

Appendix A

Opinion, U.S. 6th Circuit Court of Appeals,
Cody v. Slusher, No. 19-3680
(2020 U.S. App. LEXIS 64166)

NOT RECOMMENDED FOR PUBLICATION

No. 19-3680

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Feb 28, 2020
DEBORAH S. HUNT, Clerk

ORDER

Before: SILER, DAUGHTREY, and GIBBONS, Circuit Judges.

John Cody, an Ohio prisoner proceeding pro se, appeals the district court's judgment dismissing his 42 U.S.C. § 1983 civil rights action without prejudice for failure to prosecute. This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a).

In January 2017, Cody filed a 479-page complaint against several Richland Correctional Institution employees in their individual and official capacities. That complaint contained 12 counts, describing multiple incidents and listing several causes of action for each incident, including: retaliation; ADA violations; numerous state-law claims; and violations of his rights under the First, Fifth, Sixth, Eighth, and Fourteenth Amendment. The district court conducted a preliminary review of Cody's complaint pursuant to 28 U.S.C. § 1915(e), after which it dismissed Cody's federal claims and declined jurisdiction over his state-law claims.

Cody appealed, and we reversed the district court’s dismissal of Cody’s retaliation claims, concluding that he “adequately pleaded retaliation claims [against several defendants] through the confiscation of his property and denial of medical treatment, due to his frequent filings of grievances and lawsuits.” *Cody v. Slusher*, No 17-3764, 2018 WL 3587003, at *5 (6th Cir. Mar. 8, 2018). Because the district court prematurely dismissed Cody’s retaliation claims, we vacated the district court’s dismissal of Cody’s state-law claims to allow “the district court to reconsider whether it would accept supplemental jurisdiction over those claims” on remand. *Id.* at *6. We affirmed in all other respects. *Id.*

Upon remand, Cody filed a motion for leave to file an amended 373-page complaint. The district court denied Cody’s motion and ordered him to provide a copy of the original complaint for service on the defendants within 30 days. However, because Rule 8(a)(2) of the Federal Rules of Civil Procedure requires “[a] pleading that states a claim for relief” to “contain . . . *a short and plain statement* of the claim showing that the pleader is entitled to relief,” (emphasis added), the district court ordered Cody to amend his complaint within 14 days and instructed him that his amended complaint “must not exceed twenty pages and must not include any exhibits.” Cody subsequently moved for leave to file an 80-page complaint, but the district court denied that motion and again instructed Cody “to file a succinct complaint, no more than [twenty] pages.” The district court, however, extended the deadline for Cody to file an amended complaint to April 15, 2019. When Cody missed that deadline, the district court ordered Cody to show cause why it should not dismiss his lawsuit for his failure to prosecute. Cody responded to the show-cause order, alleging that his incarceration had prevented him from meeting the deadline for filing his amended complaint. Sympathetic to “the difficulties of litigating while in prison,” the district court allowed Cody an additional 30 days—or until June 14, 2019—to file an amended complaint, but explicitly admonished Cody that he would receive no further extensions. When Cody missed that deadline as well, the district court dismissed Cody’s lawsuit without prejudice for failure to prosecute. This appeal followed.

On appeal, Cody argues that the district court violated Rule 15(a)(1)(A) of the Federal Rules of Civil Procedure by denying his motion to file an amended complaint. He also challenges

the district court’s bases for denying his motion to file an amended complaint—that the proposed amended complaint did not comply with the requirements of Rule 8(a)(2) and impermissibly sought to resurrect previously dismissed claims. Cody further challenges the district court’s order limiting his amended complaint to no more than 20 in length. Finally, Cody argues that, by “overruling [his] motion to amend[] and in imposing its order for a 20 page long amended complaint, the district court” ignored the state-law claims that he pleaded in his proposed amended complaint.

All of Cody’s appellate arguments concern the district court’s various interlocutory orders. Generally, an “appeal from a final judgment draws into question all prior related non-final rulings and orders.” *McLaurin v. Fischer*, 768 F.2d 98, 101 (6th Cir. 1985). “In the context of dismissal for failure to prosecute, however, any rulings which preceded that action by the trial court are thus rendered moot.” *Hughley v. Eaton Corp.*, 572 F.2d 556, 557 (6th Cir. 1978).

Cody has failed to raise any argument on appeal challenging the district court’s dismissal of his lawsuit for failure to prosecute. He has therefore abandoned any such argument. *See Ford v. County of Grand Traverse*, 535 F.3d 483, 499 (6th Cir. 2008). In any event, the district court did not abuse its discretion by dismissing Cody’s lawsuit for failure to prosecute. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 633 (1962). Rule 41(b) of the Federal Rules of Civil Procedure provides for the involuntary dismissal of a complaint where the plaintiff has failed to prosecute his case or to comply with court rules or orders. When determining if dismissal for failure to prosecute was an appropriate exercise of discretion, a reviewing court should consider the following four factors: “(1) whether the party’s failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party’s conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.” *Schafer v. City of Defiance Police Dep’t*, 529 F.3d 731, 737 (6th Cir. 2008) (citation omitted).

