

UNREPORTED- NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

NO. 03-3500

JEFFREY E. JACKSON,

Appellant

v.

TODD CASE, Pfc.; DOVER
CITY POLICE DEPARTMENT
AND JOHN DOES

On Appeal From the United States District Court
For the District of Delaware
(D.C. Civ. No. 98-cv-00138)
District Judge: Honorable Kent A. Jordan

Submitted Under Third Circuit LAR 34.1(a)
February 6, 2004

Before: SLOVITER, NYGAARD AND CHERTOFF, Circuit Judges.

(Filed: February 6, 2004)

OPINION

PER CURIAM

Appellant Jeffrey E. Jackson appeals from an order entered by the United States District Court for the District of Delaware granting defendants' motion to dismiss for failure to prosecute and for failure to comply with a court order. For the reasons that follow, we will affirm.

In March 1998, Jackson filed a civil rights complaint against Police Officer Todd Case, the City of Dover Police Department, and John Does. In his complaint, Jackson asserted that, on November 1, 1996, defendant Todd Case slammed his face into a church wall and broke his nose, and that, shortly thereafter, Jackson was arrested and incarcerated on unrelated charges. With the help of a fellow inmate, Jackson filed a motion for appointment of counsel, which was denied. After Jackson had been released from prison, the District Court ordered that a scheduling conference be held on October 25, 2001. One week before the conference, Jackson requested that the conference be postponed so that he could find an attorney. The conference was not postponed and Jackson did not attend. The District Court scheduled the trial to be held on January 14, 2001, and directed the parties to exchange witness and exhibit lists by December 14, 2001. Jackson failed to submit a witness or exhibit list by the deadline. Defendants' counsel wrote to Jackson informing him that he had missed the deadline and requesting his lists. Jackson responded by filing a motion for subpoenas on January 8, 2002. The District Court conducted a teleconference regarding the motion. In order to ensure the

service of the subpoenas in time to secure the witnesses for trial, the Court rescheduled the trial for March 25, 2002.

The District Court entered another scheduling order setting new deadlines. Jackson once again failed to serve and file his witness and exhibit lists and failed to respond to a letter from defendants' counsel informing him that he had missed the deadline. Three days before the trial, Jackson filed a motion requesting that the trial be postponed so that he could find an attorney. The District Court denied the motion, after a teleconference. On March 25, 2002, the trial was cancelled after Jackson telephoned the District Court and claimed to be ill. Defendants did not learn of the cancellation until they had arrived at the courthouse.

Subsequently, the District Judge to whom the case was assigned resigned. The case was reassigned in January 2003. On February 26, 2003, because there had been no recent activity in the case, the District Court ordered Jackson to show cause why the action should not be dismissed for failure to prosecute. He responded by requesting an extension of time to obtain counsel. By order entered March 13, 2003, the District Court granted his request. Jackson was unable to obtain counsel. On April 11, 2003, the District Court entered a third amended scheduling order, which required the filing of the proposed final pre-trial order on July 31, 2003; scheduled the final pre-trial conference for August 5, 2003; and scheduled trial for August 11, 2003. The order also required Jackson to submit his portion of the proposed final pre-trial order to defendants' counsel

by July 1, 2003. Jackson failed to do so. Defendants' counsel wrote to Jackson on two separate occasions requesting that he submit his portion of the proposed final pre-trial order. Jackson never submitted his portion. Consequently, defendants filed a motion to dismiss for failure to prosecute and for failure to comply with a court order.

On August 5, 2003, the Court conducted the final pre-trial conference. After hearing argument on the motion to dismiss, the District Court applied the Poulis factors to Jackson's case and concluded that the factors weighed significantly in favor of dismissal. See Poulis v. State Farm Fire & Cas. Co., 747 F.2d 863, 866 (3d Cir. 1984). The next day, the District Court entered an order granting defendants' motion and dismissing the case. Jackson appeals. Jackson's motion to file a supplemental informal brief requests that the informal brief be considered as a supplemental brief. The Court grants that motion, and the Clerk is directed to docket it as such. It has been considered in connection with this appeal.

We review the District Court's dismissal for abuse of discretion. See Adams v. Trustees of New Jersey Brewery Employees' Pension Trust Fund, 29 F.3d 863, 873 (3d Cir. 1994). To assess the District Court's exercise of discretion, we must evaluate its balancing of the following six factors: 1) the extent of the party's personal responsibility; 2) the prejudice to the adversary caused by the failure to meet scheduling orders; 3) a history of dilatoriness; 4) whether the conduct of the party or the attorney was willful or in bad faith; 5) the effectiveness of sanctions other than dismissal; and 6) the

meritoriousness of the claim or defense. See Poulis, 747 F.2d at 866. Each factor need not be satisfied for the trial court to dismiss a claim. See Ware v. Rodale Press, Inc., 322 F.3d 218, 221 (3d Cir. 2003).

With respect to personal responsibility, the District Court properly assigned responsibility for failing to comply with its orders solely to Jackson, because he was proceeding pro se. The fact that Jackson was unable to find an attorney to represent him during the District Court proceedings, while regrettable, did not excuse his failure to comply with the District Court's scheduling orders.

In considering the second Poulis factor, the District Court concluded that Jackson's failure to meet scheduling orders and other pretrial procedures prejudiced the defendants. We agree. We further agree with the District Court that Jackson's repeated attempts to postpone scheduled trial dates evidences a pattern of dilatoriness under the third Poulis factor and that his failure to comply with court orders amounts to willful conduct under the fourth Poulis factor.

On appeal, Jackson claims that he did not respond to the District Court's scheduling orders because he had forwarded them to the Delaware Correctional Center to the individual who was filing the paperwork in his case. Jackson's claim is belied by the record. Jackson had been released from prison before the District Court issued its first scheduling order and there is no indication that, subsequent to his release from prison, any other individual assisted him in filing court documents. Even if Jackson had forwarded

the orders to someone else, he fails to explain why he continued to do so after the Court warned him that his case could be dismissed for failure to prosecute.

Regarding the fifth factor, the District Court properly found that a lesser sanction would not have been an effective alternative. Because Jackson proceeded in forma pauperis in the District Court, any monetary sanction would have been futile. See Emerson v. Thiel College, 296 F.3d 184, 190 (3d Cir. 2002). Finally, we agree with the District Court that the last factor, whether Jackson's claim appears meritorious, is best treated as neutral.

Upon balancing all six factors, it is clear the District Court did not abuse its discretion in dismissing Jackson's case for failure prosecute and to comply with its orders. Accordingly, we will affirm the District Court's August 6, 2003 order. We decline to refer Jackson's motion for an initial en banc hearing to the Court en banc.

TO THE CLERK:

Please file the foregoing opinion.

/s/ Dolores K. Sloviter
Circuit Judge