

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

WILLIAM OWEN SPIVEY, K81482)

Plaintiff,)

vs.)

HOWARD SCOTT HORNER,)

Defendant.)

CIVIL NO. 13-cv-0196-GPM

MEMORANDUM AND ORDER

MURPHY, District Judge:

On April 2, 2013, Plaintiff was ordered to pay the full filing fee of \$350.00 for this action no later than April 23, 2013 (Doc. 15). Plaintiff was clearly warned in that Order that failure to pay the full filing fee of \$350.00 would result in dismissal of this case. The date to pay the full filing fee has passed, and Plaintiff has failed to do so. As a result, this action is **DISMISSED** without prejudice, for failure to comply with an Order of this Court. FED. R. CIV. P. 41(b). *See generally Ladien v. Astrachan*, 128 F.3d 1051 (7th Cir. 1997); *Johnson v. Kamminga*, 34 F.3d 466 (7th Cir. 1994). This dismissal shall not count as one of Plaintiff's three allotted "strikes" under 28 U.S.C. § 1915(g). Plaintiff's obligation to pay the filing fee for this action was incurred at the time the action was filed, thus the filing fee of \$350 remains due and payable. *See* 28 U.S.C. § 1915(b)(1); *Lucien v. Jockisch*, 133 F.3d 464, 467 (7th Cir. 1998). All pending motions are **DENIED** as moot. The Clerk's Office is **DIRECTED** to close this case.

IT IS SO ORDERED.

DATED: May 1, 2013

/s/ *G. Patrick Murphy*
G. PATRICK MURPHY
United States District Judge