

VERMONT SUPERIOR COURT
Caledonia Unit
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CIVIL DIVISION
Case No. 21-SC-00964

Kyle Bolaski #107345 v. Vermont Department of Corrections

DISMISSAL

A final merits hearing in this matter was held on May 24, 2022 at 11:15am in Caledonia Superior Court. At the start of the hearing, Plaintiff and Defendant were both present for the hearing via remote access.

As a threshold issue, the Court took up the Department of Corrections' Motion to Dismiss and requested testimony on the threshold jurisdictional issues raised in that motion. Approximately fifteen minutes into the hearing as Defendants were in the process of calling a witness, the Plaintiff expressed frustration with the hearing, the court's process, and the Department of Corrections. Plaintiff stated that he believed he was unlikely to prevail. He then said, "You win," and left the hearing at approximately 11:30. The record indicates that the remote connection to Plaintiff's location remained functioning. The Court held the hearing open for additional six minutes. Plaintiff did not return to the hearing, and the matter was closed.

Subsequent to the hearing, Plaintiff has not filed any additional information, motions, or statements to the Court stating why he left the hearing or indicating that he wishes to continue the matter.

While Plaintiffs action do evince a voluntary relinquishment of claims, there has been no express statement by Plaintiff that he seeks to dismiss or otherwise formally release his claims. Under V.R.C.P. 41(a), Plaintiff could only dismiss on a voluntary basis. The record indicates that the Department of Corrections is willing to accept such a dismissal but only under the terms that the matter be dismissed with prejudice, meaning Plaintiff could never refile or re-instate his claim. There is no evidence that this is what Plaintiff sought or is willing to agree as a stipulation.

Based on this lack of agreement, the Court looks to the rules for involuntary dismissal. Under Vermont law, the Court can dismiss an action on its own motion for a number of reasons including

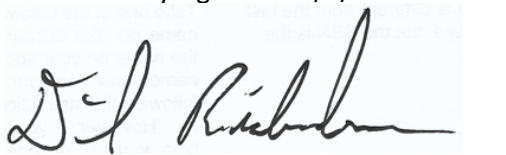
abandonment of a case or failure to prosecute. V.R.C.P. 41(b). While such an action is generally disfavored and taken as an action of last resort, the Court has the inherent authority to impose such remedies where the actions of a party with the burden of proof or production on an issue effectively abandons it. *See, e.g., Emerick v. Town Glastonbury*, 173 A.3d 28, 32, 33, 48–50 (2017) (affirming dismissal when Plaintiff demonstrated a sustained inability to follow court procedure); see also *Involuntary Dismissal of Action, Generally*, 24 AM.JUR.2D DISMISSAL 53 (2022) (collecting cases involving involuntary dismissal).

Weighing Plaintiff's statements and actions, including but not limited to leaving mid-hearing, making statements that he was dropping his action, and his in-action following the hearing, the Court finds that Plaintiff has abandoned the present action, and it concludes that such actions warrant dismissal. Therefore, the Court grants a dismissal of the present action as a matter of law under V.R.C.P. 41(b) without prejudice.

The Court does not issue this dismissal lightly but only in light of the totality of the fact and in the interest of both justice and the preservation of the Court's authority. While the present case does not rise to the same factual heights as *Emerick*, neither does the Court's remedy in this case, which is to dismiss without prejudice. This means that Plaintiff may, if he sees fit, re-file this action and attempt to cure the procedural issues that the Department of Corrections raised at the merits hearing or prepare to address them through argument.

Nevertheless, Plaintiff's mid-hearing abandonment of his claim and prosecution merit dismissal without further proceedings. Plaintiff has had full and fair opportunity to either prosecute his claim or explain why he abandoned the May 24th hearing. His silence leaves the Court with the sole remedy of dismissal.

Electronically signed on 7/7/2022 3:41 PM pursuant to V.R.E.F. 9(d)

A handwritten signature in black ink, appearing to read "D. Richardson", is written over a light blue rectangular background. A horizontal line is drawn below the signature.

Daniel Richardson
Superior Court Judge