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Palik will be subject to a 1-year probationary term during which he will be supervised by an attorney to be selected by the Relator. In addition, Palik is to comply with Neb. Ct. R. § 3-316 and is subject to contempt of this court if he does not. Further, Palik is to pay the costs of this action in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2007) and § 3-310(P) and Neb. Ct. R. § 3-323(B) within 60 days after an order imposing costs and expenses, if any, is entered by this court.

JUDGMENT OF SUSPENSION.

JAVIS ARVELL JONES, APPELLANT, V.
VALENE M. JONES, APPELLEE.
821 N.W.2d 211

Filed September 21, 2012. No. S-11-668.

1. **Actions: Dismissal and Nonsuit.** Dismissal of a civil action for lack of prosecution is addressed to the discretion of a trial court, whose ruling, in the absence of an abuse of discretion, will be upheld on appeal.
2. **Courts: Dismissal and Nonsuit.** A district court has discretionary power to dismiss a case for want of prosecution, and such dismissal is also within the court's inherent power.
3. **Judges: Words and Phrases.** A judicial abuse of discretion exists when reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.
4. **Courts: Dismissal and Nonsuit.** The power to dismiss for want of prosecution is necessary in order to prevent undue delays in the disposition of pending cases and to avoid congestion in the trial courts.
5. **Public Officers and Employees: Prisoners: Courts.** Prison officials must ensure that inmates have adequate, effective, and meaningful access to the courts.
6. **Constitutional Law: Trial: Prisoners.** Prison inmates have no constitutional right to be released from prison so that they may be present in person at the trial of a civil court action.

Petition for further review from the Court of Appeals, INBODY, Chief Judge, and IRWIN and PIRTLE, Judges, on appeal thereto from the District Court for Douglas County, W. MARK ASHFORD, Judge. Judgment of Court of Appeals reversed, and cause remanded with direction.

Javis Arvell Jones, pro se.

No appearance for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, MILLER-LERMAN, and CASSEL, JJ.

CASSEL, J.

INTRODUCTION

The district court gave a pro se inmate notice of the court's intent to dismiss the inmate's marital dissolution proceeding but identified two ways of avoiding dismissal. The inmate timely performed one of the court's specified actions. Despite this compliance and without explanation, the court dismissed the inmate's complaint. The Nebraska Court of Appeals affirmed, reasoning that because the prison previously had denied the inmate transportation and telephone access to the court, the inmate would be unable to attend any hearing no matter how many motions he made. We granted further review. Because (1) the district court abused its discretion in dismissing the inmate's complaint without explanation even though the inmate did what the court instructed and (2) the Court of Appeals erred in basing its decision on predictions of future events, we reverse the judgment and remand the cause with direction.

BACKGROUND

TRIAL COURT PROCEEDINGS

While imprisoned, Javis Arvell Jones sought to dissolve his marriage to Valene M. Jones. We summarize the timeline of the proceeding as follows:

- October 4, 2010: Javis files complaint for dissolution of marriage (no children).
- October 13, 2010: Summons is personally served on Valene.
- November 10, 2010: Valene writes letter to judge asking for "postponement."
- December 2, 2010: Javis writes letter to court clerk, stating that he had not heard of any response to his filing and inquiring about "what stage the process is in at this time."
- January 26, 2011: Javis writes letter to bailiff, stating that he had been unsuccessful in obtaining clearance in order to call

for hearing date and that he would not be able to get clearance to add court's telephone number "until well after the expiration date of [his] filing."
- January 28, 2011: Javis writes another letter to bailiff.
- February 4, 2011: Javis writes letter to bailiff, stating that prison will not transport him for March 4 hearing and asking that teleconference hearing be scheduled instead.
- April 28, 2011: Javis files motion for default judgment.
- April 28, 2011: Javis writes letter to bailiff asking that teleconference hearing be scheduled on his motion for default judgment.
- June 2, 2011: Court administrator issues "Notice of Intent to Dismiss," informing parties that within 30 days, they must either submit proposed scheduling order or request that scheduling conference be held in order to avoid dismissal.
- June 28, 2011: Javis files verified motion for pretrial scheduling conference, asking that his appearance for scheduling conference be by teleconference.
- July 5, 2011: District court summarily dismisses complaint for lack of prosecution.

We note that Valene's November 2010 letter was the extent of her participation in this case. We also observe that the record does not show that the district court ever conducted a hearing on Javis' motion for default judgment or expressly made a ruling disposing of the motion.

Appeal

Javis timely appealed to the Court of Appeals, assigning that the district court erred in (1) failing to schedule a hearing on and disregarding his motion for default judgment, (2) failing to schedule a hearing on and disregarding his motion for a pretrial scheduling conference, and (3) dismissing his complaint for lack of prosecution. Javis raised no constitutional argument or challenge, either before the district court or before the Court of Appeals.

