

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

DUSTIN LEMUEL HORN

PLAINTIFF

v.

Case No. 6:24-cv-06049

MRS. PETERSON, Kitchen Supervisor,
Omega Unit; LIEUTENANT MARTIN,
Omega Unit; and SERGEANT ANDERSON,
Omega Unit

DEFENDANTS

ORDER

Before the Court is the Report and Recommendation filed by the Honorable Mark E. Ford, United States Magistrate Judge for the Western District of Arkansas. ECF No. 8. Plaintiff Dustin Lemuel Horn, representing himself in this action, has responded with timely objections. ECF No. 12. The Court finds the matter ripe for consideration.

On April 10, 2024, Plaintiff filed his complaint pursuant to 42 U.S.C. § 1983, and his claims center around the denial of medical care after Defendant allegedly broke his tooth from biting into a foreign metal object in his food provided by the Omega Unit kitchen. ECF No. 1. Plaintiff is suing all Defendants in their individual and official capacities. On April 24, 2024, the Court entered an Order denying Plaintiff's *in forma pauperis* ("IFP") application and directing him to pay the filing and administrative fees totaling \$405.00 by May 14, 2024. ECF No. 5. To date, Plaintiff has failed to pay the filing fee and has not sought an extension to do so. Judge Ford recommends dismissing Plaintiff's Complaint (ECF No. 1) without prejudice for failure to prosecute this case and for failure to comply with the Court's local rules and orders pursuant to Federal Rule of Civil Procedure 41(b) and Local Rule 5.5(c)(2). ECF No. 8. Plaintiff objects. ECF No. 12.

In his objections, Plaintiff asserts that on May 3, 2024, “Plaintiff was called to the warden’s office and told a check in the amount of \$405.00 was being mailed to the District Court clerk,” and that within two hours that amount was removed from his commissary account. ECF No. 12, p. 2. Plaintiff asserts that if the deadline to pay the federal filing fee was not met, it was not because of him or something he did wrong, “but because of either the warden or his business/finance secretary at the Omega Unit.” ECF No. 12-1, p. 1-2. Thus, Plaintiff requests that the Court rule in favor of his objection. ECF No. 12, p. 2.

Pursuant to Federal Rule of Civil Procedure 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). Plaintiff has still failed to ensure the payment of his filing and administrative fees in accordance with the Court’s Order. *See* ECF No. 5. Consequently, the Court finds that Plaintiff’s Complaint (ECF No. 1) should be dismissed.

The Court has conducted a *de novo* review and finds that the objections lodged by Plaintiff offer neither law nor fact requiring departure from Judge Ford’s recommendation that this case be dismissed. Accordingly, Plaintiff’s objections are overruled, and the Court adopts the instant report and recommendation (ECF No. 8) *in toto*. This case is hereby **DISMISSED WITHOUT PREJUDICE**.¹

IT IS SO ORDERED, this 4th day of June, 2024.

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

¹ After Plaintiff locates his money, he may refile his case.