

OCT 19 2009

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

AITAN HILLEL,

Plaintiff - Appellant,

v.

CITY OF AGOURA HILLS, a municipal
corporation,

Defendant - Appellee.

No. 08-55743

D.C. No. 2:07-CV-08097-JFW-
AJW

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
John F. Walter, District Judge, Presiding

Argued and Submitted October 5, 2009
Pasadena, California

Before: KLEINFELD and TALLMAN, Circuit Judges, and POLLAK,** District
Judge.

The district court's dismissal for failure to file the stipulation electronically
was an abuse of discretion. The court did not weigh the five factors listed in

* This disposition is not appropriate for publication and is not precedent
except as provided by 9th Cir. R. 36-3.

* The Honorable Lewis H. Pollak, United States District Judge for
the Eastern District of Pennsylvania, sitting by designation.

Ghazali v. Moran, 46 F3d 52, 53 (9th Cir. 1995) (per curiam). Since the district court did “not consider these factors explicitly, we review the record independently to determine whether the district court abused its discretion.” Id.

The factors weigh heavily in favor of Hillel. This was merely a case of transition difficulties in the changeover from paper to electronic filing. The court knew this because the notice of document discrepancies and the order at ER 77 showed that the court received the “stipulation for continuance” and ordered it returned to counsel as designated for electronic filing. Applying the Ghazali factors, there was no risk of prejudice to the defendants from consideration of the case on the merits because they had stipulated to an extension while counsel was in trial, no risk to expeditious resolution of the litigation or the ability of the district court to manage its docket, obvious availability of less drastic sanctions, and a total failure to serve the public policy favoring disposition of cases on their merits. It is surprising that the City did not accommodate Hillel by filing the stipulation when he asked for that courtesy or sign a further stipulation to vacate the order that thwarted the City’s own agreement to the extension.

REVERSED.