

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

JOSHUA JAMES ALLEN

PLAINTIFF

v.

Civil No. 2:17-cv-02008

SHERIFF BILL HOLLENBECK, *et al.*

DEFENDANTS

**ORDER**

This is a civil rights action filed by the Plaintiff, Joshua James Allen, pursuant to 42 U.S.C. § 1983. The case is currently before me on Defendants' Motion to Dismiss (Doc. 25). The Plaintiff has not responded to the motion.

**I. BACKGROUND**

Plaintiff filed his complaint (Doc. 1), on January 10, 2017. An order granting *in forma pauperis* (IFP) was entered on the same date. (Doc. 3). In this order, Plaintiff was advised his case could be dismissed if he did not keep the Court apprised of his current address.

On April 21, 2017, the Order docketed as document 18 and the Summons docketed as document 20, previously mailed to the Plaintiff, were returned to the Court as undeliverable. No new address was available at that time. The Plaintiff reported a change of address over the telephone on May 17, 2017.<sup>1</sup> The Summons docketed as document 22, previously mailed to the Plaintiff, was returned to the Court as undeliverable on May 22, 2017. The Summons docketed as document 22 was then resent to Plaintiff's last reported address, City of Faith, 1401 South

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<sup>1</sup> The new address reported by Plaintiff on May 17, 2017 was City of Faith, 1401 South Garfield Avenue, Little Rock, Arkansas 72204.

Garfield Avenue, Little Rock, Arkansas. On May 26, 2017, mail including the Summons docketed as document 24 originally sent to the Plaintiff's City of Faith address on May 24, 2017 was returned to the court as undeliverable. No new address was available.

The Defendants move for dismissal of Plaintiff's complaint because since May 24, 2017, mail has repeatedly been returned as undeliverable and because attempts to locate a current address were unsuccessful. (Doc. 25). The Certificate of Service attached to the Motion to Dismiss shows that the pleading was mailed to the Plaintiff's last known address. The Plaintiff has not responded to the Defendants' motion and has not communicated with the Court since May 17, 2017.

## II. LEGAL STANDARD

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 that 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).

#### **IV. CONCLUSION**

In the present case, Plaintiff has failed to prosecute this matter and has failed to keep the Court informed of his current address. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that the motion (Doc. 25) should be **GRANTED** and this case should be **DISMISSED WITHOUT PREJUDICE**.

IT IS SO ORDERED this 30<sup>th</sup> day of August, 2017.

/s/P. K. Holmes, III  
P.K. HOLMES, III  
CHIEF U.S. DISTRICT JUDGE