

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE  
MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

WALTER FOSTER,	)	
	)	
Plaintiff,	)	
	)	CIVIL ACTION NO.
v.	)	2:16cv795-MHT
	)	(WO)
CVS AL DISTRIBUTION, LLC,	)	
et al.,	)	
	)	
Defendants.	)	

OPINION

On November 16, 2016, the United States Magistrate Judge held a hearing on the motions to withdraw by the plaintiff's counsel (doc. nos. 7 & 9) in light of the death of the plaintiff (doc. no. 8). Present at the hearing were counsel for both sides and Mr. Walter Foster, Jr., who indicated he was in attendance on behalf of the estate--though an executor has not yet been appointed and the estate had not yet passed through probate proceedings. The magistrate judge explained that the estate could not proceed without attorney representation and instructed Mr. Foster that

he and any other interested party would have until December 30, 2016, either to secure counsel to represent the estate in this lawsuit or to file a statement indicating they were unable to obtain counsel, which could then lead to the dismissal without prejudice of this lawsuit. Mr. Foster was specifically cautioned that the failure to file a response would be treated as an abandonment of the claims and a failure to prosecute. The magistrate judge then issued a written order (doc. no. 11) summarizing the oral instructions given at the hearing and instructing the former plaintiff's counsel to provide Mr. Foster and any other known family members a copy of the order. The deadline for response has now passed, and no response has been filed. In short, given the current circumstances, there is no longer a plaintiff.

The Supreme Court has long held that courts may dismiss actions under Rule 41(b) *sua sponte*. See Link v. Wabash R. Co., 370 U.S. 626, 630-32 (1962) (interpreting Rule 41(b) to authorize *sua sponte*

dismissals for failure to prosecute or comply with the court's order).

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Accordingly, the complaint will be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b). An appropriate judgment will be entered.

DONE, this the 5th day of January, 2017.

/s/ Myron H. Thompson  
UNITED STATES DISTRICT JUDGE