider@bhtylaw.com

**3:16-cv-03214-SEM-TSH Notice has been delivered by other means to:**

Mikhail Tsukerman

5 Delcrest Ct

# 104

St. Louis, MO 63124

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1068668610 [Date=10/2/2019] [FileNumber=3620192-0  
][487a608a4424f518a4b3dbb109bd2b282a59d53b2e6c78327f4173cba20f7530b52  
f4dde0aad5747a5198900c6f5210515d1d6b84f0dec3c25678f71551ba24d]]

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# APPENDIX C

# United States Court of Appeals

For the Seventh Circuit  
Chicago, Illinois 60604

April 13, 2020

Before

DIANE S. SYKES, *Circuit Judge*

DAVID F. HAMILTON, *Circuit Judge*

MICHAEL Y. SCUDDER, *Circuit Judge*

No. 19-3075

MIKHAIL TSUKERMAN,  
*Plaintiff-Appellant,*

*v.*

WESTERN COMMUNITY UNIT  
SCHOOL DISTRICT NO. 12, *et al.*,  
*Defendants-Appellees.*

Appeal from the United States District  
Court for the Central District of Illinois.

No. 3:16-cv-3214

Sue E. Myerscough,  
*Judge.*

## ORDER

Plaintiff-appellant filed a petition for rehearing and rehearing *en banc* on March 19, 2020. No judge in regular active service has requested a vote on the petition for rehearing *en banc*, and all members of the original panel have voted to deny panel rehearing. The petition for rehearing and rehearing *en banc* is therefore DENIED.

**Additional material  
from this filing is  
available in the  
Clerk's Office.**