

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

JUSTIN R. HENSLEY  
ADC #138260

PLAINTIFF

V.

NO: 3:11CV00121 HDY

DAVID LEACH *et al.*

DEFENDANTS

**ORDER**

On July 19, 2012, Defendants filed a motion to dismiss, along with a brief in support, asserting that Plaintiff has failed to update his address as required by the Court's Local Rule 5.5(c)(2).<sup>1</sup> Although more than 14 days have passed, Plaintiff has not responded to the motion. Plaintiff's address of record is at the Arkansas Department of Correction ("ADC"). However, as Defendants note, according to the website maintained by the ADC, Plaintiff is no longer incarcerated there. Under these circumstances, the Court concludes that Defendants' motion should be granted, and Plaintiff's complaint should be dismissed due to his failure to comply with Local Rule 5.5(c)(2). *See Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995) (District courts have inherent power to dismiss *sua sponte* a case for failure to prosecute, and exercise of that power is reviewed for abuse of discretion).

IT IS THEREFORE ORDERED THAT:

1. Defendants' motion to dismiss (docket entry #29) is GRANTED, and Plaintiff's

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<sup>1</sup>Local Rule 5.5(c)(2), provides: "It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings and state his/her address, zip code, and telephone number. If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure."

complaint is DISMISSED WITHOUT PREJUDICE for failure to comply with Local Rule 5.5(c)(2).

2. The Court certifies that an *in forma pauperis* appeal taken from the order and judgment dismissing this action is considered frivolous and not in good faith.

DATED this 7 day of August, 2012.



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UNITED STATES MAGISTRATE JUDGE