

UNITED STATES DISTRICT COURT  
 EASTERN DISTRICT OF TENNESSEE

DEWAYNE CANTRELL BEARD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 1:16-CV-148-TAV-SKL
	)	
HAMILTON COUNTY SHERIFF’S	)	
DEPARTMENT,	)	
BRIAN KNIGHT, and	)	
F/N/U RAUFERNAUGHT,	)	
	)	
Defendants.	)	

**MEMORANDUM OPINION**

This *pro se* prisoner’s civil rights action under 42 U.S.C. § 1983 is before the Court on the postal return of the Court’s previous Order mailed to Plaintiff at the last address he provided to the Court [Doc. 15]. The correspondence was returned to the Court by the postal authorities on June 12, 2017, with the face of the envelope marked undeliverable and “Return to Sender,” “Refused,” and “Unable to Forward” [*Id.*]. Previously, on May 9, 2017, the Court issued an Order stating “unless within ten (10) days of the date on this Order, Plaintiff notifies the Court of his current address and indicates that he intends to continue to pursue his claims against Defendants, the Court, without further notice to Plaintiff, will dismiss his § 1983 action.” [Doc. 14 p. 2].

Plaintiff has failed to apprise the Court of his current address, despite the Court’s earlier Order providing him with an opportunity to demonstrate that he intends to litigate this case. Without Plaintiff’s correct and current address, neither the Court nor Defendants can communicate with him regarding his case. In fact, Local Rule 83.13 not only requires *pro se* litigants, such as Plaintiff, to file a written notice with the Clerk, but also requires written notice to be given to all parties, within fourteen days of any change of address. *See* E.D. Tenn. L.R. 83.13.

Federal Rule of Civil Procedure 41(b) gives this Court the authority to dismiss a case for “failure of the plaintiff to prosecute or to comply with these rules or any order of the court.” *See, e.g., Nye Capital Appreciation Partners, L.L.C. v. Nemchik*, 483 F. App’x 1, 9 (6th Cir. 2012); *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359, 362–63 (6th Cir. 1999). Involuntary dismissal under Rule 41(b) “operates as an adjudication on the merits.” Fed. R. Civ. P. 41(b); *see Link v. Wabash R.R. Co.*, 370 U.S. 626, 629 (1962) (“The authority of a federal trial court to dismiss a plaintiff’s action with prejudice because of his failure to prosecute cannot seriously be doubted.”).

The Court considers four factors when considering dismissal under Rule 41(b):

(1) whether the party’s failure is due to willfulness, bad faith or fault; (2) whether the adversary was prejudiced by the dismissed party’s conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

*Wu v. T.W. Wang, Inc.*, 420 F.3d 641, 643 (6th Cir. 2005).

As to the first factor, the Court finds that Plaintiff’s failure to respond or comply is, in fact, the fault of the Plaintiff. Pursuant to Local Rule 83.13, it is the duty of a *pro se* party to promptly notify the Clerk and the other parties to the proceedings of any change in his or her address, to monitor the progress of the case, and to prosecute or defend the action diligently. E.D. Tenn. L.R. 83.13. Notification of a change of address must be accomplished by filing a Notice with the Clerk and service of the Notice upon all other parties within fourteen (14) days of the change of address. E.D. Tenn. L. R. 83.13. The failure of a *pro se* party to timely respond to an order or pleading addressed to the last address provided to the Clerk may result in dismissal of the case or other appropriate action. E.D. Tenn. L.R. 83.13. Since the fault lies with Plaintiff, the first factor weighs in favor of dismissal.

The second factor also weighs in favor of dismissal; as the Defendants have already been served, they have been prejudiced by the delay. Additionally, the third factor clearly weighs in favor of dismissal, as Plaintiff has failed to comply with the Court's Order, despite being expressly warned of the possible consequences of such a failure. Finally, the Court finds that alternative sanctions would not be effective. Plaintiff filed a motion for leave to proceed *in forma pauperis*; therefore, the Court has no indication that Plaintiff has the ability to pay a monetary fine. The Court thus concludes that, in total, the factors weigh in favor of dismissal of Plaintiff's action with prejudice pursuant to Rule 41(b).

Accordingly, this action will be **DISMISSED WITH PREJUDICE**, *sua sponte*, for want of prosecution. *See* Fed. R. Civ. P. 41(b); *see also Link v. Wabash R.R. Co.*, 370 U.S. 626, 630–31 (1962) (recognizing the court's authority to dismiss a case *sua sponte* for lack of prosecution); *White v. City of Grand Rapids*, 34 F. App'x 210, 211 (6th Cir. 2002) (finding that a *pro se* prisoner's complaint "was subject to dismissal for want of prosecution because he failed to keep the district court apprised of his current address"); *Jourdan v. Jabe*, 951 F.2d 108 (6th Cir. 1991). The Court **CERTIFIES** that any appeal from this action would not be taken in good faith and would be totally frivolous. *See* Fed. R. App. P. 24. Therefore, should Plaintiff file a notice of appeal, he will be **DENIED** leave to appeal *in forma pauperis*. *See* 28 U.S.C. § 1915(a)(3); Fed. R. App. P. 24.

**AN APPROPRIATE ORDER WILL ENTER.**

s/ Thomas A. Varlan  
CHIEF UNITED STATES DISTRICT JUDGE