

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

WILLIAM MULLENS, et al.,)	Case No. 5:17CV1873
)	
Plaintiffs,)	
)	MAGISTRATE JUDGE
v.)	GEORGE J. LIMBERT
)	
SUMMIT COUNTY, OHIO, et al.,)	<u>MEMORANDUM OPINION</u>
)	<u>AND ORDER</u>
Defendants.)	

This matter is before the undersigned on a motion to dismiss filed pursuant to Fed. R. Civ. P. 41(b) by Defendants Summit County, Ohio, and Steve Barry (referred to in the motion and the instant Order as “the County Defendants”). ECF Dkt. #22. In the motion to dismiss, the County Defendants assert that Plaintiffs William Mullens and JoRachel Mullens (collectively, “Plaintiffs”) have failed to participate in this case. *Id.*

On June 8, 2018, Plaintiff JoRachel Mullens participated in a telephonic status conference on behalf of Plaintiffs and requested additional time to obtain legal counsel. The Court granted an additional thirty days for Plaintiffs to obtain legal counsel, and set a telephonic status conference for July 11, 2018. On July 11, 2018, the Court made repeated attempts to contact Plaintiffs by telephone. Ultimately, the Court was unable to contact Plaintiffs and was not advised as to why Plaintiffs failed to participate in the telephonic status conference held on July 11, 2018. On July 17, 2018, the County Defendants filed the motion to dismiss. ECF Dkt. #22. Plaintiffs have failed to respond to the County Defendants’ motion to dismiss in a timely manner. For these reasons, the

Court grants the County Defendants' motion to dismiss.

The County Defendants do not specify whether they request that this case be dismissed with prejudice. *See* ECF Dkt. #22. The Sixth Circuit has explained that “a dismissal with prejudice under Rule 41(b) is warranted only when a ‘clear record of delay or contumacious conduct by the plaintiff’ exists . . . and ‘a lesser sanction would not better serve the interest of justice.” *Pope v. Memphis Police Dept.*, No. 84-5512, 1985 WL 13229, at *1 (6th Cir. 1985) (internal citations omitted). There is no record of delay or contumacious conduct by the Plaintiff in this case and the interest of justice is better served if Plaintiff’s case is dismissed without prejudice. Accordingly, the Court grants the County Defendants’ motion to dismiss (ECF Dkt. #22) and dismisses all claims against the County Defendants without prejudice. Further, for the reasons stated above, the Court dismisses all claims against all remaining defendants in this case without prejudice.

IT IS SO ORDERED.

Date: August 21, 2018

/s/George J. Limbert

GEORGE J. LIMBERT
UNITED STATES MAGISTRATE JUDGE