


UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

FILED
MAR 02 2009

CLERK

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| WILLIAM REED, | * | |
| | * | CIV 07-4073 |
| | * | |
| Plaintiff, | * | |
| | * | MEMORANDUM OPINION |
| -vs- | * | AND ORDER |
| | * | |
| WARDEN WHITEHEAD, | * | |
| DR. WILLIAM D. PIERCE, RDAP | * | |
| coordinator, DR. SAVAGE, RDAP | * | |
| coordinator, | * | |
| | * | |
| Defendants. | * | |
| | * | |

On January 8, 2009, this Court issued an Order directing Plaintiff to respond to the Motion to Dismiss filed by Defendants on May 20, 2008. The Motion to Dismiss had been pending for almost eight months without a response by Plaintiff, and Plaintiff was warned that if he failed to file a response to the motion by January 26, 2009, the case would be dismissed for lack of prosecution. More than a month has passed since that deadline, and Plaintiff still has not responded to the Motion to Dismiss.

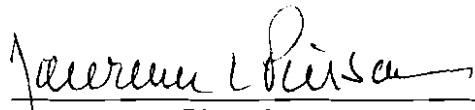
District courts have inherent power to dismiss a case, *sua sponte*, for failure to prosecute. See *Miller v. Benson*, 51 F.3d 166, 168 (8th Cir. 1995). A dismissal under Federal Rule of Civil Procedure 41(b) for failure to prosecute or for failure to comply with a court order is proper when there has been a "clear record of delay or contumacious conduct by the plaintiff." *Skelton v. Rapps*, 187 F.3d 902, 908 (8th Cir. 1999) (internal quotation marks and citations omitted). The Court is to balance its need to advance a crowded docket with the consequences of denying a plaintiff his day in court. See *Garland v. Peebles*, 1 F.3d 683, 687 (8th Cir. 1993).

Reed's Complaint was filed almost two years ago on May 21, 2007. He filed a number of letters and pleadings with the Court up until the time Defendants filed the Motion to Dismiss in May, 2008, but the Court has heard nothing from Reed since that time. Despite the warning that his case would be dismissed if he did not respond to Defendants' Motion to Dismiss, Reed has failed to follow the Court's Order. Balancing the relevant factors in deciding whether to dismiss the case, the Court concludes that the need to advance the Court's crowded docket outweighs the consequences to Reed, who appears to have lost all interest in the case. There is a clear record of delay by Reed, and his claims against Defendants will be dismissed with prejudice. Accordingly,

IT IS ORDERED that Plaintiff's complaint is dismissed with prejudice.

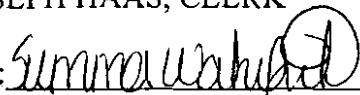
Dated this 2nd day of March, 2009.

BY THE COURT:



Lawrence L. Piersol
United States District Judge

ATTEST:
JOSEPH HAAS, CLERK

BY: 

(SEAL) DEPUTY