

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

LARRY TIES and LORETTA A. TIES, )  
 )  
 Plaintiffs, )  
 v. )  
 )  
 ALAN BRIAN STRAIN )  
 d/b/a STRAIN ENTERPRISES, )  
 )  
 Defendant and )  
 Third-Party Plaintiff, )  
 v. )  
 )  
 SAHLING KENWORTH, INC., )  
 )  
 Third-Party Defendant. )

4:09CV3172

**MEMORANDUM  
AND ORDER**

This matter is before the court on the findings and recommendation filed by Magistrate Judge Zwart on January 31, 2011 (filing [48](#)). Judge Zwart recommends dismissal of all claims brought by the plaintiff, Larry Ties, for want of prosecution.

No objections have been filed to the findings and recommendation within the time permitted by [28 U.S.C. § 636\(b\)\(1\)](#). In any event, I have conducted a de novo review and find that Judge Zwart has correctly found the facts and applied the law.

Pursuant to [Federal Rule of Civil Procedure 41\(b\)](#), a dismissal for want of prosecution “operates as an adjudication on the merits” unless the court specifies otherwise. Considering that the plaintiff failed to comply with the court’s order of November 29, 2010 (filing [44](#)), I conclude the dismissal should be with prejudice.

The remaining parties have reached a settlement and filed a joint stipulation and motion for dismissal with prejudice of all claims alleged by the plaintiff, Loretta A. Ties, and all claims alleged by the third-party plaintiff, Alan Brian Strain d/b/a

Strain Enterprises (filing [49](#)). The motion will be granted pursuant to [Federal Rule of Civil Procedure 41\(a\)](#).

Accordingly,

IT IS ORDERED:

1. The magistrate judge's findings and recommendation (filing [48](#)) are adopted and all claims alleged by the plaintiff, Larry Ties, are dismissed with prejudice for want of prosecution.
2. The joint stipulation and motion filed by the remaining parties (filing [49](#)) is granted and all claims alleged by the plaintiff, Loretta A. Ties, and all claims alleged by the third-party plaintiff, Alan Brian Strain d/b/a Strain Enterprises, are dismissed with prejudice, with costs taxed to the parties incurring the same.
3. Final judgment will be entered by separate document.

February 25, 2011.

BY THE COURT:

*Richard G. Kopf*  
United States District Judge