

On June 17, 2022, Conti filed an answer to the complaint and asserted counterclaims against Boren for intentional interference with economic advantage, intentional interference with contract, “defamation – libel,” and “defamation – slander.”³ Conti filed his first amended answer and counterclaim on June 22, 2022.⁴

Fosbury and Michael each filed a motion to dismiss pursuant to Idaho Rule of Civil Procedure 12(b)(6).⁵ Boren also filed a motion to dismiss counts I and II of Conti’s First Amended Counterclaim.⁶ By stipulation, Conti was granted leave to amend his counterclaim and Boren withdrew his motion to dismiss.⁷ Thus, Conti filed a Second Amended Counterclaim on August 15, 2022.⁸ Boren answered the Second Amended Counterclaim on August 29, 2022.⁹

On October 18, 2022, Judge Stevan Thompson dismissed Boren’s claims against the defendants Fosbury, Michael, and Gadwa.¹⁰ The claims between Boren and Conti remained in place.

On November 11, 2022, Boren filed a motion seeking leave to file a second amended complaint.¹¹ Judge Thompson denied Boren’s motion to file a second amended complaint.¹²

³ Answer and Counterclaim, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 17, 2022).

⁴ First Amended Answer and Counterclaim, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 22, 2022).

⁵ Defendant Fosbury’s Motion to Dismiss, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed July 5, 2022); Motion to Dismiss, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed July 5, 2022).

⁶ Counter-Defendant Michael Boren’s Motion to Dismiss, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed July 13, 2022).

⁷ Order Granting Joint Stipulation and Motion regarding Jon Conti’s Motion to Amend Counterclaim and Michael Boren’s Motion to Dismiss, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed August 15, 2022).

⁸ Second Amended Counterclaim, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed August 15, 2022).

⁹ Answer to Second Amended Counterclaim, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed August 29, 2022).

¹⁰ Decision and Order RE: Defendants’ Motions to Dismiss and Motion for Judicial Notice, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed October 18, 2022).

¹¹ Plaintiff Michael Boren’s Motion for Leave to File Second Amended Complaint, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed November 11, 2022).

¹² Order Re: Motion for Leave to File Second Amended Complaint, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed January 3, 2023).

On February 22, 2023, Judge Thompson entered a “Final Partial Judgment,”¹³ and stayed the “remainder of the case.”¹⁴ Boren thereafter appealed to the Idaho Supreme Court¹⁵ and Michael filed a cross-appeal.¹⁶

On December 6, 2024, the Idaho Supreme Court affirmed in part and reversed in part the decision of the district court and remanded the case.¹⁷ Michael petitioned for a rehearing¹⁸ which was denied¹⁹ and the case was then remitted to the district court.²⁰

On September 30, 2025, this case was reassigned to Judge Darren B. Simpson.²¹ Each of the parties were provided a copy of the reassignment.²² On April 13, 2026, a notice of proposed dismissal was issued to the parties.²³ Boren filed a motion asking the court to retain the case.²⁴ Boren provided a declaration²⁵ and a memorandum²⁶ in support of his motion. Gadwa filed an opposition to Boren’s Motion.²⁷ Declarations were also submitted in opposition to Boren’s

¹³ Final Partial Judgment, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed February 22, 2023).

¹⁴ Order Re: Motion for Certification [*sic*] of Final Partial Judgment and Motion to Stay, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed February 22, 2023).

¹⁵ Notice of Appeal, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed March 10, 2023).

¹⁶ Notice of Cross-Appeal, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed March 22, 2023).

¹⁷ Opinion, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (December 6, 2024).

¹⁸ Petition for Rehearing, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed December 27, 2024).

¹⁹ Order Denying Petition for Rehearing, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (dated January 23, 2025).

²⁰ Remittitur, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (dated January 23, 2025).

²¹ Assignment by Deputy Trial Court Administrator, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed September 30, 2025).

²² *Id.*

²³ Notice of Proposed Dismissal for Inactivity I.R.C.P. 41(e), I.R.C.P. 4(b)(2), *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed April 13, 2026).

²⁴ Plaintiff Michael Boren’s Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed April 23, 2026) (hereinafter “**Boren’s Motion**”).

²⁵ Declaration of James M. Wagstaffe in Support of Plaintiff Michael Boren’s Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed April 23, 2026).

