

APR 02 2009

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

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

MIMI L. CAMPBELL,

Plaintiff - Appellant,

v.

ROBERT M. GATES,** SECRETARY,
DEPARTMENT OF DEFENSE
(DEFENSE CONTRACT AUDIT
AGENCY),

Defendant - Appellee.

No. 07-56866

D.C. No. CV-06-00594-VAP

MEMORANDUM*

Appeal from the United States District Court
for the Central District of California
Virginia A. Phillips, District Judge, Presiding

Submitted March 18, 2009***

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

* Robert M. Gates is substituted for his predecessor, Donald H. Rumsfeld, as Secretary of the Department of Defense, pursuant to Fed. R. App. P. 43(c)(2).

*** The panel unanimously finds this case suitable for decision without oral argument. See Fed. R. App. P. 34(a)(2).

Before: LEAVY, HAWKINS, and TASHIMA, Circuit Judges.

Mimi L. Campbell appeals pro se from the district court's order dismissing her action without prejudice under Federal Rule of Civil Procedure 41(b). We have jurisdiction pursuant to 28 U.S.C. § 1291. We review for an abuse of discretion, *Hernandez v. City of El Monte*, 138 F.3d 393, 398 (9th Cir. 1998), and we reverse and remand.

The district court dismissed the action for lack of prosecution and failure to comply with court orders. However, Campbell timely responded to and attempted to comply with the orders to show cause why the action should not be dismissed for lack of prosecution, and there is no indication that the court considered less drastic sanctions than dismissal. The circumstances of this case do not justify dismissal. *See id.* at 400 (concluding that the case did “not present ‘exceptional circumstances’ of ‘unreasonable delay’ so as to justify dismissal” for lack of prosecution); *see also Oliva v. Sullivan*, 958 F.2d 272, 274 (9th Cir. 1992) (reversing dismissal for lack of prosecution and failure to comply with a court order, and explaining that “[w]hile explicit discussion of alternative sanctions is not always necessary, this case does not present the egregious circumstances, or the court’s use of less drastic measures prior to dismissal, that obviate the need for explicit discussion of alternatives”) (internal citation omitted).

REVERSED and REMANDED.