

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

CECIL JAMES MESSER, JR.,)
)
Plaintiff,)
)
v.)
)
R.J. HARRIS, DAVID POTTS,)
MOSETTA NIX, ANISHA PRICE,)
and FLECIA BLAIR,)
)
Defendants.)

CASE NO. 2:17-CV-9-WKW
[WO]

ORDER

Before the court are two motions filed by Plaintiff: (1) a motion for leave of court to file a motion to dismiss under Rule 41 of the Federal Rules of Civil Procedure (Doc. # 38), and (2) a motion for voluntary dismissal of this action without prejudice pursuant to Rule 41(a)(2) (Doc. # 39). Defendants Moseetta Nix, Anisha Price, and Flecia Blair filed an objection to Plaintiff’s motions. (Doc. # 40.) The two motions are due to be granted, and the objection is due to be overruled.

Per Rule 41(a)(2), this “action may be dismissed at the plaintiff’s request only by court order, on terms that the court considers proper,” because the time has passed for Plaintiff to file a voluntary notice of dismissal under Rule 41(a)(1)(A)(i) and Plaintiff has not submitted “a stipulation of dismissal signed by all parties who have appeared” as allowed by Rule 41(a)(1)(A)(ii). Dismissal under Rule 41(a)(2) is

without prejudice unless the order of dismissal says otherwise, Fed. R. Civ. P. 41(a)(2), and is committed to the sound discretion of the district court. *McCants v. Ford Motor Co.*, 781 F.2d 855, 857 (11th Cir. 1986). That said, such a dismissal should be granted in most cases absent clear legal prejudice to Defendants. *McCants*, 781 F.2d at 856–57. Simple litigation costs, inconvenience to Defendants, and the prospect of a second or subsequent lawsuit do not constitute clear legal prejudice. *See id.* at 857.

In their objection to Plaintiffs’ motions, Defendants Nix, Price, and Blair request that the court deny Plaintiffs’ motions “absent a condition that [Plaintiff] pay all costs of the present action, including attorneys’ fees, and to stay such refiled action until Plaintiff has complied.” (Doc. # 40, at 1.) But Defendants have not demonstrated the existence of clear legal prejudice as defined above, and the conditions they request now will still be available if and when Plaintiff files another action against them with the claims he brought in this action, Fed. R. Civ. P. 41(d). The court therefore concludes this action should be dismissed without prejudice on the motion of Plaintiff.

Accordingly, it is ORDERED that:

- (1) Plaintiff’s motion for leave of court to file a motion to dismiss under Rule 41 of the Federal Rules of Civil Procedure (Doc. # 38) is GRANTED;

- (2) Plaintiff's motion for voluntary dismissal without prejudice pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure (Doc. # 39) is GRANTED;
- (3) All other pending motions are DENIED as moot;
- (4) This action is DISMISSED WITHOUT PREJUDICE under Rule 41(a)(2) of the Federal Rules of Civil Procedure.

A final judgment will be entered separately.

DONE this 14th day of May, 2018.

/s/ W. Keith Watkins
CHIEF UNITED STATES DISTRICT JUDGE