

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

JEFFREY MILLER,
Plaintiff,

vs.

JEFF KNAUER,
Defendant.

Case No. 1:13-cv-356

Dlott, J.
Litkovitz, M.J.

**REPORT AND
RECOMMENDATION**

Plaintiff initiated this pro se action against his supervisor at the United States Postal Service in the Hamilton County, Ohio Municipal Court asserting violations of his rights under the Family and Medical Leave Act of 1993, 29 U.S.C. § 2601 *et seq.* (Doc. 1, Ex. 1). Defendant removed the matter to this Court as it involved a federal question. (Doc. 1). On June 26, 2013, defendant moved to dismiss plaintiff's complaint for lack of subject matter jurisdiction; defendant also moved to substitute the United States of America as the defendant. (Docs. 3, 4). Pursuant to Local Rule 7.2, plaintiff was to file his memorandum in opposition within twenty-one days. S. D. Ohio Civ. R. 7.2(a)(2). Plaintiff failed to respond to the motion to dismiss within the prescribed time.

On January 10, 2014, this Court Ordered plaintiff to show cause, in writing and within fourteen days, why defendant's pending motion to dismiss should not be construed as unopposed and granted for the reasons stated in the motion. (Doc. 6). This Order was sent to plaintiff via certified mail and received by plaintiff no later than January 11, 2014. (Doc. 7). To date, plaintiff has failed to respond to the Court's Show Cause Order or to respond to the motion to dismiss.

Plaintiff's failure to prosecute this matter and to obey an Order of the Court warrants dismissal of this case pursuant to Fed. R. Civ. P. 41(b). *See Jourdan v. Jabe*, 951 F.2d 108, 109-

10 (6th Cir. 1991). District courts have the power to *sua sponte* dismiss civil actions for want of prosecution to “manage their own affairs so as to achieve the orderly and expeditious disposition of cases.” *Link v. Wabash R.R.*, 370 U.S. 626, 630-31 (1962). *See also Jourdan*, 951 F.2d at 109. Though plaintiff is proceeding pro se, as stated by the Supreme Court, “we have never suggested that procedural rules in ordinary civil litigation should be interpreted so as to excuse mistakes by those who proceed without counsel.” *McNeil v. United States*, 508 U.S. 106, 113 (1993).

IT IS THEREFORE RECOMMENDED THAT plaintiff’s case be **DISMISSED** for want of prosecution and for failure to obey an Order of the Court.

Date: 1/29/14


Karen L. Litkovitz
United States Magistrate Judge

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NOTICE

Pursuant to Fed. R. Civ. P. 72(b), any party may serve and file specific, written objections to these proposed findings and recommendations within **FOURTEEN DAYS** after being served with this Report and Recommendation (“R&R”). That period may be extended further by the Court on timely motion for an extension. Such objections shall specify the portions of the R&R objected to, and shall be accompanied by a memorandum of law in support of the objections. A party may respond to another party's objections within **FOURTEEN DAYS** after being served with a copy thereof. Failure to make objections in accordance with this procedure may forfeit rights on appeal. *See United States v. Walters*, 638 F.2d 947 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 106 S. Ct. 466, 88 L. Ed. 2d 435 (1985).

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