

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Andrew G. Zukowski,

Plaintiff,

v.

Case No. 2:09-cv-662

Steve Germain, et al.,

Judge Michael H. Watson

Defendants.

OPINION AND ORDER

This cases arises from alleged violations of Plaintiff's rights during an arrest and subsequent involuntary placement in a mental health facility. This matter is before the Court *sua sponte*.

I. FACTS

The facts of this case were set forth in the Court's Opinion and Order dated June 18, 2010 (ECF No. 36), and will not be repeated in detail here. Briefly summarized, Mr. Zukowski's claims arise out of his arrest at a car dealership on September 29, 2008, after he was asked, but refused, to leave the premises. Mr. Zukowski's complaint contains the following allegations. Following his arrest at the Mercedes-Benz of Easton, a Germain car dealership, Mr. Zukowski was transported to jail. Compl. 3, Attachment 4A, ECF No. 1. He appeared in Franklin County Municipal Court on the charge of criminal trespass. Compl. Attach. 6-7. The Municipal Judge, after learning that an application for emergency admission had been issued for Mr. Zukowski, dismissed the criminal charge in order to permit Mr. Zukowski to undergo further

psychiatric evaluation. Compl. Attach. 7. Mr. Zukowski was then transported to “Netcare” and on to Riverside Methodist Hospital. Compl. Attach. 4B. He was subsequently transferred against his will to Twin Valley, a mental health facility. Compl. 3. He spent 48 days in Twin Valley during which he was administered psychotropic drugs and had his blood drawn against his will. *Id.* The drugs caused him to endure “very bad” side effects including swollen legs. *Id.* Mr. Zukowski also claims he was prevented from leaving the mental facility to visit Poland. Supplemental Compl. 3, ECF No. 44. As a result of these events, Mr. Zukowski contends that he was deprived of his liberty for 51 days. Compl. 4. He seeks both compensatory and punitive damages. *Id.*

II. PROCEDURAL POSTURE

On February 13, 2001, the active judges of the Court at that time issued an order restricting Mr. Zukowski’s access to the Joseph P. Kinneary U.S. Courthouse (the “Courthouse”) and to the Court’s officers and employees in “order to protect the dignity and decorum of the court and to protect its officers and employees from harassment and disruption in the performance of their public duties[.]” Feb. 13, 2001 Order, *Andrew Zukowski v. Kea-Lan Investments, et al.*, Case No. 2:01–cv–38; the Feb. 13, 2001 Order can also be electronically accessed in Case No. 2:09–cv–791, ECF No. 7-1 at Page ID# 27–29. That order denied Mr. Zukowski access to the interior of the Courthouse and established procedures for Mr. Zukowski to file any pleadings or other papers with the Court because of Mr. Zukowski’s inability to control himself or his behavior while on the premises. The order further set forth that Mr. Zukowski “shall not contact or communicate with any officer or employee of this court directly, by telephone or other electronic means, or by mail, except as provided for in this Order.” *Id.*

It came to the Court's attention that on October 27, 2010, apparently in furtherance of prosecuting his claims herein, Mr. Zukowski repeatedly telephoned the office of the Clerk of Court of the United States District Court for the Southern District of Ohio. On that day, in one instance, Mr. Zukowski engaged in inappropriate communications via telephone with an employee of the Clerk of Court including intemperate, racially charged statements. This Court, after speaking to the employee and her supervisor, had cause to believe that Mr. Zukowski may be in contempt of the February 13, 2001 Court order. Accordingly, the Court set the matter for a Show Cause Hearing to determine whether Plaintiff's reported conduct should lead to a finding of contempt for failing to comply with the Court's February 13, 2001 order and to allow Mr. Zukowski a chance to demonstrate any possible reason for his alleged outrageous and intolerable behavior. Show Cause Order, ECF No. 49. The Show Cause Order specifically dictated procedures to allow Mr. Zukowski into the building¹ and also specifically designated that the hearing would be "held before the Honorable Michael H. Watson, United States District Judge, Wednesday, November 10, 2010, at 2:00 p.m. in Courtroom 3, Joseph P. Kinneary U.S. Courthouse, 85 Marconi Blvd., Columbus, Ohio, 43215." *Id.* at 2. A copy of the Show Cause Order was mailed to Mr. Zukowski at his correct home address on Shell Court in Whitehall, Ohio. After receiving the Show Cause Order in the mail, Mr. Zukowski called several days before the hearing to state he was unable to make the hearing because his car was in the shop.