²⁶ Plaintiff Michael Boren’s Memorandum in Support of Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed April 23, 2026) (hereinafter “**Boren’s Brief**”).

²⁷ Defendants’ [*sic*] Memorandum in Opposition to Plaintiff Michael Boren’s Memorandum in Support of Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 2, 2026).

Motion.²⁸ Boren filed a reply on June 5, 2026.²⁹ On June 9, 2026, this court heard arguments on Boren’s Motion. At the hearing, all defendants objected to Boren’s Motion. The court took the matter under advisement.

ANALYSIS

I.R.C.P. 41(e) - Good Cause Standard:

Idaho Rule of Civil Procedure 41(e) reads, “Any action, appeal or proceeding, except for guardianships, conservatorships, and probate proceedings, in which no action has been taken for a period of 90 days may be dismissed unless there is a showing of good cause for retention.” A dismissal under this rule is without prejudice.

A trial court has the authority to dismiss a case for failure to prosecute under Rule 41(e) of the Idaho Rules of Civil Procedure. In doing so, the trial court has discretion to determine whether “good cause” has been established.³⁰ The trial court's exercise of such authority will not be disturbed on appeal unless it is shown that there was a manifest abuse of discretion.³¹

²⁸ Declaration of JT Morris, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 2, 2026); Declaration of Gary Gadwa, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 2, 2026); Declaration of Sarah C. Michael in Support of Defendant Sarah C. Michael’s Opposition to Plaintiff Michael Boren’s Motion for Good Cause Relief From Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 3, 2026).

²⁹ Plaintiff Michael Boren’s Reply in Support of Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed June 5, 2026).

³⁰ See: *Morgan v. Demos*, 156 Idaho 182, 186, 321 P.3d 732, 736 (2014). Note: This case deals with Rule 40(c) of the Idaho Rules of Civil Procedure. Rule 40(c) read in relevant part,

In the absence of a showing of good cause for retention, any action, appeal or proceeding ... in which no action has been taken ... for a period of six (6) months shall be dismissed. Dismissal pursuant to this rule in the case of appeals shall be with prejudice and as to all other matters such dismissal shall be without prejudice. At least 14 days prior to such dismissal, the clerk shall give notification of the pending dismissal to all attorneys of record, and to any party appearing on that party's own behalf, in the action or proceeding subject to dismissal under this rule.

Rule 40(c) has since been recodified and amended under Rules 4 and 41 of the Idaho Rules of Civil Procedure. Even so, the Idaho Supreme Court precedent as to former Rule 40(c) is relevant and binding as to its application to Rule 41(e). Unless good cause is shown, Rule 4(b)(2) *requires* dismissal of an action if service has not been completed within 182 days. Under Rule 41(e) a court *may* dismiss a case if no activity has occurred for a period of 90 days.

³¹ *Morgan v. Demos*, 156 Idaho at 186, 321 P.3d at 736.

The determination of whether good cause exists is a factual one.³² In order to show good cause under Rule 41(e), a party must present sworn testimony by affidavit or otherwise setting forth facts that demonstrate good cause for retention of a case.³³

Boren's Assertion of Good Cause

Boren sets forth several arguments in his brief of alleged “extenuating circumstances” that caused delay and amount to good cause.³⁴ Counsel for Boren, James M. Wagstaffe, attempts to support his brief with his own declaration.³⁵ This court will address each ground seriatim.

1. Boren's Federal Nomination and Appointment.

In Wagstaffe's Declaration he asserts that Boren was “appropriately focused on other matters” which included Boren's nomination and appointment process to a federal position. This statement amounts to speculation and there is no foundation as to how Wagstaffe knew of Boren's focus (other than representation of Boren). As such, this statement should not be considered as evidence of good cause. However, even if true, Boren's focus on other matters is of little significance in determining good cause. Boren's employment, without more, does not put him in some unique position from other individuals who are employed and have filed suits against other people and have failed to prosecute their case for over a year. Therefore, for purposes of evaluating whether good cause exists, the statement will be considered.

Boren was appointed to serve as Under Secretary of Agriculture for Natural Resources and Environment.³⁶ While awaiting his confirmation hearing, he served for 10 months in the

³² *Id.* [citing: *Nerco Minerals Co. v. Morrison Knudsen Corp.*, 132 Idaho 531, 533, 976 P.2d 457, 459 (1999)].

³³ See: *Morgan* at p. 187, 321 P.3d at 737.