These factors support the district court’s dismissal in this case. First, Cody’s failure to file an amended complaint that comported with the page limitation imposed by the district court was due to his own willfulness or fault. Indeed, the district court gave Cody nearly three and a half

months to file an amended complaint that did not exceed twenty pages in length, but Cody did not avail himself of that opportunity. Cody's failure in this regard displayed at the very least a "reckless disregard for the effect of his conduct on those proceedings." *Id.* (quoting *Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005)). Further, Cody's failure to file a succinct and comprehensible pleading in the years since he initiated this lawsuit would surely hinder the defendants' ability to defend against his claims, which stem from conduct that allegedly occurred several years ago.

With respect to prior notice, the district court issued an order instructing Cody to show cause why his lawsuit should not be dismissed when he missed the April 15, 2019, deadline for filing his amended complaint. The district court was sympathetic to Cody's reasons for missing the deadline and thus afforded him an extra 30 days to file his amended complaint. But in doing so, the district court warned Cody that it would "grant no further extensions." Despite that explicit warning, Cody never filed an amended complaint. Finally, although the district court had not previously imposed less drastic sanctions on Cody concerning his failure to file an amended complaint that satisfied the district court's 20 page limit, "[t]his court . . . has 'never held that a district court is without power to dismiss a complaint, as the first and only sanction . . .' and is 'loathe to require the district court to incant a litany of the available lesser sanctions.'" *Schafer*, 529 F.3d at 738 (quoting *Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368 (6th Cir. 1997)). Under the facts of this case, the district court appropriately dismissed Cody's lawsuit for failure to prosecute. Therefore, we need not review Cody's arguments concerning the district court's interlocutory orders.

Accordingly, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

Appendix B

Order denying rehearing,
U.S. 6th Circuit Court of Appeals,
Cody v. Slusher, No. 19-3680

No. 19-3680

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Apr 06, 2020
DEBORAH S. HUNT, Clerk

JOHN CODY, ALSO KNOWN AS BOBBY THOMPSON,

Plaintiff-Appellant,

v.

CORRECTIONS OFFICER KAREN SLUSHER, ET AL.,

Defendants-Appellees.

O R D E R

BEFORE: SILER, DAUGTREY, and GIBBONS, Circuit Judges.

The court received a petition for rehearing en banc. The original panel has reviewed the petition for rehearing and concludes that the issues raised in the petition were fully considered upon the original submission and decision of the case. The petition then was circulated to the full court. No judge has requested a vote on the suggestion for rehearing en banc.

Therefore, the petition is denied.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JOHN CODY,	:	
	:	Case No. 1:17-cv-132
Plaintiff,	:	
	:	
vs.	:	JUDGMENT
	:	
CORRECTIONS OFFICER KAREN	:	
SLUSHER, <i>et al.</i> ,	:	
	:	
Defendants.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

The Court has issued its opinion in the above-captioned matter. For the reasons stated in that opinion, the Court DISMISSED the case without prejudice. Accordingly, this action is terminated under Federal Rule of Civil Procedure 58.

IT IS SO ORDERED.

Dated: June 24, 2018

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JOHN CODY,	:	
Plaintiff,	:	Case No. 1:17-cv-132
vs.	:	
CORRECTIONS OFFICER KAREN	:	ORDER
SLUSHER, <i>et al.</i> ,	:	
Defendants.	:	
	:	

JAMES S. GWIN, UNITED STATES DISTRICT JUDGE:

Pro se Plaintiff John Cody filed a 168-page complaint (with 311 pages of exhibits) alleging prison abuse.¹ Because the complaint's heft made it impenetrable, the Court ordered Cody to file a streamlined complaint by March 14, 2019.² When Cody failed to do so, the Court extended the deadline to April 15th.³ After Cody missed that deadline too, the Court gave him until June 15th, cautioning that it would be his last chance.⁴

Yet, after 116 days, the nearly 500-page behemoth persists. Plaintiff Cody has repeatedly failed to file a "short and plain" statement as both Rule 8 and the Court's orders required.⁵ Accordingly, the Court DISMISSES Plaintiff's case, without prejudice, for failure

¹ Doc. 1.

² Doc. 19 ("Cody's complaint does nothing but make his claims impossible to understand.").

³ Doc. 23.

⁴ Doc. 28.

⁵ Fed. R. Civ. P. 8(a)(2) ("A pleading that states a claim for relief must contain . . . a short and plain statement of the claim showing that the pleader is entitled to relief."); *Muhammad v. Love's Travel Stops*, No. 3:18-cv-341, 2019 WL 2210770, *2 (S.D. Ohio May 22, 2019) (noting that an unduly long complaint ran afoul of Rule 8).

Case No. 1:17-cv-132

Gwin, J.

to prosecute.⁶

IT IS SO ORDERED.

Dated: June 24, 2019

s/ James S. Gwin
JAMES S. GWIN
UNITED STATES DISTRICT JUDGE

⁶ See *Link v. Wabash R.R. Co.*, 370 U.S. 626, 629–30 (1962) (Noting the inherent authority of federal trial courts to dismiss actions for failure to prosecute); *Rogers v. City of Warren*, 302 F. App'x 371, 375 (6th Cir. 2008) (Rule 41(b) “permits the court to involuntarily dismiss an action if a plaintiff fails . . . to comply with a court order”).