

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
HELENA DIVISION**

AMBER J. RICKMAN,

Plaintiff,

vs.

CANDICE OSTERMAN, et al.,

Defendants.

CV 20-23-H-DLC-JTJ

**FINDINGS AND
RECOMMENDATION**

INTRODUCTION

Plaintiff Amber J. Rickman (Rickman) has brought this lawsuit against numerous individuals and organizational defendants. Rickman alleges that the Defendants violated her constitutional rights in contravention of 42 U.S.C. § 1983 by interfering with her custody of her four minor children. Rickman is proceeding *in forma pauperis* without the assistance of counsel.

Presently before the Court are the following motions:

1. The Motion to Dismiss filed by Defendants Arcadia Montana, Jennifer Hedke, and Karen Galvin (Doc. 108);
2. The Motion to Dismiss filed by Defendant AWARE, Inc. (Doc. 110);
3. The Motion to Dismiss filed by Defendants Jake Westerhold, Deanna Lougee, Emily McVey, and Candice Osterman (Doc. 112); and
4. The Motion to Dismiss filed by Defendants AYA Youth Dynamics Group Home (AYA), and Kevin Hansen (Doc. 117).

BACKGROUND

Rickman filed this lawsuit on March 26, 2020. (Doc. 2). Defendants AWARE, Inc., Acardia Montana, and Jennifer Hedke appeared and filed motions for a more definite statement. (Docs. 19, 22). The Court granted the motions because Rickman's original Complaint did not comply with Fed. R. Civ. P. 8. (Doc. 28). The Court ordered Rickman to file an Amended Complaint that complied with Rule 8 on or before November 16, 2020. (Doc. 28 at 9).

The Court's November 16, 2020 Order gave Rickman specific instructions on how to draft an Amended Complaint that complied with Rule 8. The Court stated that the Amended Complaint must consist of short, plain statements describing: 1) the name of each Defendant who allegedly violated her rights; 2) the rights that each Defendant violated; 3) the actions of each Defendant that violated her rights; 4) the date that the actions occurred; and 5) the injuries that were suffered as a result of each Defendant's actions. (Doc. 28 at 2-3).

The Court warned Rickman that if she failed to comply with the Court's Order, the Court would recommend that all claims against Defendants AWARE, Inc., Acardia Montana, and Jennifer Hedke be dismissed. (Doc. 28 at 9). Rickman did not comply with the Court's Order.

Defendants AWARE, Inc., Arcadia Montana, and Jennifer Hedke

subsequently moved to dismiss the claims against them based on Rickman's failure to comply with the Court's Order. (Docs. 36, 39). Rickman did not respond to the motions. The Court set a hearing on the unanswered motions and warned Rickman that her claims against AWARE, Inc., Arcadia Montana, and Jennifer Hedke would be dismissed if she did not appear at the hearing. (Doc. 44). The Court also ordered Rickman to either serve the other Defendants with process or inform the Court that she needed the assistance of the United States Marshal's Service (USMS) to complete service. (Doc. 43 at 3).

On July 14, 2021, Rickman informed the Court that she needed the assistance of the USMS to serve the other Defendants. (Docs. 47, 48, 49, 50, 51, 52, 53, 54). The Court ordered the USMS to serve the other Defendants. (Doc. 56 at 2-5). The Court postponed the hearing on the pending motions to dismiss until the USMS submitted its service report. (Doc. 56 at 5).

Defendants Deanna Lougee, Emily McVey, Candice Osterman, Jake Westerhold, and Karen Galvin, AYA, and Kevin Hansen received service and filed motions for a more definite statement. (Docs. 66, 69, 81). Rickman filed responses to the motions on October 21, 2021. (Docs. 84, 85, 86, 87, 88, 89, 90 and 91). Defendant Heather Crane was never served. (Doc. 71).

The Court addressed all of the pending motions on October 28, 2021. (Doc.

92). The Court granted the motions for a more definite statement. (Doc. 92 at 7). The Court denied the motions to dismiss, subject to renewal. (Doc. 92 at 6-8).

The Court gave Rickman one final opportunity to file an Amended Complaint that complied with Rule 8. *Id.* The Court's October 28, 2021 Order gave Rickman specific instructions on how to draft an Amended Complaint that complied with Rule 8. (Doc. 92 at 6-7). The Court told Rickman that the Amended Complaint: 1) must describe the specific claims asserted against each Defendant; 2) must contain a short, plain statement of the facts that support each claim against each Defendant; and 3) must describe the injury that was suffered as a result of each Defendant's alleged misconduct. *Id.* The Court warned Rickman that if she failed to comply with the Court's Order on or before November 12, 2021, the Court would "recommend that all claims against all of the Defendants be dismissed." (Doc. 92 at 7). The Court ordered Rickman to file her Amended Complaint on or before November 12, 2021. *Id.*

Rickman responded to the Court's Order on November 15, 2021, by filing 11 documents entitled "Motion to Produce An Amended Complaint." (Docs. 94-97, 99-105). None of the documents comply with the Court's October 28, 2021 Order. The documents do not describe the claims asserted against each Defendant. The documents do not describe the facts that support each claim, and the

documents do not describe the injuries allegedly caused by each Defendant's misconduct. The filings are similar to Rickman's original Complaint which does not comply with Rule 8.

PRESENT MOTIONS

Defendants have moved to dismiss this case under Rule 41(b) based on Rickman's failure to comply with the Court's October 28, 2021 Order. Rickman responded to the motions filed by Defendants AYA Youth Dynamics Group Home, Kevin Hansen, and AWARE, Inc. on February 7, 2022. (Docs. 122, 123). The response briefs were untimely. The briefs were filed well after the 21-day deadline described in Local Rule 7.1(d)(1)(B)(i).

