

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PERRY NEWMAN,)

Plaintiff,)

v.)

Case No. 4:17 CV 2771 CDP

CITY OF DES PERES, et al.,)

Defendants.)

MEMORANDUM AND ORDER

Defendants move to dismiss this case with prejudice under Fed. R. Civ. P. 41(b) for plaintiff’s failure to prosecute and failure to comply with Court orders. Plaintiff has not responded to the motion and the time to do so has passed. I will dismiss the case for the reasons stated in defendants’ motion, but will do so without prejudice. However, as a condition to refiling an action based on or including the same claim(s) against any or all of the same defendants, plaintiff shall pay to defendants their reasonable attorney’s fees in bringing the instant motion to dismiss. Fed. R. Civ. P. 41(d). *See Copeland v. Hussmann Corp.*, 462 F. Supp. 2d 1012, 1024 (E.D. Mo. 2006) (courts have discretion to include reasonable attorney’s fees as “costs” that a plaintiff may be ordered to pay to a defendant upon the refiling of a previously dismissed case) (citing *Evans v. Safeway Stores, Inc.*, 623 F.2d 121 (8th Cir. 1980)). Defendants’ request for the


immediate imposition of costs and expenses is denied.

Accordingly,

IT IS HEREBY ORDERED that defendants' Rule 41(b) Motion for Involuntary Dismissal [42] is GRANTED in part and DENIED in part.

IT IS FURTHER ORDERED that this case is dismissed without prejudice.

IT IS FURTHER ORDERED that as a condition to refiling an action based on or including the same claim(s) against any or all of the same defendants, plaintiff shall pay to defendants their reasonable attorney's fees in bringing this motion to dismiss.



CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

Dated this 2nd day of November, 2018.