

United States Court of Appeals
FOR THE EIGHTH CIRCUIT

No. 11-1211

Derick Wewerka,	*
	*
Appellant,	*
v.	*
Don Roper, Superintendent;	*
Unknown Huffman; Unknown West;	*
Martin; CO Clubbs; PCC Delasmit,	[UNPUBLISHED]
	*
Appellees,	*
	*
Carl Taylor; Willie Williams,	*
	*
Defendants,	*
	*
Linda Roberts; Sandra Beedle,	*
Nurse; Dale Persch; Carl L. Omer,	*
Asst. Warden; Malloy, Mrs.,	*
	*
Appellees.	*

Submitted: September 28, 2011
Filed: October 3, 2011

Before MURPHY, ARNOLD, and BENTON, Circuit Judges.

PER CURIAM.

Inmate Derick Wewerka appeals the district court's¹ order dismissing his 42 U.S.C. § 1983 action, without prejudice. The court dismissed the complaint under Federal Rule of Civil Procedure 41(b) for failure to prosecute, based on Wewerka's failure to obey a court order requiring him to pay an initial partial filing fee; or alternatively under 42 U.S.C. § 1997e(a) for failure to exhaust his administrative remedies. Upon careful review, this court concludes that the district court did not abuse its discretion based on Wewerka's failure to pay the initial partial filing fee as ordered: he failed to do so for over seven months; he never notified the court of any reason for his noncompliance; and on appeal he does not address the issue. *See Smith v. Gold Dust Casino*, 526 F.3d 402, 404-05 (8th Cir. 2008) (standard of review); *Cosby v. Meadors*, 351 F.3d 1324, 1327 (10th Cir. 2003) (if inmate has means to pay partial filing fee and fails to do so, district court may dismiss action under Rule 41(b) for noncompliance with court order); *Schooley v. Kennedy*, 712 F.2d 372, 374 (8th Cir. 1983) (per curiam) (Rule 41(b) dismissal without prejudice militates against finding abuse of discretion). Thus, this court does not need to discuss the administrative-exhaustion issue.

This court affirms.

¹The Honorable Catherine D. Perry, Chief Judge, United States District Court for the Eastern District of Missouri.