

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

ROBERT MARTIN

PLAINTIFF

V.

2:08CV00204 JMM

**AGRICULTURAL PRODUCTIVITY
d/b/a AG PRO OF DEWITT, ARKANSAS;
JOHN DEERE OF ARKANSAS**

DEFENDANTS

ORDER

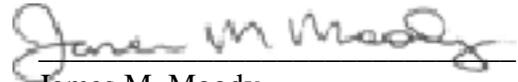
Pending is the Motion to Transfer Case and Motion for Attorneys Fees filed by Defendant Agricultural Productivity. The Plaintiff has objected to the Motion for Attorneys Fees.

It appears that the Plaintiff's previously dismissed case, Case Number 5:07CV00189 JMM, is identical to this case. Pursuant to Rule 41(d) the costs related to the 2007 case could be assessed to the Plaintiff upon re-filing. Fed. R. Civ. P. 41(d). However, because the Court did not caution Plaintiff that costs related to the 2007 case could be assessed to him if he re-filed the case, the Court does not find it just to impose this rule. Accordingly Defendant's Motion for Attorneys Fees is DENIED.

On January 9, 2009, the Honorable William R. Wilson, who was presiding over the case at the time, asked Plaintiff to respond to the Motion to Transfer by Friday, January 16, 2009. Judge Wilson added, "If you choose not to respond by 5:00 p.m. on Friday, January 16, 2009, I will grant the motion." (Docket # 11). Plaintiff did not respond to the motion. Therefore, the Court finds that the Motion to Transfer (Docket # 6) should be, and hereby is, GRANTED. The case is transferred from the Helena Division of the Eastern District of Arkansas to the Pine Bluff Division.

The Motion to Transfer Case (Docket #) is GRANTED. The Motion for Attorneys Fees (Docket # 4) is DENIED.

IT IS SO ORDERED this 21st day of January 2009.

A handwritten signature in black ink, appearing to read "James M. Moody", written over a horizontal line.

James M. Moody
United States District Judge