

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF ARKANSAS
HOT SPRINGS DIVISION

BILLY J. KAIN, JR.

PLAINTIFF

v.

Civil No.: 6:17-CV-06037

CORRECT CARE SOLUTIONS, *et. al.*

DEFENDANTS

ORDER

Plaintiff proceeds in this matter *pro se* pursuant to 42 U.S.C. § 1983. Currently before the Court is Plaintiff's failure to comply with an Order of the Court directing him to pay the filing fee in this matter as required by law.

I. BACKGROUND

Plaintiff is prohibited from proceeding *in forma pauperis* (IFP) because he has had at least three (3) prior cases dismissed as frivolous or for failure to state a claim. *See Kain v. Banks*, No. 2:05CV00019JMM (E.D. Ark. Feb. 10, 2005) (citing seven prior cases by Plaintiff which had been dismissed as frivolous and for failure to state a claim). He was granted IFP status in this case on May 17, 2017, because of questions regarding his allegation that he currently suffered from Crohn's disease. (ECF No. 12). When Plaintiff's subsequent filings indicated that the Court's initial decision regarding IFP status had been misplaced, Plaintiff's IFP status was revoked on June 20, 2018, and he was given thirty days to pay the full filing fee of \$350.00. (ECF No. 94). In that Order, Plaintiff was advised as follows: "If Plaintiff fails to pay the full filing fee within this thirty-day period, his case will be dismissed without prejudice pursuant to 28 U.S.C. § 1915(g)." (ECF No. 94 at 6). Accordingly, Plaintiff's deadline to pay the full filing fee was July 20, 2018. To date, Plaintiff has not paid the filing fee as he was ordered to do on June 20, 2018.

In response to this Court's Order to pay the filing fee, Plaintiff filed a Notice of Appeal and a Motion for Leave to Appeal IFP.¹ (ECF Nos. 96 and 97). On July 2, 2018, United States Magistrate Judge Barry A. Bryant entered a Report and Recommendation that Plaintiff's Motion to Appeal IFP be denied, as it was frivolous and therefore not taken in good faith. (ECF No. 99). The Report and Recommendation was adopted on July 19, 2018. (ECF No. 102). Plaintiff's Motion for Leave to Appeal IFP was denied and he was informed of his right to renew the IFP request directly with the United States Court of Appeals for the Eighth Circuit.

Plaintiff filed a Second Motion for Leave to Appeal IFP on July 9, 2018. (ECF No. 100). He also filed a Supplement to this Motion on July 19, 2018. (ECF No. 103).²

II. LEGAL STANDARD

Although *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 that 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) (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).

¹ The Clerk for the United States Court of Appeals for the Eighth Circuit indicates the Notice of Appeal filed by Plaintiff on July 2, 2018 (ECF No. 96) has been received by that Court. *See, Kain v. Correctional Medical Services et al*, No. 18-2556 (8th Cir. 2018).

² The Eighth Circuit has ordered Plaintiff to pay the filing fee of \$505.00 or file a pleading explaining why he is eligible to proceed without pre-payment of the filing fee. *See id.*

III. ANALYSIS

Plaintiff has filed at least three (3) prior frivolous cases or cases where no valid claim for relief was stated. He has failed to allege imminent harm in the pending case. He is therefore not entitled to proceed IFP. The Court ordered Plaintiff to pay the full filing fee in this matter. He has failed to comply with that court order and pay the filing fee. Accordingly, pursuant to Federal Rule of Civil Procedure 41(b) and 28 U.S.C. § 1915(g) Plaintiff's Complaint should be dismissed without prejudice for failure to comply with the Court's orders and failure to pay the filing fee as required by law.

IV. CONCLUSION

For these reasons, IT IS ORDERED that Plaintiff's claims are DISMISSED WITHOUT PREJUDICE. All pending Motions are DENIED.

IT IS SO ORDERED this 24th day of July 2018.

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