

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
EL DORADO DIVISION

DANIEL EAST

PLAINTIFF

v.

Case No. 1:15-cv-01019

SHERIFF MIKE
MCGOUGH

DEFENDANT

ORDER

Plaintiff, Daniel East, submitted this *pro se* action for filing on April 8, 2015. ECF No. 1. Currently before the Court are Plaintiff's failure to follow a Court Order and failure to prosecute.

On April 8, 2015, Plaintiff filed his Complaint (ECF No. 1) and the Court granted him *in forma pauperis* ("IFP") status. The IFP Order advised Plaintiff to keep the Court apprised of any address changes or face dismissal of his case. ECF No. 3. On October 19, 2015, mail sent to Plaintiff at the Union County Criminal Justice Facility was returned as undeliverable. On October 20, 2015, the Court entered an Order changing Plaintiff's address to the home address he provided to the justice facility when he was booked.¹ The Order was not returned as undeliverable. Plaintiff has not communicated with the Court since April 8, 2015.

On December 18, 2015, Defendant filed a Motion to Compel, stating that Plaintiff had failed to respond to discovery requests. ECF No. 12. On January 14, 2016, the Court entered an Order granting this motion. ECF No. 15. In the Order, Plaintiff was directed to respond to the discovery requests by February 1, 2016. Plaintiff was also advised that failure to respond could result in dismissal of the case. ECF No. 15. The Order was sent to Plaintiff, and it was not returned as undeliverable. On February 4, 2016, Defendant filed a Motion to Dismiss, requesting this case be dismissed with prejudice because Plaintiff had not complied with the Court's Order. ECF No. 17.

While *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from

¹The Order was mailed to 3402 King Street, El Dorado, Arkansas 71730.

complying with substantive and procedural law. *See Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984).

Local Rule 5.5(c)(2) states in pertinent part:

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. . . . 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.

Local Rule 5.5(c)(2) (emphasis added).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds the plaintiff failed to prosecute or failed to comply with orders of the Court. *See Fed. R. Civ. P. 41(b)*; *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (the district court possess the power to dismiss *sua sponte* under Rule 41(b)). Pursuant to Rule 41(b), a district court has the power to dismiss an action based on “the plaintiff’s failure to comply with *any* Court order.” *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986).

Plaintiff has failed to keep the Court apprised of his current address as required by Local Rule 5.5(c)(2). Plaintiff has failed to comply with the Court’s Order granting Defendant’s Motion to Compel directing him to respond to discovery requests. Plaintiff has also failed to prosecute this matter. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), this case should be dismissed without prejudice for failure to comply with the Court’s Local Rules and Orders and failure to prosecute this case. *See* Local Rule 5.5(c)(2); Fed. R. Civ. P. 41(b). Accordingly, Plaintiff’s Complaint (ECF No. 1) is hereby **DISMISSED** without prejudice.

IT IS SO ORDERED, this 18th day of February, 2016.

/s/ Susan O. Hickey _____
Susan O. Hickey
United States District Judge