On Wednesday, November 10, 2010, at 2:00 p.m., Mr. Zukowski failed to appear

¹The Court notes that additional resources were expended to assure the safety of the Court, its officers, and Mr. Zukowski during his limited yet permitted entry into the Courthouse for the Show Cause Hearing. Several United States Deputy Marshals and all the Court Security Officers were on alert and present to facilitate Mr. Zukowski's secure entry onto the premises.

before this honorable Court. The Court noted as much on the record. Around the 2:00 p.m. hour, Mr. Zukowski left a voicemail message on the telephone line of the Division Manager stating he could not attend the Show Cause Hearing because he was at the airport and unable to rent a car to get to the Courthouse. Around 3:00 p.m., his wife left a voicemail message on the telephone line of the Division Manager offering a conflicting reason as to why he could not attend the Show Cause Hearing and stating Mr. Zukowski was ill and that he would appear on Friday. To date, Mr. Zukowski has failed to appear at the Courthouse to show cause.

III. ANALYSIS

Fed. R. Civ. P. 41(b) provides, in part, that if a plaintiff fails to comply with “a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision . . . operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b). “Although Rule 41 does not expressly provide for a *sua sponte* dismissal, it is well settled that the district court can enter a *sua sponte* dismissal under Rule 41(b).” *Rogers v. City of Warren*, 302 Fed. App’x 371, 378 n.4 (6th Cir. 2008) (unpublished) (citing *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630 (1962)). A court has the inherent power to “protect [] the due and orderly administration of justice, and . . . maintain[] the authority and dignity of the court” *Bowles v. City of Cleveland*, 129 Fed. App’x 239, 241 (6th Cir. 2005) (unpublished) (citing *Cooke v. United States*, 267 U.S. 517, 539 (1925)). *Pro se* litigants are subject to all appropriate sanctions for their misconduct. *Ballard v. Carlson*, 882 F.2d 93, 94 (4th Cir. 1989).

Although most cases in the Sixth Circuit involving involuntarily dismissal under

Fed. R. Civ. P. 41(b) are primarily based on failure to prosecute, some courts have analyzed the following factors for dismissal under Fed. R. Civ. P. 41(b) for disobedient and contumacious behavior by a plaintiff.

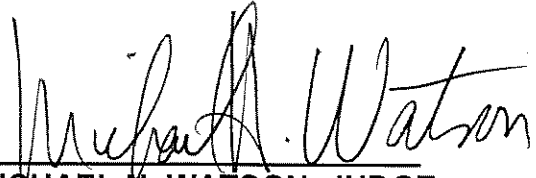
(1) the bad faith or deliberate misconduct of the plaintiff; (2) the notice which the plaintiff received concerning the consequences of his continued misconduct; (3) the amount of prejudice caused by the plaintiff; (4) the existence of an effective sanction which is less drastic.

See, e.g., Gantt v. Maryland Div. of Correction, 894 F. Supp. 226, 229 (D. Md. 1995) (analyzing those factors to dismiss pro se prisoner's law suit due to his abusive behavior toward the Court that threatened the integrity and dignity of the Court) (citing *Zaczek v. Fauquier County, Va.*, 764 F. Supp. 1071, 1079 (E.D. Va. 1991)).

The Court finds Mr. Zukowski's inappropriate verbal abuse of a Court employee coupled with both his flagrant disobedience of a previous Court order prescribing methods for his contact and his failure to appear at the Court's Show Cause Hearing are egregious affronts to the integrity and dignity of the Court. Mr. Zukowski was given the opportunity by the Court to appear and explain his actions, but he voluntarily chose to disobey the order and not appear. The Court finds it notable that Mr. Zukowski consistently has demonstrated his ability to approach the Court when it is in his interest to do so. Moreover, on previous occasions when he has needed to file a document with the Court, Mr. Zukowski has made arrangements to get to the Courthouse. However when the Court noticed this Show Cause Hearing, Mr. Zukowski was unable to make similar arrangements and offered conflicting reasons as to his failure to appear. Similarly dealing with Mr. Zukowski's misconduct has been unduly time consuming and costly to the Court and to Defendants. Having found lesser remedies ineffective in controlling Mr. Zukowski's behavior and to protect the decorum of this

Court, the Court hereby **DISMISSES WITHOUT PREJUDICE** the remaining claims against the remaining Defendants in this case. Should Mr. Zukowski refile, the case shall be assigned to the undersigned Judge and will resume at its current posture—no additional discovery will be permitted as the discovery deadline has passed, and dispositive motions shall be due 30 days from the date of refiling the action.

IT IS SO ORDERED.


MICHAEL H. WATSON, JUDGE
UNITED STATES DISTRICT COURT