

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
PADUCAH DIVISION
CASE NO. 5:11-CV-P151**

RONALD BENJAMIN MILLER

PLAINTIFF

v.

BRAD BOYD, ET AL.

DEFENDANTS

MEMORANDUM OPINION AND ORDER

This matter is before the Court upon Defendant's Motion to Dismiss and alternative Motion for Summary Judgment (DN 26). Plaintiff has failed to file a response, and has also failed to comply with this Court's Order to pay the remaining balance of his filing fee. Defendant has renewed his Motion to Dismiss and alternative Motion for Summary Judgment (DN 28). These matters are now ripe for adjudication. For the following reasons, Defendant's Motion to Dismiss (DN 26 & 28) is GRANTED.

Plaintiff Ronald Benjamin Miller filed a civil-rights action under 42 U.S.C § 1983 against a number of Christian County Jail officials in their individual and official capacities. After conducting an initial review of Plaintiff's *pro se* complaint pursuant to 28 U.S.C. §1915A and *McGore v. Wigglesworth*, 114 F.3d 601 (6th Cir. 1997), the Court dismissed Plaintiff's claims except for his deliberate indifference claim against Brad Boyd in his official capacity. The Court further gave leave for Plaintiff to amend his claim alleging a denial of medical treatment to provide more specific details and name as Defendants those allegedly responsible for the denial. Plaintiff filed motions requesting appointment of counsel and to proceed *in forma pauperis*, which this Court denied on July 16, 2012 (DN 24). In that Order, the Court also allowed Plaintiff an additional 30 days in which to respond to Defendant's May 30 discovery requests and an

extension until August 31, 2012, to amend his denial of medical treatment claim. Both deadlines have passed without response from the Plaintiff. Based on Plaintiff's release from incarceration, the Court in a separate order on July 16, 2012, (DN 25) also directed Plaintiff to pay the balance of the \$350.00 filing fee or file a non-prisoner application to proceed without prepayment of fees. Plaintiff has failed to adhere to this Court's Order and has further failed to file his Pretrial Memorandum by the ordered deadline of October 17, 2012.

Based on Plaintiff's failure to pay the requisite filing fee, Defendant has moved to dismiss this action. Alternatively, because Plaintiff has failed to respond to Defendant's May 30, 2012, discovery requests, Defendant asks that the Requests for Admissions be deemed admitted and summary judgment be granted based on those admissions.

The Court finds that Plaintiff's action should be dismissed. In its July 16 Order, the Court warned Plaintiff that failure to pay the required filing fee would result in dismissal of his case. Despite this warning, four months have passed and Plaintiff has not paid the filing fee.

Based on the foregoing, IT IS HEREBY ORDERED that Defendant's Motion and Renewed Motion to Dismiss (DN 26 & 28) are GRANTED and Plaintiff's claims are DISMISSED WITHOUT PREJUDICE. Because the Court grants Defendant's Motion to Dismiss, Defendant's alternative Motion for Summary Judgment is MOOT.

cc: Plaintiff, *pro se*
Counsel of Record

The image shows a handwritten signature in black ink that reads "Thomas B. Russell". The signature is written in a cursive style. Behind the signature is a circular seal of the United States District Court, which features an eagle with wings spread, perched on a shield, surrounded by the words "UNITED STATES DISTRICT COURT".

**Thomas B. Russell, Senior Judge
United States District Court**

November 19, 2012