

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION

GEOFFREY H. ANDERSON,

Plaintiff,

-vs-

Case No. 5:13-cv-572-Oc-10PRL

BOB HARDCASTLE, Administrator,
EDWARD DWAYNE LUCROY, Deacon,
PAT R. KICKLIGHTER, Property
Representative, Trustee, President,
FIRST BAPTIST CHURCH OF
UMATILLA,

Defendants.

ORDER DISMISSING CASE

On November 22, 2013, Plaintiff Geoffrey H. Anderson, proceeding *pro se*, filed a four-count Complaint (Doc. 1) against the Defendants alleging violations of his First Amendment rights to free speech, freedom of association, and free exercise of religion (Count I). Mr. Anderson has also asserted state law claims of breach of contract, tortious interference, and intentional infliction of emotional distress (Counts II-IV). Mr. Anderson moved for leave to proceed *in forma pauperis* (Doc. 2), which the Magistrate Judge granted on December 31, 2013 (Doc. 5).

Service of process was effected upon the Defendants on January 13, 2014 (Docs. 8-11). On March 3, 2014, the Defendants filed a motion to dismiss (Doc. 13), to which Mr. Anderson filed a response on April 30, 2014 (Doc. 17). With leave of

court, the Defendants filed a reply on June 6, 2014 (Doc. 22), and Mr. Anderson filed a sur-reply on July 14, 2014 (Doc. 25). The motion to dismiss remains pending.

On July 28, 2014, the Deputy Clerk issued an Order to Show Cause (Doc. 26) directing Mr. Anderson to respond in writing why this case should not be dismissed for lack of prosecution due to the non-filing of a Case Management Report within the time prescribed by M.D. Fla. Local Rule 3.05. See also M.D. Fla. Local Rule 3.10. Mr. Anderson filed his response on August 11, 2014 (Doc. 27), stating that he was not aware of the Local Rules, and “should not be expected to perform as a licensed attorney.” (Doc. 27, p. 2). Mr. Anderson further stated that he is indigent and disabled and cannot meet with opposing counsel, who reside in Tampa, to prepare and file a Case Management Report (Id., p. 3). Mr. Anderson then requested permission for each side to file separate Case Management Reports.

The Magistrate Judge issued an Order on August 28, 2014 (Doc. 28) addressing Mr. Anderson’s response. The Magistrate Judge denied Mr. Anderson’s request to file separate Case Management Reports and directed the Parties to meet as required by M.D. Fla. Local Rule 3.05, and to file a joint Case Management Report on or before September 15, 2014. The Magistrate Judge expressly stated that “[f]ailure to comply with this Order may result in this case being dismissed for lack of prosecution.

As of the date of this Order, the Parties have not filed a Case Management Report. Instead, on September 11, 2014, Mr. Anderson filed a document entitled “Motion for Consolidation and Motion to Withdraw Federal Claim” (Doc. 29). In this

motion, Mr. Anderson states that on October 10, 2013, he filed a complaint in state court, and that the state court case and this case involve the same Defendants and “intertwined material facts.” (Id., pp. 1-2). The state court case remains pending and is proceeding through litigation.

Mr. Anderson also reiterates in his motion that he cannot meet with opposing counsel in this case in Tampa to prepare and file a Case Management Report, and that opposing counsel refuse to meet with him in Lake County. He then asserts that “it is in his best interest that he consolidate the subordinate state claims in this federal case with the claims in the pending state court action.” (Doc. 29, p. 3). Mr. Anderson also requests that his sole federal claim for violations of his First Amendment rights be withdrawn, so that his state law claims in this case can be consolidated with his pending state court action. In other words, Mr. Anderson is asking to have his First Amendment claim dismissed, and his state law claims remanded to state court. The Defendants have not filed a response to this motion, and the time for responding has expired.

