

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

GREGORY F. GATES

PLAINTIFF

v.

Civil No. 6:17-cv-06106

SHERIFF MIKE CASH, Hot Spring
County, Arkansas; and JAIL ADMINISTRATOR
KEN FAIN

DEFENDANTS

ORDER

Before the Court is Plaintiff Gregory F. Gates' failure to obey two court orders. Plaintiff filed this case *pro se* on October 5, 2017, pursuant to 42. U.S.C. § 1983. (ECF No. 1). Plaintiff filed a Motion to Proceed *In Forma Pauperis* ("IFP") the same day. (ECF No. 2). An initial review of Plaintiff's Complaint revealed that he failed to allege any facts suggesting how Defendant Sheriff Mike Cash was personally involved in the violation of his federal constitutional rights. In addition, although Plaintiff indicated he was suing Defendant Ken Fain in his official capacity only, he did not allege the existence of any policy or custom of Hot Spring County as being the moving force behind the alleged constitutional violation.

On October 5, 2017, the Court entered an order directing Plaintiff to submit an amended complaint by October 20, 2017, specifying how Defendant Cash was involved in violating Plaintiff's rights and identifying a policy or custom of Hot Spring County that was the moving force behind the alleged constitutional violation. (ECF No. 3). On October 25, 2017, Plaintiff filed a motion for extension of time to file an amended complaint. (ECF No. 6). The Court granted Plaintiff's motion that same day giving Plaintiff until November 15, 2017, to file an amended complaint. (ECF No. 7). To date, Plaintiff has not filed an amended complaint.

On November 30, 2017, the Court issued an order to Plaintiff to show cause as to why he failed to file an amended complaint as directed. (ECF No. 8). The order informed Plaintiff that failure to respond to the show cause order by December 14, 2017, would result in the summary dismissal of the Complaint for failure to obey an order of the Court. To date, Plaintiff has not responded to the Court's order to show cause.

Although *pro se* pleadings are to be liberally construed, 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 Local Rules state in pertinent part:

It is the duty of any party not represented by counsel to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. A party appearing for himself/herself shall sign his/her pleadings. . . . If any communication from the Court to a *pro se* plaintiff is not responded to within thirty (30) days, the case may be dismissed without prejudice. Any party proceeding *pro se* shall be expected to be familiar with and follow the Federal Rules of Civil Procedure.

Local Rule 5.5(c)(2).

Additionally, 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 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).

In the present case, Plaintiff has failed to comply with two of the Court’s orders. Therefore, pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2), the Court finds that this case should be dismissed. Accordingly, Plaintiff’s Complaint (ECF No. 1) is **DISMISSED**

WITHOUT PREJUDICE. In addition, Plaintiff's Motion to Proceed IFP (ECF No. 2) is
DENIED AS MOOT.

IT IS SO ORDERED, this 3rd day of January, 2018.

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