

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
FORT WAYNE DIVISION**

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| JEREMY MYERS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | CASE NO.1:20 CV 290 HAB-SLC |
| |) | |
| ADAMS COUNTY SHERIFF'S OFFICE, |) | |
| DEPUTY PIPER, and DEPUTY BUTLER, |) | |
| |) | |
| Defendants. |) | |
| |) | |
| _____ |) | |

OPINION AND ORDER

Before the Court is Plaintiff's Unopposed Motion to Dismiss (ECF No. 16). The Motion seeks dismissal of the case with prejudice. The Motion does not cite to a federal rule of procedure; however, given the absence of a stipulation of dismissal signed by all the parties who have appeared, see Fed.R.Civ.P. 41(a)(1(A)(ii), it appears that Plaintiff is seeking voluntary dismissal pursuant to Fed.R.Civ.P. 41(a)(2). Plaintiff represents in his filing that the Defendants do not oppose dismissal.

It is within the Court's sound discretion in deciding whether to permit a plaintiff to voluntarily dismiss an action pursuant to Rule 41(a)(2). *Tolle v. Carroll Touch, Inc.*, 23 F.3d 174, 177 (7th Cir. 1994). By its terms, Rule 41(a)(2) permits the court to grant voluntary dismissal "on terms that the court considers proper." Fed.R.Civ.P. 41(a)(2). For example, the court may require that dismissal be with prejudice or condition the dismissal on plaintiff's payment of costs and attorney fees. *Cauley v. Wilson*, 754 F.2d 769, 771 (7th Cir. 1985). In deciding whether to dismiss a claim with prejudice, a court may consider "[t]he defendant's effort and expense of preparation for trial, excessive delay and lack of diligence on the part of the plaintiff in prosecuting the action,

insufficient explanation for the need to take a dismissal, and the fact that a motion for summary judgment has been filed by the defendant.” *Federal Deposit Insurance Corp. v. Knostman*, 966 F.2d 1133, 1142 (7th Cir. 1992).

A review of the procedural context of this case demonstrates that dismissal of the action is appropriate. The case is in the early stages of discovery and thus, little to no effort has been expended in the preparation of the case for trial. Nor have Defendants filed summary judgment motions against the Plaintiff. Finally, the Defendants do not object to the dismissal and there is no prejudice to the Defendants in allowing the dismissal.

For the foregoing reasons, the Court GRANTS the Unopposed Motion to Dismiss (ECF No. 16) and DISMISSES WITH PREJUDICE the Plaintiff’s claims against the Defendants. The Court DIRECTS the Clerk of Court to close this case.

SO ORDERED on April 13, 2021.

s/ Holly A. Brady

JUDGE HOLLY A. BRADY
UNITED STATES DISTRICT COURT