**NONPRECEDENTIAL DISPOSITION**
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# United States Court of Appeals

**For the Seventh Circuit**
**Chicago, Illinois 60604**

Submitted September 7, 2023
Decided October 24, 2023

**Before**

MICHAEL B. BRENNAN, *Circuit Judge*

AMY J. ST. EVE, *Circuit Judge*

CANDACE JACKSON-AKIWUMI, *Circuit Judge*

No. 20-2639

MARTELL FLIPPINS,
*Plaintiff-Appellant*,

*v*.

WEXFORD HEALTH SOURCES, INC., ET AL.,
*Defendants-Appellees*.

Appeal from the United States District Court for the Southern District of Illinois.

No. 3:19-cv-00517-NJR

Nancy J. Rosenstengel,
*Chief Judge*.

**O R D E R**

Martell Flippins sued prison officials, medical providers, and Wexford Health Sources, Inc., for deliberate indifference to his serious medical needs as an inmate, in violation of the Eighth Amendment. The district court dismissed his case with prejudice under Federal Rule of Civil Procedure 41(b) for failure to comply with the court's orders and failure to prosecute the case. But those court orders were sent to the wrong mailing address due to a clerical error, meaning Flippins never received the explicit warning

that his case was in danger of being dismissed. Because of that clerical error, we vacate the judgment and remand for further proceedings.

We begin by recounting the relevant procedural facts. In May 2019, Flippins filed his lawsuit in the district court, without the assistance of counsel. At the time, he was incarcerated at Lawrence Correctional Center in Sumner, Illinois, an Illinois Department of Corrections facility. Flippins named as defendants (1) prison officials Kevin Kink, Rob Jeffreys, John Baldwin, Lorie Cunningham, and Sherry Benton; (2) Wexford Health Sources, Inc., which is an IDOC contractor, along with three medical providers employed by Wexford, namely Dr. Steven Ritz, Dr. Vipin Shah, and certified nurse practitioner Sara Stover; and (3) an independent Wexford contractor, Dr. Faiyaz Ahmed.

In August 2019, when IDOC released Flippins from custody, he advised the court of his new mailing address at a halfway house in Calumet City, Illinois**.** Approximately one month later, Flippins notified the court that he had moved to a different halfway house in Chicago, Illinois. Both times, the court updated his mailing address accordingly.

In October 2019, the prison officials filed a motion for summary judgment for failure to exhaust administrative remedies. Flippins did not respond to the motion, but in early February 2020, he emailed Wexford's defense counsel requesting a case update. Counsel responded that the parties were "waiting for the Court to schedule a hearing date for the pending" summary judgment motion.

Two days after this exchange, Flippins filed another change of address notice, writing by hand: "I moved to a different halfway house still located in Chicago, IL. But I have a more permanent mailing address." He then clearly listed his permanent address, located in Gary, Indiana. He signed the letter and, underneath his signature, wrote the address of the Chicago halfway house where he was living at the time. The court updated Flippins's mailing address, but it recorded the Chicago address listed in the signature block instead of the permanent Gary address listed in the body of the letter.

This mistake meant that Flippins would not receive future court orders. On June 11, 2020, the district court issued an order directing Flippins to show cause why his failure to respond to the summary judgment motion "shall not be deemed an admission to the merits of the motion and his claims against these defendants dismissed." The court issued the order on its own initiative—none of the defendants had sought

dismissal for failure to prosecute. The court mailed the order to the incorrect mailing address recorded on the docket, so Flippins never received it and did not respond.

On July 21, 2020, the court issued a "Notice of Impending Dismissal," ordering Flippins to show cause "as to why the Court should not consider his failure to respond to Defendants' motion for summary judgment and the Court's previous Show Cause Order . . . as an abandonment of this lawsuit." The order warned Flippins that failure to comply would result in dismissal "for want of prosecution and/or for failure to comply with a court order under Federal Rule of Civil Procedure 41(b)." This order, too, was sent to the wrong address. Once again, Flippins did not receive it and filed no response.

In fact, on appeal, Flippins shares that he did not think anything was unusual about the long delay between the prison officials' summary judgment motion (filed in October 2019) and the court's scheduling a hearing on the motion because of the COVID-19 pandemic declared shortly after the last update he had on the case (in February 2020, from emails with Wexford's defense counsel). He knew the pandemic had affected the court's operations.

For its part, the district court was unaware that its orders never reached Flippins. On August 6, 2020, the district court dismissed Flippins's case with prejudice and denied the summary judgment motion as moot. Flippins only learned of the dismissal and obtained copies of the court's final order and judgment through an email exchange with Wexford's counsel several days later. The email exchange illustrates that Flippins never received the court's show-cause orders: When Wexford's counsel shared the final order and judgment with Flippins, Flippins asked, "Wasn't [I] supposed to receive some form of notification about these proceedings?"

His case having been dismissed, Flippins filed a timely notice of appeal in this court, and we granted his motion for appointment of counsel. With the help of counsel, Flippins entered two stipulations to dismiss certain defendants-appellees under Federal Rule of Appellate Procedure 42(b). Thus, the only remaining defendant-appellees are Wexford and its three medical providers, Dr. Ritz, Dr. Shah, and certified nurse practitioner Stover.

