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UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

JAMES R. MCDANIEL, JR.,

Plaintiff,

v.

ELY STATE PRISON, *et al.*,

Defendants.

Case No. 3:16-cv-00259-MMD-WGC

ORDER

The court has the power to sua sponte dismiss an action for failure to prosecute it. *See* Fed. R. Civ. P. 41(b); *Ash v. Cvetkov*, 739 F.2d 493, 496 (9th Cir. 1984) (citation omitted); *Pearson v. Dennison*, 353 F.2d 24, 28 (9th Cir. 1965) (citation omitted) (acknowledging court had power to dismiss under its local rule). In addition, Local Rule 41-1 provides that a civil action that has been pending for more than 270 days without any proceeding of record may, after notice, be dismissed for want of prosecution by the court sua sponte.

Plaintiff filed this action on May 18, 2016, and later filed a completed application to proceed in forma pauperis (IFP). (ECF Nos. 2, 2-1, 5.) On December 30, 2016, the court issued its screening order, allowing Plaintiff to proceed with a single Eighth Amendment deliberate indifference claim against Dr. Roberts, Manning and Trice, based on allegations that they knew he was trying to obtain medical help for a cataract, and Dr. Roberts refused to see him, and Manning and Trice purposely and falsely told medical Plaintiff refused to go to his appointments. (ECF No. 9.) The action was stayed while the matter was referred for an inmate early mediation conference. The mediation was held on March 14, 2017, but was unsuccessful. (ECF No. 19.)

Defendants filed their answer on June 2, 2017, and the court issued a scheduling order on June 5, 2017. (ECF Nos. 25, 26.) Defendants twice moved for and were granted extensions of time to file a dispositive motion. (ECF Nos. 28, 29, 30, 31.)

1 Defendants filed their motion for summary judgment on November 16, 2017. (ECF No.
2 32.) On November 17, 2017, District Judge Du issued a *Klinge* order advising Plaintiff of the
3 requirements for opposing a motion for summary judgment, and giving him twenty-one days to
4 file his response. (ECF No. 37.)

5 Plaintiff did not file a response. On December 15, 2017, the undersigned issued an order
6 giving Plaintiff an additional twenty days to file his response, making it due on or before January 4,
7 2018. Plaintiff still did not file a response.

8 As of the date of this order, the court has not had any communication from Plaintiff since
9 May 4, 2017, when he filed a document concerning discovery he claimed to have served on
10 Dr. Roberts. (ECF No. 23.)

11 Plaintiff has **FOURTEEN DAYS** from the date of this Order to file and serve a notice of
12 intent to prosecute this action, along with a response to Defendants' motion for summary
13 judgment. A failure to do so will result in a recommendation that this action be dismissed with
14 prejudice for failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b).

15 **IT IS SO ORDERED.**

16 DATED: March 12, 2018.

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19 WILLIAM G. COBB
20 UNITED STATES MAGISTRATE JUDGE
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