

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

ROBERT W. AVERY

PLAINTIFF

v.

Civil No. 5:18-cv-05075

TURN KEY HEALTH CLINICS,
LLC; JOHN AND JANE DOE EMPLOYEES
OF TURN KEY HEALTH CLINICS;
TRINITYSERVICES GROUP, INC.; JOHN
AND JANE DOE EMPLOYEES OF TRINITY
SERVICES GROUP; SHERIFF HOLLOWAY;
CAPTAIN GUYLL; LIEUTENANT HOLT;
JOHN AND JANE DOE EMPLOYEES OF THE
BENTON COUNTY DETENTION CENTER;
SMART COMMUNICATIONS HOLDING, INC.
d/b/a SmartJailMail.com; KEEFE
COMMISSARY NETWORK, LLC; and JOHN
AND JANE DOE EMPLOYEES OF KEEFE
COMMISSARY

DEFENDANTS

OPINION AND ORDER

This is a civil rights action filed by the Plaintiff pursuant to 42 U.S.C. § 1983. Plaintiff proceeds *pro se* and *in forma pauperis*. When Plaintiff filed this lawsuit, he was incarcerated in the Benton County Detention Center. Plaintiff is currently incarcerated in the Delta Regional Unit of the Arkansas Department of Correction.

On August 13, 2018, Separate Defendant Smart Communications Holding, Inc., filed a Motion to Dismiss (ECF No. 25). That same day, an Order (ECF No. 35) was entered directing Plaintiff to file a response to the Motion to Dismiss by September 4, 2018. Plaintiff was advised that failure to respond to the Order would subject the case to dismissal, without prejudice.

On September 7, 2018, mail was returned to the Court as undeliverable from the Benton County Detention Center. On September 12, 2018, Plaintiff filed a notice of change of address to the Delta Regional Unit. All documents that had been returned as undeliverable, including the Order directing the filing of a response to the Motion to Dismiss, were resent to the Plaintiff. On September 14, 2018, in view of

Plaintiff's recent change of address, an Order (ECF No. 38) was entered extending Plaintiff's response time to October 3, 2018.

To date, Plaintiff has not filed a response to the Motion to Dismiss. He has not requested an extension of time to file his response. No mail has been returned as undeliverable. Plaintiff has failed to comply with the Court's Order (ECF No. 38) requiring him to file his response to the Motion to Dismiss by October 3, 2018.

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 with order of the court. Fed. R. Civ. P. 41(b); *Line 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). Additionally, Rule 5.5(c)(2) of the Local Rules for the Eastern and Western Districts of Arkansas requires parties appearing *pro se* to monitor the case, and to prosecute or defend the action diligently.

In this case, the Court finds it appropriate to limit the dismissal to Smart Communications Holding, Inc. Therefore, pursuant to Rule 41(b), all claims against Smart Communications Holding, Inc. d/b/a SmartJailMail.com are DISMISSED WITHOUT PREJUDICE based on Plaintiff's failure to prosecute those claims, his failure to obey the order of the Court, and his failure to comply with Local Rule 5.5(c)(2). Fed. R. Civ. P. 41(b).

IT IS SO ORDERED this 16th day of October 2018.


P. K. HOLMES, III
CHIEF U.S. DISTRICT JUDGE