We now turn to the merits of the appeal. Flippins asks us to vacate the judgment against him as a matter of law because a clerical error prevented the court's show-cause orders from reaching him. Alternatively, he argues that the district court abused its discretion.

The district court dismissed Flippins's case under Rule 41(b) of the Federal Rules of Civil Procedure. That rule provides that, if the plaintiff fails to prosecute or to comply with a court order, "a defendant may move to dismiss the action or any claim against it." Fed. R. Civ. P. 41(b). We have previously held that dismissals under Rule 41(b) are "undeniably harsh" because, procedurally, they serve as "an adjudication on the merits against the plaintiff." *Matter of Bluestein & Co.*, 68 F.3d 1022, 1025 (7th Cir. 1995). And since self-represented plaintiffs are "particularly in need of the court's patience and instruction," we have "consistently held that a district court must give explicit warning prior to dismissing the case for want of prosecution." *Id.* at 1025. Though we have qualified this requirement as "a useful guideline" rather than "a rigid rule" in some cases, *Fischer v. Cingular Wireless, LLC*, 446 F.3d 663, 665 (7th Cir. 2006), we have reiterated that sua sponte dismissals require a warning, *McMahan v. Deutsche Bank AG*, 892 F.3d 926, 933 (7th Cir. 2018).

Here, the district court endeavored to provide an explicit warning to Flippins in its "Notice of Impending Dismissal," but it ultimately did not do so because it sent the order to the wrong address. This deprived Flippins of the court's instruction and an opportunity to receive a judgment on the merits.

Appellees insist that, even aside from the "Notice of Impending Dismissal" that Flippins did not see, Flippins received other warnings that alerted him to his obligation to stay engaged with his case enough to avoid dismissal. Specifically, appellees argue (1) Flippins knew, based on the court's prior orders, that he had to have a current mailing address for service, and (2) Flippins knew he had to respond to the summary judgment motion based on the court's scheduling order and the notice that accompanied the motion.

The notices that appellees point to about the duty to apprise the court of address changes are inapposite because Flippins did update his address with the court diligently—three times. Appellees contend that Flippins failed the final time because his notice stated that he was living in a halfway house in Chicago and did not explain *when* he would move to Gary. But Flippins's notice clearly states "*I have* a more permanent mailing address" and lists that address. There is no other address listed in the body of the letter, and common sense dictates that Flippins was asking the court to forward all future case correspondence to the permanent address he provided.

As for the summary judgment point, appellees seem to be arguing that if Flippins had only responded to the summary judgment motion, the district court would not have concluded that he failed to prosecute his case. We are not so certain. The fact

remains that Flippins's mailing address was recorded incorrectly, and the district court was unaware. So even if Flippins responded to the summary judgment motion, he would not have received or responded to any future orders entered by the court. For instance, had the court scheduled a hearing on the motion, as Wexford's counsel anticipated, Flippins would not have received the notice of hearing and thus could not have appeared. The district court could interpret that as abandonment of the case as well and we would find ourselves contending with the same issue.

Appellees next posit that we should nevertheless affirm the dismissal because Flippins had an independent responsibility to periodically check the case docket. But we have never required self-represented litigants to monitor the docket—that expectation is reserved for attorneys. In *Shaffer*, we said that a self-represented litigant "was responsible for monitoring the status of his case by periodically checking the court's docket." 962 F.3d 313, 317 (7th Cir. 2020). That statement, however, was not essential to the outcome of the appeal and was therefore dictum. *See, e.g.*, *Tate v. Showboat Marina Casino P'ship*, 431 F.3d 580, 582 (7th Cir. 2005). *Shaffer*'s holding was that the district court did not abuse its discretion when it dismissed Shaffer's case after a *pattern* of neglect, including failing to provide the court with an updated address and failing to respond to communication from the court and the other parties. *Shaffer*, 962 F.3d at 314, 316. A district court may dismiss a pro se plaintiff's case for failure to prosecute where a pattern of neglect is shown, including failure to monitor the docket, but that failure alone, when the plaintiff makes other attempts to participate in the lawsuit, is insufficient neglect to justify dismissal with prejudice. Moreover, the only authority *Shaffer* relied on for this proposition was *Salata v. Weyerhaeuser Co.*, which involved an *attorney* who claimed she did not receive notice of status hearings or copies of opposing counsel's motions, even though she was registered with the court's CM/ECF system and copies of all motions and notices were sent to her. 757 F.3d 695, 700 (7th Cir. 2014). That situation is markedly different from the one here.

In sum, a clerical error hindered the district court's ability to warn Flippins about the impending danger of dismissal. Courts have a "duty to correct judgments which contain clerical errors or judgments which have issued due to inadvertence or mistake." *Am. Trucking Ass'ns v. Frisco Transp. Co.*, 358 U.S. 133, 145 (1958). Because of the court's clerical error, Flippins's case must be reinstated as a matter of law. Given this holding, we do not reach the question of whether the district court abused its discretion.

**VACATED** and **REMANDED** for further proceedings consistent with this order.