

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
MIDDLE DISTRICT OF LOUISIANA  
2009 NOV 24 P 3:42

EDDIE D. LEE (#102226)

BY [Signature]

VERSUS

CIVIL ACTION

LOUISIANA DEPARTMENT OF  
CORRECTIONS, ET AL

NUMBER 09-327-JJB-SCR

ORDER OF DISMISSAL

Before the court is the plaintiff's Motion to Voluntary Dismiss Without Prejudice. Record document number 20.

Pro se plaintiff, an inmate confined at Louisiana State Penitentiary, Angola, Louisiana, filed this action pursuant to 42 U.S.C. § 1983 against the Louisiana Department of Corrections, Sgt. T. Etheridge, Cadet D. Haney and Cadet Jedda. Plaintiff alleged that on May 30, 2008, the defendants failed to protect him from attack by a fellow inmate in violation of his constitutional rights. Plaintiff also alleged a negligence claim under state law. On October 5, 2009, the claims against the Louisiana Department of Corrections were dismissed.<sup>1</sup> Defendants Etheridge, Haney and Jedda have not been served with the complaint.

Plaintiff moved to dismiss his complaint without prejudice pursuant to Rule 41, Fed.R.Civ.P. in order to pursue his claims in state court.

On November 3, 2009, the plaintiff was placed on notice that should the state court later determine that his re-filed claims are

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<sup>1</sup> Record document number 19.

prescribed under state law, then a dismissal without prejudice would effectively be a dismissal with prejudice.<sup>2</sup> Plaintiff was granted 15 days to withdraw his motion.

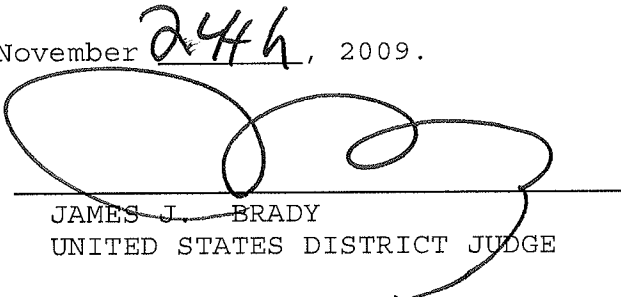
A review of the record showed that the plaintiff failed to respond to the court's November 3 order.

Rule 41(a) provides for the voluntary dismissal of actions at a plaintiff's request. The basic purpose of Rule 41(a)(2) is to freely permit the plaintiff, with court approval, to voluntarily dismiss an action so long as no other party will be prejudiced. *LeCompte v. Mr. Chip, Inc.*, 528 F.2d 601, 604 (5th Cir. 1976); 9 Charles Alan Wright & Arthur R. Miller, *Federal Practice and Procedure* § 2362 (3d d. 2008). A dismissal without prejudice should be granted unless the defendant will suffer some legal harm other than the mere prospect of a second lawsuit. *Holiday Queen Land Corp. v. Baker*, 489 F.2d 1031, 1032 (5th Cir. 1974).

It does not appear that any defendant will be prejudiced by a dismissal without prejudice.

Accordingly, this action shall be dismissed pursuant to Rule 41(a).

Baton Rouge, Louisiana, November 24th, 2009.



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JAMES J. BRADY  
UNITED STATES DISTRICT JUDGE

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<sup>2</sup> Record document number 21.