The Court of Appeals affirmed via a memorandum opinion filed on May 15, 2012. The court observed that there was no bill of exceptions and limited its review to a consideration of whether the record supported the district court's judgment. In

doing so, the Court of Appeals focused on the dismissal of Javis' case. The court noted that "Javis was active in the case," but that the prison "denied Javis telephone access and transportation to the court, and thus, no matter how many motions Javis makes to the court, he will be unable to attend any hearing either in open court or via teleconference." Despite the absence of any arguments based on constitutional claims, the court extensively discussed the due process rights of prison inmates. The Court of Appeals concluded that the district court did not abuse its discretion by dismissing the complaint for lack of prosecution and declined to address Javis' other assignments of error.

We granted in part Javis' petition for further review, for the limited purpose of reviewing the dismissal for lack of prosecution, and ordered that the appeal be submitted without oral argument.[1]

ASSIGNMENTS OF ERROR

On further review, Javis assigns the following three errors:

> 1. The Court of Appeals abused its discretion by making an erroneous and unconstitutional assertion as key to its affirmance of the abuses of discretion which comprises the district court's dismissal of [Javis'] case for lack of prosecution. . . .
>
> 2. The Court of Appeals asserts erroneously that the district court did not abuse its discretion by disregarding [Javis'] motion for default judgment because "the court cannot make a finding that the marriage is irretrievably broken based upon pleadings alone." . . .
>
> 3. As excuse for its affirmance of the district court's abuses of discretion inherent to denying [Javis] any remedy by due course of law and justice administered, the Court of Appeals erroneously offers as fact that [the prison] would only have denied [Javis] telephone access to appear at any requested teleconference hearings, had such requests not been disregarded by the district court.

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[1] See Neb. Ct. R. App. P. § 2-111(B)(1) (rev. 2008).

STANDARD OF REVIEW

[1] Dismissal of a civil action for lack of prosecution is addressed to the discretion of a trial court, whose ruling, in the absence of an abuse of discretion, will be upheld on appeal.[2]

ANALYSIS

[2] We limit our review to a consideration of the propriety of the dismissal of the complaint for lack of prosecution. The Court of Appeals correctly recited that a district court has discretionary power to dismiss a case for want of prosecution and that such dismissal is also within the court's inherent power.[3] The Court of Appeals also correctly recognized that Javis had been "active" in the case, that a notice of intent to dismiss sent to Javis informed him that his case would be dismissed for lack of prosecution unless he either submitted a proposed scheduling order or requested a scheduling conference, and that Javis timely filed a motion for a pretrial scheduling conference. In our view, the district court abused its discretion in dismissing Javis' complaint for lack of prosecution when Javis complied with one of the two options provided to him to avoid dismissal.

[3,4] The district court gave no explanation for its summary dismissal despite Javis' clear compliance with one of the alternatives specified in the court's notice. A judicial abuse of discretion exists when reasons or rulings of a trial judge are clearly untenable, unfairly depriving a litigant of a substantial right and denying just results in matters submitted for disposition.[4] In the case before us, the court's action was untenable because it directly contradicted its own notice and was done without any attempt to explain the contradiction. We have said that the power to dismiss for want of prosecution is necessary in order to prevent undue delays in the disposition of pending

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[2] *Billups v. Jade, Inc.*, 240 Neb. 494, 482 N.W.2d 269 (1992).

[3] See, Neb. Rev. Stat. § 25-1149 (Reissue 2008); *Talkington v. Womens Servs.*, 256 Neb. 2, 588 N.W.2d 790 (1999).

[4] *Gary's Implement v. Bridgeport Tractor Parts*, 281 Neb. 281, 799 N.W.2d 249 (2011).

cases and to avoid congestion in the trial courts.[5] And we are not here presented with a dismissal based upon a litigant's failure to obey an order of the court.[6] Rather, the district court's notice informed Javis that he could avoid dismissal by requesting a scheduling conference. He made the request, but the court dismissed his case anyway and provided no explanation why it did so. In doing so, the court abused its discretion.

[5,6] The Court of Appeals erred when it affirmed the district court's dismissal based upon its prediction that Javis would be unable to appear or participate in any hearing. The Court of Appeals should have focused on the actions of the district court contained in the record rather than on predictions about future events. As Javis points out, the record reveals no ruling by the district court on his requests for a teleconference hearing. Thus, the record does not demonstrate that the prison would deny him the ability to participate in a scheduled hearing via telephone. After all, prison officials must ensure that inmates have "adequate, effective, and meaningful" access to the courts.[7] But we again emphasize that prison inmates have no constitutional right to be released from prison so that they may be present in person at the trial of a civil court action.[8]

CONCLUSION

On further review, we reverse the Court of Appeals' affirmance of the district court's dismissal of Javis' complaint for lack of prosecution and remand the cause to the Court of Appeals with direction to reverse the district court's dismissal of the complaint.

REVERSED AND REMANDED WITH DIRECTION.

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[5] See *Talkington v. Womens Servs., supra* note 3.

[6] See, Neb. Rev. Stat. § 25-601 (Reissue 2008); *Christianson v. Educational Serv. Unit No. 16*, 243 Neb. 553, 501 N.W.2d 281 (1993).

[7] See *Bounds v. Smith*, 430 U.S. 817, 822, 97 S. Ct. 1491, 52 L. Ed. 2d 72 (1977).

[8] *Wilson v. Wilson*, 238 Neb. 219, 469 N.W.2d 750 (1991).