

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

LOYDALE KIRVEN and
IGNACIA KIRVEN,

Plaintiffs,

vs.

No. CV 16-01110 JCH/KRS

HONORABLE JAN GARRET,

Defendant.

MEMORANDUM OPINION AND ORDER

THIS MATTER is before the Court *sua sponte* under Fed. R. Civ. P. 41(b) on the prisoner civil rights complaint filed by Plaintiffs Loydale Kirven and Ignacia Kirven on October 6, 2016 (Doc. 1) and the Amended Complaint filed November 4, 2016 (Doc. 4) and on the Court's Order to Show Cause entered May 18, 2016 (Doc. 10). The Court will dismiss this case for failure to comply with the Court's Orders and failure to prosecute.

The record reflects that certain mailings to Plaintiffs Loydale Kirven and Ignacia Kirven have been returned as undelivered (*see* Doc. 9, 11, 12). It appears that Plaintiffs have been transferred, released from custody, or moved without advising the Court of their new address, as required by D.N.M. LR-Civ. 83.6, thus severing contact with the Court. Further, neither Plaintiff paid the filing fee for this proceeding. Instead, Loydale Kirven filed an application to proceed *in forma pauperis*. On January 4, 2017, the Court denied Loydale Kirven leave to proceed *in forma pauperis* under the "three strikes" rule of 28 U.S.C. § 1915(g), and ordered him to pay the filing fee or show cause within thirty (30) days why the case should not be dismissed. (Doc. 6). To date, the Plaintiffs have not paid the filing fee and Loydale Kirven has failed to respond, in any manner, to the Court's January 4, 2017 Order.

The Court entered an Order to Show Cause on May 18, 2016, ordering Plaintiffs to show cause why the case should not be dismissed under Fed. R. Civ. P. 41(b) for failure to comply with the Court's January 4, 2017 Order and failure to comply with the local rules of the Court no later than June 16, 2017. (Doc. 10). The Order to Show Cause notified Plaintiffs that, if they failed to show cause within the time allowed, the Court may dismiss the proceedings without further notice. Plaintiffs have not shown cause or otherwise responded to the Court's Order.

The Court may dismiss an action under Fed. R. Civ. P. 41(b) for failure to prosecute, to comply with the rules of civil procedure, or to comply with court orders. *See Olsen v. Mapes*, 333 F.3d 1199, 1204, n. 3 (10th Cir. 2003). Plaintiffs have failed to comply with the Court's Order to Show Cause, and the local rules requiring them to notify the Court of a change in address. Plaintiffs have also failed to prosecute this action by failing to pay the requisite filing fee. Last, Plaintiff Loydale Kirven has failed to comply with the Court's January 4, 2017 Order. The Court will dismiss this proceeding for failure to comply with the local rules, failure to comply with a Court Order, and failure to prosecute. Fed. R. Civ. P. 41(b); *Olsen v. Mapes*, 333 F.3d at 1204, n. 3; *Bradenburg v. Beaman*, 632 F.2d 120, 122 (10th Cir. 1980) ("It is incumbent on litigants, even those proceeding pro se, to follow the federal rules of procedure. . . The same is true of simple, nonburdensome local rules . . .") (citation omitted)).

IT IS THEREFORE ORDERED that the prisoner civil rights complaint filed by Plaintiffs Loydale Kirven and Ignacia Kirven on October 6, 2016 (Doc. 1) and the Amended Complaint filed November 4, 2016 (Doc. 4) are **DISMISSED** without prejudice for failure to comply with the Court's Orders and for failure to prosecute.


UNITED STATES DISTRICT JUDGE