

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ALABAMA  
SOUTHERN DIVISION**

**CLARESE SMITH,**

}

**Plaintiff,**

}

}

**v.**

}

**Case No. 2:18-CV-02007-CLM**

}

**ADVANCE STORES  
COMPANY INCORPORATED  
d/b/a Advance Auto Parts,**

}

}

}

}

}

**Defendant.**

}

}

**MEMORANDUM OPINION**

The court **GRANTS** Defendant’s Motions to Dismiss for Lack of Prosecution (docs. 22, 24), for the reasons explained below.

**I. Background**

On December 4, 2018, Plaintiff Smith filed a Complaint against Defendant Advance Stores Company Incorporated d/b/a Advance Auto Parts (“Advance Auto”) alleging gender discrimination claims under Title VII and disability discrimination claims under the ADA/ADAAA. Doc 1. The court entered a scheduling order on April 29, 2019, requiring all discovery to be completed by January 31, 2020. Doc. 13. On January 31, 2020, Plaintiff Smith’s attorney filed a motion to withdraw, which was granted. *See* Docs. 18, 19. After granting the motion to withdraw. the court temporarily stayed the case to allow Plaintiff Smith time to find new counsel

and extended the discovery deadline in this case to April 30, 2020. Doc. 18. The court further explained to Plaintiff Smith that, “[r]egardless of whether Plaintiff Smith obtains new counsel, her discovery obligations continue after the stay is lifted. This means that after February 27, 2020, Plaintiff Smith will be required to participate in a deposition, regardless of whether she has obtained counsel.” Doc. 19. It seems that Plaintiff Smith has not participated in this case since.

On May 12, 2020, Advance Auto filed a Motion to Dismiss for Lack of Prosecution. Doc. 22. In its motion, Advance Auto explained that despite its multiple attempts to contact Plaintiff Smith and to schedule her deposition, Advance Auto had received no response from Plaintiff Smith and that the discovery deadline had passed. Advance Auto also noted in its motion that Plaintiff Smith failed to appear at a status conference set by the court on May 11, 2020, a fact of which the court was already aware.

The court entered a show cause order on May 15, 2020, giving Plaintiff Smith until May 29, 2020 to explain to the court her failure to prosecute this case, including why she failed to respond to Defendant’s attempts to communicate and schedule a deposition and why she failed to participate in the status conference set by the court. Doc. 23. The court warned Plaintiff Smith that “[f]ailure to respond to this order shall result in the dismissal of this action with prejudice.” *Id.* Smith failed to respond, and Advance Auto filed its second Motion to Dismiss (doc. 24).

## II. Analysis


Rule 41(b) states that “[i]f a plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” The Eleventh Circuit has held that “[d]ismissal pursuant to Rule 41(b) upon disregard of an order, especially where the litigant has been forewarned, generally is not an abuse of discretion.” *Kelly v. Old Dominion Freight Line, Inc.*, 376 F.App’x 909, 913-14 (11th Cir. 2010) (citations omitted).

Plaintiff Smith has disregarded the discovery schedule and court orders, even after the court warned her of the effect of doing so. When Advance Auto moved to dismiss this action, Smith provided no response, even after the court ordered her to respond. In short, Plaintiff Smith has “utterly abandoned prosecution of this action.” *Dudley v. City of Birmingham*, 2014 WL 4166773, at \*3 (N.D. Ala. Feb 3, 2014).

Because Smith has failed to heed this court’s warnings and orders, the court finds that Defendant Advance Auto’s Motions to Dismiss (docs. 22 and 24) are due to be **GRANTED** and this action is due to be **DISMISSED with prejudice**. A final judgment will be entered contemporaneously with this memorandum opinion.

The Clerk is **DIRECTED** to mail a copy of this opinion to Plaintiff Clarese Smith at 435 10<sup>th</sup> Terrace, Pleasant Grove, AL, 35127.

**DONE** and **Ordered** on June 22, 2020.

  
\_\_\_\_\_  
**COREY L. MAZE**  
UNITED STATES DISTRICT JUDGE