

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

BILLY RAY MCCAULEY, JR.

PLAINTIFF

v.

Civil No. 4:15-cv-04109

HEMPSTEAD COUNTY, ARKANSAS;
JOHNNY GODBOLT, Captain;
JAMES ROSS, Lieutenant;
JAMES SINGLETON, Sheriff

DEFENDANTS

ORDER

This is a civil rights action filed by the Plaintiff, Billy Ray McCauley, Jr., pursuant to 42 U.S.C. § 1983. Plaintiff proceeds in this action *pro se* and *in forma pauperis*. Currently before the Court is Plaintiff's failure to respond to two Court Orders directing Plaintiff to complete an Amended Complaint (ECF No. 8) and Plaintiff's failure to respond to the Court's Order to Show Cause (ECF No. 10). After thorough consideration, the Court issues this Order.

BACKGROUND

On November 18, 2015, Plaintiff originally filed this case *pro se*. ECF No. 1. In his Complaint, Plaintiff claims his constitutional rights were violated as a result of unsanitary and unsafe conditions and denial of medical care while he was housed in the Hempstead County Detention Center in Hope, Arkansas. Plaintiff's address of record indicates that he is now incarcerated in the Arkansas Department of Correction – Ouachita River Unit in Malvern, Arkansas. ECF No. 11.

On February 18, 2016, Judge James R. Marschewski, United States Magistrate Judge for the Western District of Arkansas, directed Plaintiff to complete and return an Amended Complaint (ECF No. 8) in order to assist the Court with preservice screening under the provision

of the Prison Litigation Reform Act (“PLRA”). In this Order, Plaintiff was advised that, if he failed to return the completed and executed Amended Complaint by March 19, 2016, his Complaint may be dismissed for failure to prosecute and/or for failure to obey an order of the Court. ECF No. 8. Plaintiff did not respond to the Court’s Order. On March 2, 2016, Plaintiff filed a Motion to Appoint Counsel. ECF No. 9. On March 29, 2016, Judge Marschewski denied Plaintiff’s Motion.

Because Plaintiff had made contact with the Court, by filing the request for counsel, Judge Marschewski issued an Order to Show Cause why Plaintiff had failed to respond to the Court’s February 18, 2016 Order. ECF No. 10. This show cause order directed Plaintiff to file his Amended Complaint by April 12, 2016. He was advised that if he failed to timely return the Amended Complaint, his Complaint may be dismissed for failure to prosecute and/or for failure to obey an order of the Court. ECF No. 10. Plaintiff did not respond to the show cause order or file his amended complaint. None of the Court’s Orders have been returned as undeliverable. On April 6, 2016 Plaintiff notified the Court of a change of address. ECF No. 11.

DISCUSSION

While *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 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. Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962) (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) (quoting *Haley v. Kansas City Star*, 761 F.2d 489, 491 (8th Cir. 1985)) (emphasis added).

Plaintiff has failed to prosecute this case and has failed to comply with court orders. Plaintiff has failed to respond to two of the Court's Orders (ECF No. 8, 10). As a result, the Court is unable to perform the required prescreening function required by the PLRA.

CONCLUSION

Because Plaintiff has failed to comply with this Court's Orders, the Court finds that Plaintiff's Complaint should be and hereby is **DISMISSED WITHOUT PREJUDICE** pursuant to Federal Rule of Civil Procedure 41 (b).

IT IS SO ORDERED, this 11th day of July, 2016.

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