

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

JIMMY JERMAINE HEARD

PLAINTIFF

v.

Civil No. 1:21-cv-01050

DR. DEANNA HOPSON;
CAPTIAN RICHARD MITCHAM;
NURSE KASIE SANFORD; OFFICER
MICK VICK; OFFICER WARD;
OFFICER BEASLEY; OFFICER JONATHAN
TUBBS; and OFFICER JEDIDAH COTTON

DEFENDANTS

ORDER

Plaintiff, Jimmy Jermaine Heard, filed this 42 U.S.C. § 1983 action *pro se* on October 22, 2021. (ECF No. 1). Plaintiff was granted Leave to Proceed *in forma pauperis* on the same day. (ECF No. 3). On February 16, 2022, the parties consented to have the undersigned conduct all proceedings in this case including a jury or nonjury trial and to order the entry of a final judgment in accordance with 28 U.S.C. § 636(c) and Fed. R. Civ. P. 73. (ECF No. 21). Before the Court is Plaintiff's failure to comply with orders of the Court.

On September 8, 2022, Plaintiff filed a Notice of Change of Address informing the Court he was released and providing the Court with his free-world mailing address. (ECF No. 42). Based on this Notice, on September 8, 2022, the Court ordered Plaintiff to either: (1) pay the remaining balance on his filing fee; or (2) resubmit an application to proceed *in forma pauperis* (IFP) with such application reflecting Plaintiff's free-world financial status. (ECF No. 43). Plaintiff's response to the September 8, 2022 Order was due on September 29, 2022. Plaintiff failed to resubmit a new IFP Application, pay his filing fee balance, or file any response.

The Court then entered an Order to Show Cause directing Plaintiff to show cause why he failed to follow the Court's September 8, 2022 Order. (ECF No.52). Plaintiff's response to the

Show Cause Order was due on November 1, 2022. To date, Plaintiff has not filed a response to the Show Cause Order, resubmitted his IFP Application, or paid the remaining balance on his filing fee.

On October 11, 2022, the Court ordered Plaintiff to file a response to Defendant Deanna Hopson's Motion for Summary Judgment by November 1, 2022. (ECF No. 49). To date, Plaintiff has not filed a response to the Motion for Summary Judgment. Further, no Orders sent to Plaintiff's free-world address of record have been returned to the Court as undeliverable.

Although *pro se* pleadings are to be construed liberally, a *pro se* litigant is not excused from complying with substantive and procedural law. *Burgs v. Sissel*, 745 F.2d 526, 528 (8th Cir. 1984). The Local Rules state 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).

Additionally, the Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the grounds that the plaintiff failed to prosecute or failed to comply with orders of the court. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (stating the district court possesses 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) (emphasis added).

Plaintiff has failed to obey several orders of the Court. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that this case should be

dismissed. Accordingly, Plaintiff's Complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED, this 18th day of November 2022.

s/ Barry A. Bryant

HON. BARRY A. BRYANT
UNITED STATES MAGISTRATE JUDGE