

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

CIVIL ACTION NO. 11-315-KSF

LENN BEATTY

PLAINTIFF

v.

OPINION & ORDER

MICHAEL WOOD and
D & E TRANSPORTATION, INC.

DEFENDANTS

* * * * *

This matter is currently before the Court upon the motion [DE #17] of the defendants, Michael Wood and D & E Transportation, Inc., to dismiss pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for failure to prosecute and for violation of the Court's April 9, 2012 Order. For the reasons set forth below, the defendants' motion will be granted.

The plaintiff, Lenn Beatty, filed this civil action on February 12, 2011 in Garrard Circuit Court. The defendants subsequently removed the action to this Court on February 15, 2012 pursuant to 28 U.S.C. § 1441 on the basis of diversity jurisdiction under 28 U.S.C. § 1332(a) [DE #1]. On February 15, 2012, counsel for Beatty moved to withdraw from representation on the basis of a "breakdown in communication and cooperation" [DE #11]. On February 23, 2012, the Court entered an Order granting the motion to withdraw from representation and granting Beatty forty-five days from the date of the Order in which to retain new counsel [DE #23]. Beatty has failed to notify the Court of the retention of new counsel in this matter and the mailing containing the February 23, 2012 Order sent to Beatty was returned to the Clerk as unclaimed [DE #14].

On April 9, 2012, the Court entered an Order requiring Beatty to show cause no later than April 23, 2012 why this matter should not be dismissed for failure to prosecute and for failure to

abide by an order of the Court [DE #15]. The Order further required the United States Marshals Service to personally serve a copy of the February 23, 2012 and the April 9, 2012 Order upon Beatty. The record reflects that the United States Marshals Service was able to serve Beatty with the Orders on April 11, 2012, and filed its process receipt in the record on April 11, 2012 [DE #16].

Beatty has failed to file any response to the Court's show cause order of April 9, 2012 or to the defendants' motion to dismiss. Accordingly, pursuant to Rule 41(b), the Court will dismiss Beatty's complaint for failure to prosecute.

For the reasons set forth above, the Court, being fully and sufficiently advised, hereby **ORDERS** as follows:

- (1) the defendants' motion to dismiss [DE #17] is **GRANTED**; and
- (2) pursuant to Rule 41(b), this matter is hereby **DISMISSED** and **STRICKEN** from the active docket.

This June 4, 2012.



Signed By:

Karl S. Forester *K S F*

United States Senior Judge