³⁴ Boren's Brief at p. 8.

³⁵ Declaration of James M. Wagstaffe in Support of Plaintiff Michael Boren's Motion for Good Cause Relief from Proposed Dismissal for Inactivity, *Boren v. Fosbury*, Custer County case no. CV19-22-0051 (filed April 23, 2026) (hereinafter “**Wagstaffe's Declaration**”).

³⁶ Wagstaffe Declaration, at p. 4.

Interior Department as acting Assistant Secretary for policy and budget.³⁷ Boren’s Senate hearing was held in October of 2025.³⁸ Boren was confirmed and began service in January 2026.³⁹ During this time, Boren was evaluating his lawsuit and its potential impact on his job.⁴⁰

This argument does not amount to good cause. Boren filed a complaint and prosecuted it through an appeal to the Idaho Supreme Court. He obtained a new job. Nothing in the affidavit asserts why he or his counsel could not have taken any action to move his case along such as asking the court for a scheduling conference, requesting a trial date, or following through by setting a hearing on his motion to amend his complaint.⁴¹ Furthermore, the assertion that Boren was contemplating his lawsuit shows that he was aware of the need to either pursue his lawsuit or dismiss it.

2. Change in Lead Counsel for Boren.

According to the Wagstaffe Declaration, lead counsel Thomas Banducci retired from the practice of law.⁴² Wagstaffe then states, “[t]hus, there was further attention given to my role in the case on an ongoing basis.”⁴³ This assertion does not set forth good cause for failing to

³⁷ Id.

³⁸ Id.

³⁹ Id. at pp. 3 – 4.

⁴⁰ Id. at p. 4. Note: Again, this statement appears to be speculative on Wagstaffe’s part and without proper foundation as to how Wagstaffe knew of Boren’s evaluating process. Again, because it has little significance in the determination of whether good cause exists, the court will consider the statement.

⁴¹ In this regard, Wagstaffe misreads the Opinion of the Idaho Supreme Court. The Idaho Supreme Court did not remand to allow the motion to amend the complaint, as asserted on page 3 of Boren’s Brief, nor to have the amended complaint “formally accepted for filing,” as asserted at page 5 paragraph d of the Wagstaffe Declaration. Judge Thompson concluded that Boren’s Second Amended Complaint would be futile because it would be dismissed for the same legal reasons as the first amended complaint. The Idaho Supreme Court found this to be error, because Judge Thompson erred in dismissing the majority of the first amended complaint. Therefore, because Judge Thompson abused his discretion as to this issue, the remedy was to “remand for reconsideration in light of the correct legal standard.” The case was then remanded for further proceedings. The Idaho Supreme Court did not hold that the motion to amend the complaint a second time was granted or that it should be filed. It was remanded for further proceedings to address the motion to amend the complaint under the correct legal standard.

⁴² Wagstaffe Declaration at p. 4.

⁴³ Id.

pursue this lawsuit. In fact, the statement seems to read that because Mr. Banducci retired, Mr. Wagstaffe had a larger role in representing Boren. Thus, Mr. Wagstaffe had a responsibility to diligently pursue Boren's cause of action but failed to do so. No action was taken from January 24, 2025 (the day of the remittitur) until April 23, 2026, when Boren responded to the notice of intent to dismiss.

3. Boren's Counsel's "Flawed" Expectations.

a. Lack of Activity of Defendants.

Wagstaffe then asserts⁴⁴ that he expected defense would pursue discovery or the motion "left unresolved by the Idaho Supreme Court."⁴⁵ A party cannot just sit back and wait for the other party to act. Boren filed this lawsuit and had a duty to diligently pursue his claims. This assertion does not, in any fashion, amount to good cause.

b. Wagstaffe Assumed the District Court Would Act.

Wagstaffe asserts that based upon his experience in California, he anticipated that the Court would schedule a "case management conference."⁴⁶ Even if true, if a court does not take some type of action for a period of time, that should trigger a response from a party or that party's attorney, at a minimum, to make an inquiry, or file a motion for such a hearing, or to request a trial setting. In fact, Rule 16(b) of the Idaho Rules of Civil Procedure provides just such a mechanism. It reads in part, "[s]hould a trial court fail to set the matter for scheduling conference or otherwise . . . a party may

⁴⁴ When the court uses the phrase "Wagstaffe asserts" or "Wagstaffe assumed" or other Wagstaffe action or inaction, it does so because it is relying on the Wagstaffe Declaration. Wagstaffe is asserting claims of good cause for his client Boren. So, although the court references matters directly as to Wagstaffe, they are binding upon or assumed to be the assertions, actions, or inactions of Boren as well as his attorney and agent, Wagstaffe.

