

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

VEVERLY BROOKS, as mother)
and next friend of L.K.D., a minor child,)
)
Plaintiff,)
)
v.) CV 117-114
)
NANCY A. BERRYHILL, Acting)
Commissioner of Social Security)
Administration,)
)
Defendant.)

MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION

Plaintiff filed the above-captioned social security appeal *pro se* on September 22, 2017, and was granted permission to proceed *in forma pauperis*. (Doc. nos. 1, 2, 4.) On October 4, 2017, the Court issued a briefing order explaining non-attorney parents generally must be represented by counsel in bringing an action on behalf of his or her child and directing Plaintiff to “show cause as to why the Court should not dismiss this case for improper representation” or obtain counsel and notify the court within sixty days. (Doc. no. 3.) Plaintiff did not respond to the show cause order, nor has she obtained counsel who has filed a notice of appearance in this case or communicated with the Court in any way.

The Eleventh Circuit has stated “[a] district court has inherent authority to manage its own docket ‘so as to achieve the orderly and expeditious disposition of cases.’” Equity Lifestyle Props., Inc. v. Fla. Mowing & Landscape Serv., Inc., 556 F.3d 1232, 1240 (11th

Cir. 2009) (quoting Chambers v. NASCO, Inc., 501 U.S. 32, 43 (1991)). This authority includes the power to dismiss a case for failure to prosecute or failure to comply with a court order. Id. (citing Fed. R. Civ. P. 41(b)); see also Eades v. Alabama Dep’t of Human Res., 298 F. App’x 862, 863 (11th Cir. 2008) (“District courts possess the ability to dismiss a case . . . for want of prosecution based on two possible sources of authority: Fed. R. Civ. P. 41(b) or their inherent authority to manage their dockets.”). Moreover, the Local Rules of the Southern District of Georgia provide an “assigned Judge may, after notice to counsel of record, *sua sponte* . . . dismiss any action for want of prosecution, with or without prejudice . . . [for] failure to prosecute a civil action with reasonable promptness.” Loc. R. 41.1(c). Finally, dismissal pursuant to Rule 41(b) is proper where a plaintiff has failed to comply with a court order, “especially where the litigant has been forewarned.” Owens v. Pinellas Cnty. Sheriff’s Dep’t, 331 F. App’x 654, 656 (11th Cir. 2009) (*per curiam*) (citing Moon v. Newsome, 863 F.2d 835, 837 (11th Cir. 1989)).

Here, Plaintiff’s failure to respond to the show cause order, obtain counsel, or communicate with the Court amounts not only to a failure to prosecute, but also an abandonment of her case. This is precisely the type of neglect contemplated by the Local Rules. Furthermore, because Plaintiff is proceeding IFP, the Court finds the imposition of monetary sanctions is not a feasible sanction.

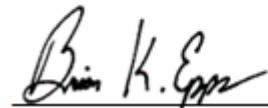
While the dismissal entered here is without prejudice,¹ Plaintiff should consider the practical effect of dismissal may be with prejudice. This is because a claimant must

¹Unless the Court specifies otherwise, a dismissal for failure to prosecute operates as an adjudication on the merits. See Fed. R. Civ. P. 41(b).

commence a civil action seeking review of a final decision of the Acting Commissioner of Social Security “within sixty days after the mailing to [her] of notice of such decision or within such further time as the Commissioner of Social Security may allow.” 42 U.S.C. § 405. This deadline, however, “is not jurisdictional, but is a statute of limitations which is waivable by the parties and subject to the doctrine of equitable tolling.” Scott v. Colvin, 13-CV-0106, 2013 WL 2452313, at *2 n.2 (S.D. Ala. June 5, 2013) (citing Bowen v. City of New York, 476 U.S. 467, 478-480 (1986)).

For the reasons set forth herein, the Court **REPORTS** and **RECOMMENDS** this case be **DISMISSED** without prejudice under Loc. R. 41.1 for Plaintiff’s failure to prosecute this action and this civil action be **CLOSED**.

SO REPORTED and RECOMMENDED this 6th day of December, 2017, at Augusta, Georgia.



BRIAN K. EPPS
UNITED STATES MAGISTRATE JUDGE
SOUTHERN DISTRICT OF GEORGIA