

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

MICHAEL GARDNER

PLAINTIFF

v.

Civil No. 4:16-cv4102

CORRECTIONAL OFFICER  
N. TEFFT, *et al.*

DEFENDANTS

**ORDER**

Plaintiff proceeds in this matter *pro se* and *in forma pauperis* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's failure to obey a Court order and failure to prosecute this case.

**I. BACKGROUND**

On September 14, 2017, the Court entered an Order (ECF No. 39) directing Plaintiff to submit a Response to Defendants' Motion for Summary Judgment (ECF No. 33). Plaintiff's Response was due by October 16, 2017, and the Order advised Plaintiff that failure to timely and properly comply with the Order would result in the dismissal of this action, without prejudice, pursuant to Local Rule 5.5(c)(2). (ECF No. 39). The Order was not returned as undeliverable. Plaintiff did not respond.

**II. LEGAL STANDARD**

The Federal Rules of Civil Procedure specifically contemplate dismissal of a case on the ground that the plaintiff failed to prosecute or failed to comply an order 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).

### III. ANALYSIS

Plaintiff has failed to comply with a Court Order directing him to respond to a Motion for Summary Judgment. Plaintiff has failed to prosecute this matter. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that Plaintiff’s Complaint should be dismissed without prejudice for failure to comply with the Court’s order and failure to prosecute this case. Thus, Plaintiff’s Complaint (ECF No. 1) is **DISMISSED WITHOUT PREJUDICE**.

**IT IS SO ORDERED** this 21st day of November 2017.

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