

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

ROY ANTHONY DABNEY

PLAINTIFF

v.

Civil No. 5:22-cv-05251-CDC

CORPORAL CODY REX, Washington
County Detention Center (WCDC); and
DEPUTY HUGHES, WCDC

DEFENDANTS

OPINION

Plaintiff, Roy A. Dabney, filed this action pursuant to 42 U.S.C. §1983 on December 28, 2022. He proceeds *pro se* and *in forma pauperis*. At the time the case was filed, Plaintiff was incarcerated in the Washington County Detention Center. (ECF No. 1). Plaintiff has since been transferred to the Cummins Unit of the Arkansas Division of Correction. (ECF No. 16).

Plaintiff filed an Amended Complaint on January 5, 2023, which is the operative pleading. (ECF No. 6). Plaintiff alleges his constitutional rights were violated when the Defendants used excessive force against him on October 28, 2022.

On July 20, 2023, the Court granted in part and denied in part Defendants' Motion to Compel. (ECF No. 21). Plaintiff was directed to supplement his responses to certain interrogatories, respond to other interrogatories, and respond to a request for production of documents. Plaintiff was given until August 14, 2023, to submit his discovery responses to Defendants. If Plaintiff failed to provide the discovery responses, Defendants were directed to file a motion to dismiss notifying the Court of Plaintiff's failure.

On August 16, 2023, Defendants filed a Motion to Dismiss. (ECF No. 22). In their Motion, Defendants advise the Court that Plaintiff has failed to respond to the discovery requests. Defendants ask that the case be dismissed pursuant to Rule 41(b) or Rule 37(b)(2) of

the Federal Rules of Civil Procedure. Defendants also requested a stay of the deadline for filing a summary judgment motion set forth in the Initial Scheduling Order. (ECF No. 13). This portion of the Motion was granted on August 17, 2023. (ECF No. 25). That same day, Plaintiff was directed to respond to the Motion to Dismiss by September 7, 2023. (ECF No. 24).

Rule 41(b) of the Federal Rules of Civil Procedure specifically contemplates dismissal of a case on the ground that the plaintiff failed to prosecute or failed to comply with an 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.

Finally, Rule 37(b)(2) provides that the Court may sanction a party for not obeying a discovery order. Fed. R. Civ. P. 37(b)(2). Among the authorized sanctions a party may seek is the dismissal of the action or proceeding in whole or in part. Fed. R. Civ. P. 37(b)(2)(v). The remedy sought in this case by the Defendants.

In view of Plaintiff’s failure to obey the Order on the Motion to Compel entered on July 20, 2023, and the Order directing him to respond to the Motion to Dismiss entered on August 17, 2023, the Court finds that dismissal of this case is the appropriate remedy.¹ Accordingly, Defendants’ Motion to Dismiss (ECF No. 22) is **GRANTED**. This case is **DISMISSED**

¹ The last document filed by Plaintiff was his change of address on April 3, 2023. (ECF No. 16).

WITHOUT PREJUDICE pursuant to Rules 37(b)(2)(v) and 41(b) of the Federal Rules of Civil Procedure and Rule 5.5(c)(2) of the Local Rules for the Eastern and Western Districts of Arkansas.

IT IS SO ORDERED on this 25th day of September 2023.

s/ Christy Comstock

CHRISTY COMSTOCK
UNITED STATES MAGISTRATE JUDGE