

IN THE UNITED STATES DISTRICT COURT  
IN THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION-DAYTON

FILED  
JUN 01 2001  
KENNETH J. MURPHY, Clerk  
DAYTON, OHIO

MICHAEL A. GALLUZZO  
PLAINTIFF,

VS.

CASE NO. C-3-01-174  
Chief Judge Walter Herbert Rice  
Magistrate Judge Michael R. Merz

CHAMPAIGN COUNTY COURT  
OF COMMON PLEAS, et al.  
DEFENDANTS,

**MOTION TO DISMISS DEFENDANTS JUDGE ROGER B. WILSON,  
TERESA A. COOK, RONALD C. TOMPKINS  
WITHOUT PREJUDICE**

Now comes Michael A. Galluzzo, Plaintiff, respectfully requesting dismissal of Defendants Judge Roger B. Wilson, Teresa A. Cook, and Ronald C. Tompkins without prejudice from the instant matter.

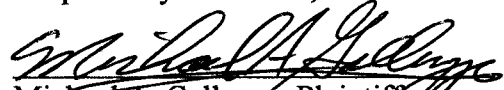
Plaintiff was unable to respond to any dispositive pleadings since this case was filed April 27, 2001, and pursuant to his recent incarceration, which ended May 27, 2001, and was unable to file the instant dismissal motion of the above-named Defendants until now. Therefore, Plaintiff has not clearly delayed the best interests of justice and this trial court should dismiss, without prejudice, the named defendants from the instant matter.

Where this pro se litigant acted diligently to dismiss the aforesaid parties, Plaintiff's conduct cannot be construed to be extreme, negligent, irresponsible, contumacious, or dilatory. In granting a motion to dismiss with prejudice, the court must determine that there is a clear record of delay or contumacious conduct by the Plaintiff. In this case there is no delay and no conduct that can be construed as contumacious, therefore the dismissals should occur without prejudice. [See *Willis v. RCA Corporation et al.*, (1983) 12 Ohio App. 3d 1, where the court states that "unless the record shows that

plaintiff's conduct was contumacious, deliberately dilatory, or gross misconduct, a dismissal with prejudice is too harsh a penalty."}]

**WHEREFORE**, Plaintiff respectfully requests that the aforesaid Defendants be dismissed without prejudice.

Respectfully submitted,

  
Michael A. Galluzzo, Plaintiff

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT A TRUE AND ACCURATE COPY OF THE FOREGOING WAS SERVED UPON DEFENDANTS by U.S. mail, postage prepaid, THE 31st DAY OF May 2001.

  
Michael A. Galluzzo, Plaintiff