

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

MICHAEL PATRICK SPEAR, SR.

PLAINTIFF

V.

NO: 3:13CV00006 SWW

DENNIS BURTON

DEFENDANT

ORDER

Plaintiff filed this *pro se* complaint, pursuant to 42 U.S.C. § 1983, on January 9, 2013.

Plaintiff did not pay the \$350.00 filing fee, or file an application for leave to proceed *in forma pauperis*. Accordingly, on January 16, 2013, Plaintiff was ordered to pay the filing fee, or to file an application for leave to proceed *in forma pauperis*, within 30 days (docket entry #2). That same order also warned Plaintiff that his failure to do so would result in the dismissal of his complaint.

Because that order, and other mail sent to Plaintiff at the Sharp County Detention Center was returned with a notation that he was no longer here, the Court, on February 21, 2013, entered another order directing Plaintiff to pay the filing fee or to file an application for leave to proceed *in forma pauperis*, and warning him that his failure to do so within 30 days would result in the dismissal of his complaint (docket entry #6). That order was sent not only to Plaintiff's address of record, but also to a private address he had included in his original complaint.

More than 30 days have passed, and Plaintiff has not paid the filing fee, filed an application for leave to proceed *in forma pauperis*, or otherwise responded to the order. Under these circumstances, the Court concludes that Plaintiff's complaint should be dismissed without prejudice for failure to pay the filing fee, failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order. *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. Plaintiff's complaint is DISMISSED WITHOUT PREJUDICE for failure to pay the filing fee, failure to comply with Local Rule 5.5(c)(2), and for failure to respond to the Court's order.
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 29th day of March, 2013.

/s/Susan Webber Wright

UNITED STATES DISTRICT JUDGE