⁴⁵ Id.

⁴⁶ Id.

request that the court set the matter for trial and that any other deadlines and pretrial conferences be established.”

Failing to take any action in a case because a party is relying on the court to set a scheduling conference does not amount to good cause, particularly when there is a specific rule that provides a way to pursue a party’s claims when a court does not act.

c. Defamation Cases Not Typically “Litigation-intensive.”

Wagstaffe asserts that defamation cases are “not typically litigation-intensive.”⁴⁷ Whether a case is “litigation-intensive” or not does not impact whether there is good cause to retain a case for inactivity. The real question is whether there are facts or matters outside a party’s control that have led to delay in a party’s efforts to pursue its claims, not whether a case is litigious or not.

d. Concern About the Absence of Service of Process.

Wagstaffe then argues that the order refers to inactivity for non-service. This argument is correct but does not amount to good cause for retention. The notice sent by the court not only referred to Idaho Rule of Civil Procedure 4(b)(2), which deals with lack of service, but also referred to Rule 41(e) of the Idaho Rules of Civil Procedure which allows for dismissal for inactivity for 90 days. Under both Rules, a party must show good cause for retention.

e. Current Efforts to Resolve Case.

Wagstaffe asserts that he has “recently” communicated a possible means of settling the case. Wagstaffe gives no factual description of what he means by the term “recently.”

⁴⁷ Id. at p. 5.

The Idaho Supreme Court in dealing with whether good cause existed under Rule, 4(a)(2) stated: “we hold that settlement negotiations between the parties do not provide justification for delay of service and do not in and of themselves constitute good cause for non-compliance with Rule 4(a)(2).”⁴⁸ The Idaho Supreme Court cited to other courts who have rejected settlement negotiations to excuse lack of compliance with the timely service requirement. One such case held that “if settlement negotiations alone were deemed good cause for failing to effectuate service, it would defeat the purpose of the rule and ‘plaintiffs would have no incentive to comply with the 120–day limit if they could always find shelter from the rule by claiming they had begun negotiations in good faith.’”⁴⁹ Likewise, where there has been no activity in a case for over 90 days, and in particular a case such as this where no activity occurs for over a year, to assert ongoing negotiations as good cause eviscerates the purpose of the rule. Furthermore, settlement negotiations cannot be deemed a hinderance in moving the case along, especially when moving a lawsuit forward can be as simple as requesting a scheduling conference.

Wagstaffe fails to provide information or evidence of when any proposed settlement communication occurred. If the parties were truly engaged in settlement negotiations, which the defendants deny in this case, they still had the ability to reach out to the court to discuss the timing of those negotiations and to determine whether the matter should be scheduled for trial or not.

⁴⁸ *Martin v. Hoblit*, 133 Idaho 372, 377, 284 P.2d 284, 289 (1999).

⁴⁹ *Healthcare Compare Corp. v. Super Solutions Corp.*, 151 F.R.D. 114 (D.Minn.1993)

f. Lack of Prejudice.

Under Rule 41(e) a court may dismiss a lawsuit in which no action has been taken for a period of six months if there is no showing of good cause for retention of the action. The rule also provides that “[a]t least 14 days prior to such dismissal, the clerk shall give notification of the pending dismissal.” There is no requirement that a party will or will not be prejudiced by the dismissal. Therefore, any argument that the defendants would not be prejudice is without merit.

CONCLUSION

Boren has failed to show good cause for retention in this matter. The justifications asserted by Boren or Boren’s attorney show nothing more than pure neglect of the case. Furthermore, the defendants have not requested retention of their counterclaims. Therefore, pursuant to the findings of this court and Rule 41(e) of the Idaho Rules of Civil Procedure, this matter is dismissed, in its entirety, without prejudice. A judgment of dismissal shall enter forthwith.

DATED: 6/25/2026 11:10:25 AM


DAREN B. SIMPSON
District Judge

CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on this 6/26/2026 12:24:46 PM a true and correct copy of the
ORDER DENYING MOTION TO RETAIN was served on the attorney and/or person
listed below as follows:



Deputy Clerk