

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
TEXARKANA DIVISION

GEORGE BOOKER FOSTER, JR.

PLAINTIFF

v.

CASE NO. 4:08-cv-4028

SGT. MARSHALL WILLIAMS;
OFFICER JAKE JONES;
KITCHEN SUPERVISOR GREEN

DEFENDANTS

MEMORANDUM OPINION

Now before the Court is the Defendants' Motion for Facts to be Deemed Admitted and Motion to Dismiss. (Doc. 28). On October 31, 2008, Defendants filed their Motion for Summary Judgment. (Doc. 20). On November 21, 2008, the Court entered an Order directing Plaintiff to complete and return the attached response to the Motion for Summary Judgment. (Doc. 23). Plaintiff failed to return his response to the Motion for Summary Judgment, and he also failed to file completed pretrial materials related to the bench trial which was set in this case for January 8, 2009. As such, the Court issued an Order to Show Cause (Doc. 25) allowing Plaintiff until January 7, 2009 to show cause why his case should not be dismissed for a failure to follow a court order/failure to prosecute. Plaintiff has not responded to the Order to Show Cause, nor has any mail sent to the Plaintiff been returned to the Court.

Defendants seek in their Motion to have the facts as pled in their Statement of Undisputed Material Facts be deemed admitted due to Plaintiff's failure to respond or controvert those facts. Defendants also seek to have the Motion for Summary Judgment be granted, and Plaintiff's Complaint dismissed with prejudice.

The Court finds Plaintiff has had the opportunity to respond and prosecute this action. He

was given notice of the Motion for Summary Judgment filed by the Defendants, was sent the response from the court, and also received an Order to Show Cause. Plaintiff has also had adequate notice of the Defendants' Motion at issue, and has not responded. Plaintiff has plainly made no effort to pursue his case against Defendants.

Accordingly, Defendants Statement of Facts (Doc. 22) is deemed admitted, pursuant to Local District court Rule 56.1. As such, Defendants' Motion for Summary Judgment (Doc. 20) is **GRANTED**. Plaintiff's Complaint is should be **DISMISSED** with prejudice due to the granting of Defendants' Motion for Summary Judgment, Plaintiff's failure to prosecute this action, and Plaintiff's failure to follow an Order of the Court. A judgment incorporating these findings will be entered pursuant to Federal Rules of Civil Procedure 52 and 58.

IT IS SO ORDERED this 2nd day of April 2009.

/s/ Barry A. Bryant
HON. BARRY A. BRYANT
U.S. MAGISTRATE JUDGE