

**IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF ARKANSAS
JONESBORO DIVISION**

CALVIN RAY McDANIEL

PLAINTIFF

V.

CASE NO. 3:09CV00169-BD

DICK BUSBY, *et al.*

DEFENDANTS

ORDER

Now pending is a motion to compel discovery and a motion to dismiss filed by Defendants Busby, Boyd, Bonner, Mobley, and Peterson. (Docket entries #29 and #32) Both motions are based upon Mr. McDaniel's failure to participate in this lawsuit. Mr. McDaniel has not responded to either motion, and the time do so has passed.

In the motion to compel, Defendants explain that they sent Mr. McDaniel their first set of discovery requests in October, 2009. He never responded. After the Court appointed George Michael DeLoache to represent Mr. McDaniel, Defendants sent another copy of the discovery requests to Mr. DeLoache. The Defendants still received no response. After Mr. DeLoache withdrew his representation, the Court appointed Danny Glover to represent Mr. McDaniel. (#25) The Defendants provided copies of their discovery requests to Mr. Glover. To date, the Defendants have not received any response. It appears that Mr. Glover has been unable to locate Mr. McDaniel and, therefore, has been unable to provide responses to the discovery requests. (#29-3 at p.1)

In their motion to dismiss, Defendants explain that in August 2011, they scheduled Mr. McDaniel's deposition. Although Mr. Glover testified that he had received the notice

of deposition and mailed it to Mr. McDaniel's last-known address, Mr. McDaniel did not appear for the deposition. Mr. Glover also explained that he had attempted to mail several other letters to Mr. McDaniel and had attempted to contact Mr. McDaniel by telephone multiple times, but received no response. Based on Mr. McDaniel's failure to participate in this lawsuit, which he initiated, Defendants now ask that Mr. McDaniel's claims against them be dismissed.

Federal Rule of Civil Procedure 37(d)(3) provides that a Court may dismiss an action if a party fails to attend his own deposition or fails to respond to requests for inspection. Here, Mr. McDaniel neither attended his deposition nor responded to discovery requests that were initially served nearly two years ago. Based on his apparent lack of interest in this lawsuit, it would be a waste of judicial resources to allow this action to continue.

The motion to dismiss (#32) is GRANTED. Mr. McDaniel's claims are DISMISSED without prejudice. The motion to compel (#29) is DENIED as moot.

IT IS SO ORDERED this 21st day of September, 2011.



UNITED STATES MAGISTRATE JUDGE