Because this case was first filed in federal court and was not removed from any state court, the Court can only grant part of the relief Mr. Anderson has requested. The Court will treat Mr. Anderson’s motion as a request to voluntarily dismiss his First Amendment claim pursuant to Fed. R. Civ. P. 41(a), and that request will be granted. A review of the Complaint readily demonstrates that the Court does not have original subject matter jurisdiction over the three remaining claims – the Parties are not citizens

of diverse jurisdictions, (Doc. 1, ¶¶ 5-8), and the claims are not predicated on any federal law. See 28 U.S.C. §§ 1331-1332. The only basis for the Court's jurisdiction over these claims is pendent and ancillary supplemental jurisdiction pursuant to 28 U.S.C. § 1367.

The Court may decline to exercise supplemental jurisdiction if it “has dismissed all claims over which it has original jurisdiction.” 28 U.S.C. § 1367(c)(3). The Eleventh Circuit Court of Appeals has “encouraged district courts to dismiss any remaining state claims when . . . the federal claims have been dismissed prior to trial.” Raney v. Allstate Ins. Co., 370 F.3d 1086, 1089 (11th Cir. 2004). See also Carnegie–Mellon University v. Cohill, 484 U.S. 343, 350 n. 7, 108 S. Ct. 614 (1988) (“in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered ... will point toward declining to exercise jurisdiction over the remaining state-law claims”); Busse v. Lee County, Fla., 317 Fed. Appx. 968, 973 (11th Cir. Mar. 5, 2009) (“we expressly encourage district courts to [refrain from exercising supplemental jurisdiction over state-law claims] when all federal claims have been dismissed pretrial”). See also Fed. R. Civ. P. 12(h)(3); Cadet v. Bulger, 377 F.3d 1173, 1179 (11th Cir. 2004) (“Federal courts are obligated to inquire into subject-matter jurisdiction *sua sponte* whenever it may be lacking.”); University of South Alabama v. American Tobacco Co., 168 F.3d 405, 410 (11th Cir. 1999) (same)

Because all federal claims have now been dismissed, and pursuant to this Circuit's precedent and 28 U.S.C. § 1367(c), the Court is inclined to refrain from

exercising supplemental jurisdiction over the three remaining state law claims. The case is at an early stage of the litigation, the Defendants have not filed an answer, and discovery has not yet begun. In addition, dismissal of this case is warranted due to Mr. Anderson's failure to file a Case Management Report as required by Local Rule 3.05, and this Court's prior orders (Docs. 26, 28).

The Court cannot remand the three state law claims or consolidate them with Mr. Anderson's pending state court action, however, because this case was originally filed in federal court. Thus, there is no state court to remand any claims to as they were never removed from a state court to begin with. See e.g., 28 U.S.C. §§ 1441, 1447. The Court also is without authority to order a state court to consolidate claims or otherwise manage its litigation. Instead, the best course of action is for the Court to dismiss this entire action without prejudice, so that Mr. Anderson will then be free to pursue his claims in state court in the appropriate manner. See Crosby v. Paulk, 187 F.3d 1339, 1352 (11th Cir. 1999) ("If [the Court] decides to dismiss these state-law claims, then they should be dismissed without prejudice so that the claims may be refiled in the appropriate state court."); Austin v. City of Montgomery, 196 Fed. Appx. 747, 754 (11th Cir. 2006) ("When a court declines to exercise supplemental jurisdiction under § 1367(c)(3) because only state claims remain, the proper action is a dismissal without prejudice so that the complaining party may pursue the claim in state court.").

Accordingly, upon due consideration, Plaintiff Geoffrey H. Anderson's Motion for Consolidation and Motion to Withdraw Federal Claim (Doc. 29) is GRANTED IN PART

AND DENIED IN PART. The First Amendment Claim (Doc. 1, Count I) is DISMISSED WITHOUT PREJUDICE. In all other respects, the Motion (Doc. 29) is DENIED. Pursuant to 28 U.S.C. § 1367(c)(3), the remaining claims in this case (Doc. 1, Counts II-IV) are DISMISSED WITHOUT PREJUDICE. The Clerk is directed to enter judgment accordingly, terminate all pending motions, and close the file.

IT IS SO ORDERED.

DONE and ORDERED at Ocala, Florida this 10th day of October, 2014.



UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record
Geoffrey H. Anderson, *pro se*
Maurya McSheehy