

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
CENTRAL DIVISION

FILED
FEB 24 2009
[Signature]
CLERK

DANAHER CORPORATION &
SUSBSIDIARIES SAVINGS PLAN and
NORTHERN TRUST COMPANY,

Plaintiffs

-vs-

ESTATE OF DAVID LESTON and
VERNA LESTON

Defendants

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CIV. 05-3027

ORDER

Plaintiffs instituted this action on October 4, 2005. Returns of service were filed on November 16, 2005. On October 25, 2006, the court inquired of attorney Don E. Petersen, one of the attorneys for plaintiffs, as to what was transpiring in the case, pointing out that the court could dismiss the case for failure to prosecute and pointing out that no responsive pleading of any kind had been filed. The attorney replied on November 8, 2006, stating that he would be filing an amended complaint the following week as there had been no answer or appearance on behalf of the defendants. No motion for a default or a default judgment has ever been filed and it would appear that such would have been appropriate long ago to terminate the case. No amended complaint was filed as promised by the attorney for plaintiffs.

Again, on February 5, 2009, the court made inquiry of counsel for the plaintiffs, asking that he respond within no later than 10 days from the date of the inquiry. He has failed to respond. The plaintiffs and their attorneys have failed to timely prosecute this


case and the case should be dismissed as part of the inherent case-management powers of the court. Sterling v. United States, 985 F.2d 411, 412 (8th Cir. 1993). On March 30, 2009, the case would otherwise have to be reported as more than a three old case, something the court does not wish to do.

Now, therefore,

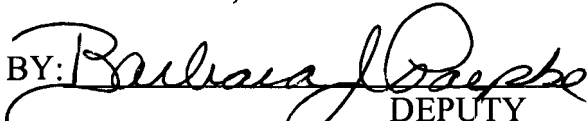
IT IS ORDERED that plaintiffs' complaint is dismissed without prejudice and without costs.

Dated this 24th day of February, 2009.

BY THE COURT:


CHARLES B. KORNMANN
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 
DEPUTY
(SEAL)