

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

BOBBY JAMES CREEL

PLAINTIFF

VERSUS

CIVIL ACTION NO. 1:08CV89-RHW

POLICE CHIEF JIM LUKE et al

DEFENDANTS

MEMORANDUM OPINION AND ORDER

Before the Court is Defendants' [33] Motion to Dismiss Plaintiff's 42 U.S.C. § 1983 prisoner civil rights complaint. Plaintiff filed his complaint on March 12, 2008, alleging that he was the victim of excessive force in violation of his constitutional rights. Defendants argue that the complaint should be dismissed because correspondence sent to the Plaintiff has been returned as "undeliverable" and that Plaintiff has failed to keep the Court apprised of a current address, in violation of the Court's March 28, 2008 order. In the March 28, 2008 order, the Court stated that: "failure to advise the Court of a change of address. . . will result in this cause being dismissed without further notice to the Plaintiff." Defendants also argue that they have been unable to conduct discovery because of the Plaintiff's failure to maintain a current address of record.

The Court finds that on June 9, 2008; June 23, 2008; and July 28, 2008, mail sent by the Court to Plaintiff was returned as "undeliverable". The Court also conducted an MDOC inmate search and was unable to locate Plaintiff within the MDOC system. The Court finds that Plaintiff has failed to maintain a current address of record with the clerk of the court, in direct violation of this Court's Order of March 28, 2008. Consequently, the Court finds that the cause of action against the Defendants should be dismissed without prejudice for failure to prosecute

pursuant to Fed. R. Civ. P. 41(b).

IT IS THEREFORE ORDERED AND ADJUDGED that Defendant's [33] Motion to Dismiss is GRANTED to the extent that the dismissal is without prejudice for failure to prosecute.

IT IS FURTHER ORDERED that in light of the dismissal, Defendants' [34] Motion to Amend the Scheduling Order is found to be MOOT.

SO ORDERED, this the 29th day of October, 2008.

s/ Robert H. Walker

UNITED STATES MAGISTRATE JUDGE