Rickman has not responded to the motions to dismiss filed by Defendants Arcadia Montana, Jennifer Hedke, Karen Galvin, Jake Westerhold, Deanna Lougee, Emily McVey and Candice Osterman. Rickman's failure to file response briefs may be deemed an admission that those motions are well-taken.

L.R. 7.1(d)(1)(B)(ii).

DISCUSSION

The Court possesses the authority to dismiss a case for failure to comply with a court order. Fed. R. Civ. P. 41(b); *Malone v. United States Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987). The Court must consider the following five

factors in determining whether to dismiss a case for failure to comply with a court order: 1) the public's interest in expeditious resolution of litigation; 2) the court's need to manage its docket; 3) the risk of prejudice to the defendants; 4) the availability of a less drastic alternatives; and 5) the public policy favoring disposition of cases on their merits. *Pagtalunan v. Galaza*, 291 F.3d 639, 642 (9th Cir. 2002).

A. Public's Interest in Expeditious Resolution of Litigation

"[T]he public's interest in expeditious resolution of litigation always favors dismissal." *Yourish v. California Amplifier*, 191 F.3d 983, 900 (9th Cir. 1999).

District courts are in a superior position to evaluate this factor and determine when a particular delay interferes with the public's interest. *Id.*

Here, Rickman's repeated failure to file an Amended Complaint that complies with Rule 8 has interfered with the public's interest in an expeditious resolution of this matter. This factor weighs in favor of dismissal.

B. Court's Need to Manage Its Docket

"The trial judge is in the best position to determine whether the delay in a particular case interferes with docket management." *Pagtalunan*, 291 F.3d at 642.

A court must be able to "manage its docket without being subject to routine noncompliance of litigants[.]" *Id.* (citing *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261

(9th Cir. 1992). Litigants who do not obey the court's orders disrupt the court's handling of other matters by consuming time and resources needed by other litigants who are compliant. *Id.*

Here, Rickman has demonstrated an inability or unwillingness to comply with the Court's October 28, 2021 Order. Rickman has failed to draft an Amended Complaint that complied with Rule 8 despite the specific instructions provided by the Court. Rickman's noncompliance has caused this case to come to a complete halt. The Court's time is better spent on cases in which the litigants are compliant. This factor weighs in favor of dismissal.

C. Prejudice to the Defendants

To prove prejudice, a defendant must establish that the plaintiff's actions "have impaired [the] defendant's ability to proceed to trial or threatened to interfere with the rightful decision of the case." *Pagtalunan*, 291 F.3d at 642 (citing *Malone*, 833 F.2d at 131).

Here, although none of the Defendants have attempted to show that they suffered prejudice as a result of Rickman's failure to comply with the Court's October 28, 2021 Order, prejudice is inherent in the delay caused by Rickman's non-compliance. An unreasonable delay "increases the risk that witnesses' memories will fade and evidence will become stale." *Pagtalunan*, 291 F.3d at

642. This factor weighs in favor of dismissal.

D. Less Drastic Alternatives

A court is required to consider the impact of a dismissal as a sanction, and the adequacy of less drastic sanctions. *In re Phenylpropanolamine (PPA) Products Liability Litigation*, 460 F.3d 1217, 1228 (9th Cir. 2006) (citing *Malone*, 833 F.2d 131-132). The court is not required, however, to exhaust all less-drastring sanctions before dismissing a case under Rule 41(b). *Nevijel v. North Coast Life Insurance Co.*, 651 F.2d 671, 674 (9th Cir. 1981).

Here, the Court has given Rickman multiple opportunities to avoid a Rule 41(b) dismissal by filing an Amended Complaint that complied with Rule 8. The Court provided Rickman with specific instructions on how to draft an Amended Complaint that satisfied Rule 8 on two separate occasions. The Court's October 28, 2021 Order warned Rickman that if she failed to file an Amended Complaint that complied with Rule 8, the Court would recommend that all claims against all of the Defendants be dismissed. (Doc. 92 at 7). Rickman failed to comply with the Court's Order despite the warning. The Court has no reason to expect that Rickman would respond more satisfactorily if she was given additional opportunities to comply with the Court's Order. This factor weighs strongly in favor of dismissal.

E. Disposition on the Merits

Public policy favors disposition of cases on their merits. *Pagtalunan*, 291 F.3d at 643 (citing *Hernandez v. City of El Monte*, 138 F.3d 393, 399 (9th Cir. 1998)). Regardless of the circumstances of any particular case, this factor will always counsel against dismissal.

CONCLUSION

Four of the five factors discussed above weigh in favor of dismissal. Dismissal is appropriate under Rule 41(b).

Accordingly, IT IS HEREBY RECOMMENDED:

1. Defendants' Motions to Dismiss (Docs. 108, 110, 112 and 117) should be GRANTED.
2. All claims against all of the Defendants should be DISMISSED with prejudice including the claims against Defendant Heather Crane.
3. The Clerk should be directed to enter judgment accordingly.

NOTICE OF RIGHT TO OBJECT TO FINDINGS AND RECOMMENDATIONS AND CONSEQUENCES OF FAILURE TO OBJECT

The parties may serve and file written objections to the Findings and Recommendations within 14 days of their entry, as indicated on the Notice of Electronic Filing. 28 U.S.C. § 636(b)(1). A district judge will make a de novo

determination regarding any portion of the Findings and Recommendations to which objection is made. The district judge may accept, reject, or modify, in whole or in part, the Findings and Recommendations. Failure to timely file written objections may bar a de novo determination by the district judge

DATED this 10th day of February, 2022.



John Johnston
United States Magistrate Judge