

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF LOUISIANA**

WILLIAM CONSTANT; ET AL

CIVIL ACTION

VERSUS

NO: 07-3042

CRAIG WEBRE, ET AL

SECTION "C"(5)

ORDER AND REASONS¹

Before this Court is a Motion to Dismiss Plaintiff, Lathaniel Jackson, for Failure to Appear at two scheduled depositions. (Rec. Doc. 149). Having considered the record, the memoranda of counsel and the applicable law, the motion is GRANTED for the following reasons.

Rule 37 and 41 of the Federal Rules of Civil Procedure govern dismissals for failure to participate in discovery. Rule 37(d) provides that if a party fails to obey an order to provide or permit discovery, the court may dismiss the action or proceeding in whole or in part. Rule 41 states "if the plaintiff fails to prosecute or comply with these rules or any order of court, a defendant may move for dismissal of an action or claim against the defendant."

Jackson's disposition was ordinarily scheduled and noticed for December 16, 2009, but he did not appear. (Rec. Doc. 153). Jackson's disposition was re-scheduled and re-noticed for August 20, 2010, and he again failed to appear even after informing his counsel that he would be present for the rescheduled deposition. (Rec. Doc. 153). On both occasions, Jackson's counsel could not offer any reason explaining his absence. (Rec. Doc. 149). It is evident that Jackson has repeatedly

¹Helen Meaher, a J.D. Candidate at Tulane Law School assisted in preparing this Order and Reasons.

failed to attend his depositions, which has impeded the discovery process and trial. Therefore the Court finds that Jackson has failed to prosecute his claim.

Accordingly,

IT IS ORDERED that the defendant Craig Webre's Motion to Dismiss Plaintiff Lathaniel Jackson for Failure to Appear at Scheduled Depositions, is hereby GRANTED.

New Orleans, Louisiana, this 12th day of October, 2010.

A handwritten signature in black ink, appearing to read "Helen G. Berrigan". The signature is written in a cursive style with a large, prominent "H" and "B".

HELEN G. BERRIGAN
UNITED STATES DISTRICT JUDGE