

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-5323

September Term, 2002

00cv01186

Filed On: July 21, 2003 [761605]

David W. Noble, Jr.,
Appellant

v.

United States Postal Service,
Appellee

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

BEFORE: Rogers, Tatel, and Roberts, Circuit Judges

JUDGMENT

Upon consideration of the briefs filed by the parties and the district court record, it is

ORDERED AND ADJUDGED that the district court's order filed September 13, 2002, dismissing the complaint for want of prosecution be vacated and the case remanded for further proceedings. Fed. R. Civ. P 41(b) provides that a court may dismiss an action for failure of the plaintiff to prosecute or to comply with the Rules of Civil Procedure or any order of the court. Such dismissals are reviewed for abuse of discretion. See Bristol Petroleum Corp. v. Harris, 901 F.2d 165, 167 (D.C. Cir. 1990). Because disposition of claims on the merits is favored, however, the harsh sanction of dismissal for failure to prosecute is ordinarily limited to cases involving egregious conduct by particularly dilatory plaintiffs, after "less dire alternatives" have been tried without success. See Trakas v. Quality Brands, Inc., 759 F.2d 185, 186-87 (D.C. Cir. 1985); see also Bristol Petroleum, 901 F.2d at 167. In this case, there is no indication the court pursued other alternatives before resorting to the sanction of dismissal, and the court provided no notice to the pro se plaintiff that it was considering this course. See Nita v. Connecticut Dep't of Environmental Protection, 16 F.3d 482, 485 (2d Cir. 1994) (dismissal improper where district court failed, inter alia, to give notice that it was considering dismissing for failure to prosecute); Velazquez-Rivera v. Sea-Land Service, Inc., 920 F.2d 1072, 1078 n.9 (1st Cir. 1990) (same).

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing en banc. See Fed. R. App. P. 41(b); D.C. Cir. Rule 41.

Per Curiam