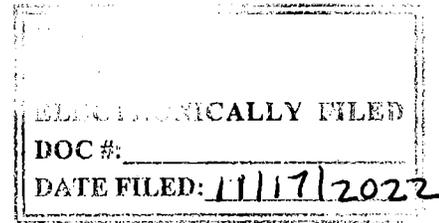


UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



-----X
JERMAINE MCGINNIS, :
 : Plaintiff, :
 : :
v. :
 : :
ORANGE COUNTY; CORRECTION :
OFFICER BANDES, Badge #105 or #106; :
CORRECTION OFFICER M. CARTER, Badge :
#339; CORRECTION OFFICER :
DONAHOUGH; and CORRECTION OFFICER :
D. POWEL, :
 : Defendants. :
-----X

ORDER OF DISMISSAL

22 CV 3335 (VB)

Copies ~~Mailed~~ Faxed
Chambers of Vincent L. Briccetti

Plaintiff, while incarcerated and proceeding pro se and in forma pauperis, commenced this action by filing a complaint dated April 22, 2022. (Doc. #1).

On July 14, 2022, defendant Orange County was served. (Doc. #21). On July 18, 2022, defendants Correction Officer Donahue (sued as Correction Officer Donahough) and Correction Officer Banse (sued as Correction Officer Bandes) were served. (Docs. ## 20, 22).

On August 4, 2022, defendants Orange County, Correction Officer Banse, and Correction Officer Donahue filed a motion to dismiss. (Doc. #27). On August 5, 2022, the Court denied the motion to dismiss without prejudice; the Court noted, in the interests of judicial efficiency, it would set a deadline for all defendants to answer, move, or otherwise respond to the complaint once all defendants were served. (Doc. #32). On October 21, 2022, counsel for defendants Correction Officer D. Powles (sued as Correction Officer D. Powel) and Correction Officer M. Carter filed a notice of appearance. (Doc. #36).

On August 22, 2022, the Court’s mailings to plaintiff at the address listed on his complaint, 140 Old Orangeburg Road, Orangeburg, NY, 10962, were returned and marked “[r]eturn to sender attempted – not known unable to forward.” (Doc. #34). On August 23, 2022, the Court ordered plaintiff to update the Court, in writing, as to his current address by September 23, 2022, and warned plaintiff that if he failed to do so, “the case may be dismissed for failure to comply with Court orders or dismissed for failure to prosecute. See Fed. R. Civ. P. 16(f), 41(b).” (Id.) The Court mailed that Order to plaintiff at the address listed on the docket and the return address on the envelopes containing plaintiff’s letters received on June 24, 2022, Rockland Psychiatric Center, Business Office, Orangeburg, NY 10962. (Id.)

On September 12, 2022, the Court’s mailings to plaintiff of the August 23, 2022, Order was returned and marked “Return to Sender Not Deliverable as Addressed Unable to Forward.” (Doc. #35). On October 3, 2022, the Court extended plaintiff’s time to update the Court regarding his current address, in writing, to November 3, 2022, and again warned plaintiff that if

he failed to do so, “the Court will dismiss the case for failure to prosecute and comply with Court orders, pursuant to Fed. R. Civ. P. 41(b).” (Id.)

To date, plaintiff has failed to update his address in writing. Plaintiff thus has not complied with the Court’s Orders dated August 23, 2022, and October 3, 2022.

As a result, the Court concludes plaintiff has abandoned this case. Accordingly, having considered all of the factors set forth in Lucas v. Miles, 84 F.3d 532 (2d Cir. 1996), the Court dismisses this case with prejudice for failure to prosecute or failure to comply with Court orders. Fed. R. Civ. P. 41(b).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith, and therefore in forma pauperis status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444–45 (1962).

The Clerk is directed to close this case.

Chambers will mail a copy of this Order to plaintiff at the addresses listed above.

Dated: November 17, 2022
White Plains, NY

SO ORDERED:



Vincent L. Briccetti
United States District Judge