NONPRECEDENTIAL DISPOSITION
To be cited only in accordance with FED. R. APP. P. 32.1

United States Court of Appeals

For the Seventh Circuit
Chicago, Illinois 60604

Submitted July 9, 2025*
Decided July 9, 2025

Before

THOMAS L. KIRSCH II, *Circuit Judge*

JOHN Z. LEE, *Circuit Judge*

JOSHUA P. KOLAR, *Circuit Judge*

No. 24-2971

JOEY KIMBROUGH,
Plaintiff-Appellant,

v.

AMERICAN EXPRESS NATIONAL BANK,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 1:22-cv-01993-TWP-MJD

Tanya Walton Pratt,
Chief Judge.

O R D E R

Joey Kimbrough appeals the dismissal of his lawsuit under the Fair Credit Reporting Act for failure to prosecute. The district court dismissed his suit after he

* We have agreed to decide the case without oral argument because the briefs and record adequately present the facts and legal arguments, and oral argument would not significantly aid the court. FED. R. APP. P. 34(a)(2)(C).

failed to comply with the court's directive to proceed with arbitration. Because the court appropriately exercised its discretion to dismiss the case, we affirm.

In 2022, Kimbrough sued American Express National Bank and TransUnion for violating the Fair Credit Reporting Act. *See* 15 U.S.C. §§ 1681e(b), 1681i(a), 1681s-2(b). He alleged that he was a customer of American Express, that American Express had reported inaccurate information about his credit history to TransUnion, and that neither company had rectified the inaccuracies even after he pointed them out. He soon agreed to dismiss TransUnion from the case.

American Express then moved to compel arbitration based on its cardholder agreements with Kimbrough. The district court granted the motion, ordered Kimbrough to initiate arbitration, and stayed the proceedings.

Kimbrough appealed the order to arbitrate, but we dismissed the appeal for lack of jurisdiction because proceedings were still pending in the district court. Kimbrough then refused to arbitrate for over a year, despite the district court's warning that inaction could result in the dismissal of his case.

In 2024, the district court dismissed the case for failure to prosecute. *See* FED. R. CIV. P. 41(b). The court cited Kimbrough's continued and explicit refusal to comply with its directive to initiate arbitration.

On appeal, Kimbrough mainly challenges the district court's order to compel arbitration. But we lack jurisdiction to review this interlocutory order. Interlocutory orders typically do not "merge" into the final judgment when the final order is one dismissing the case under Rule 41(b) for failure to prosecute. *See R&C Oilfield Servs. LLC v. Am. Wind Transp. Grp. LLC*, 45 F.4th 655, 659-60 (3d Cir. 2022) (citing cases); *see also Sere v. Bd. of Trs.*, 852 F.2d 285, 288 (7th Cir. 1988) (refusing to review interlocutory orders to avoid rewarding "dilatory and bad faith tactics" after case dismissed as a discovery sanction). As the Third Circuit explained in a factual scenario nearly identical to Kimbrough's, an interlocutory order compelling arbitration could not be reviewed where the appellant "sat on its rights for a year and a half and told the District Court that it did not intend to comply with the order, leaving the Court no choice but to involuntarily dismiss the complaint." *R&C Oilfield Servs.*, 45 F.4th at 661. So too, here. We lack jurisdiction to review the district court's order compelling arbitration when it dismissed the case based on Kimbrough's refusal to abide by its order.

That leaves for review only the district court's decision to dismiss for failure to prosecute, and we discern no abuse of discretion there. A district court has "inherent power" to dismiss a case for failure to prosecute when the plaintiff refuses to comply with its orders, *Next Millennium Telecom Co. v. Am. Signal Corp.*, 112 F.4th 481, 486 (7th Cir. 2024) (internal quotation omitted), including orders to arbitrate. *See McMahan v. Deutsche Bank AG*, 892 F.3d 926, 932 (7th Cir. 2018). Here, the court acted well within its discretion to dismiss the case where Kimbrough, despite being notified of the possible consequences of noncompliance, *see Shaffer v. Lashbrook*, 962 F.3d 313, 316 (7th Cir. 2020), steadfastly refused to comply with the order to arbitrate.

AFFIRMED