

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF OKLAHOMA**

KEVIN ELKINS,)
))
Plaintiff,)
))
v.)
))
CITY OF TISHOMINGO, an Oklahoma)
Municipal Corporation; SHANNON SMITH,)
Chief of Police in his official and individual)
capacities; TED WOODHEAD, in his official)
and individual capacities; JASON LOWE,)
in his official and individual capacities; and)
STEVE BOWMAN, in his official and)
individual capacities,)
))
Defendants.)

Case No. 09-CV-230-JHP

ORDER

On December 7, 2009, Plaintiff failed to appear at the Status and Scheduling Conference held by this Court. The Plaintiff failed to contact the court to provide an explanation as to why he was unable to attend the court ordered status conference. Defense counsel stated at the status and scheduling conference that, despite several attempts, he was unable to contact the Plaintiff to assist with preparation of the Joint Status Report required by LCvR 16.1 and Federal Rule of Civil Procedure 26(f). Defense counsel stated he had not heard from the Plaintiff regarding this litigation.

Because of Plaintiff’s failure to appear at the scheduling conference, the court issued a Minute Order on December 8, 2009, [Dkt. No. 40] setting a show cause hearing for December 15, 2009. The Minute Order provided notice to the Plaintiff that failure to appear at the show cause

hearing would result in dismissal of the case pursuant to Federal Rule of Civil Procedure 16(f)¹ and LCvR 16.1(b)(2).

On December 15, 2009, the court held the scheduled show cause hearing and the Plaintiff again failed to appear. Defense counsel appeared and again stated that he had not heard from, or been contacted by the Plaintiff regarding this litigation. The court was not contacted by the Plaintiff or provided any reason from the Plaintiff why he was unable to appear at the hearing. The docket sheet reflects that the last activity in the case by the Plaintiff was on September 19, 2009, when Plaintiff entered a *pro se* entry of appearance and asked for a 30 day extension to retain substitute counsel after his attorney filed a motion to withdraw as counsel of record. [Dkt. Nos. 29 and 30] On September 25, 2009, the court granted Plaintiff's request for additional time to retain counsel. [Dkt. No. 31]

As such, this court finds that pursuant to Federal Rule of Civil Procedure 16(f), LCvR 16.1(b)(2) and Federal Rule of Civil Procedure 41(b) this case is hereby **DISMISSED WITH PREJUDICE** for Plaintiff's failure to attend court ordered scheduling conferences and hearings and for Plaintiff's failure to prosecute.

IT IS SO ORDERED this 22nd day of December, 2009.


James H. Payne
United States District Judge
Eastern District of Oklahoma

¹Fed.R.Civ.P. 16(f) allows the Court on motion, or on its own, to issue any “any just orders, including those authorized by Rule 37(b)(2)(A)(ii)-(Vii), if a party or its attorney: (A) fails to appear at a scheduling or other pretrial conference. . . .” Fed.R.Civ.P. 37(b)(2)(a)(v) authorizes dismissal of the action of the proceeding in whole or in part as an appropriate sanction.