

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT CHATTANOOGA**

JAMES SWANN, JR.)

Plaintiff,)

v.)

AMY L. HINKLE, et al.,)

Defendants.)

No.: 1:21-CV-319-CLC-CHS

MEMORANDUM OPINION

This is a prisoner’s pro se complaint for violation of 42 U.S.C. § 1983. On January 11, 2022, this Court entered an order notifying Plaintiff that he had not filed the required documents to proceed *in forma pauperis* and providing him thirty days from the date of entry of that order to do so [Doc. 7]. The Court also warned Plaintiff that if he failed to timely comply with that order, the Court would presume that Plaintiff is not a pauper, assess the full amount of fees, and order the case dismissed for want of prosecution [*Id.* at 1–2]. The deadline has passed, and Plaintiff has not complied with this order or otherwise communicated with the Court. Accordingly, Plaintiff’s motion to proceed *in forma pauperis* [Doc. 1] will be **DENIED**, Plaintiff will be **ASSESSED** the \$402.00 filing fee, and this matter will be dismissed pursuant to Rule 41(b) of the Federal Rules of Civil Procedure.

Under Federal Rule of Civil Procedure 41(b), the Court may dismiss a case for a failure of the plaintiff “to prosecute or to comply with these rules or a court order.” Fed. R. Civ. P. 41(b); *see also Rogers v. City of Warren*, 302 F. App’x 371, 375 n.4 (6th Cir. 2008) (“Although Rule 41(b) does not expressly provide for a sua sponte dismissal (the rule actually provides for dismissal on defendant’s motion), it is well-settled that the district court can enter a sue sponte order of

dismissal under Rule 41(b).” (citing *Link v. Wabash R.R.*, 370 U.S. 626, 630 (1962))). The Court examines four factors when considering dismissal under Fed. R. Civ. P. 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) (citation omitted).

As to the first factor, the Court finds that Plaintiff’s failure to respond to or comply with the Court’s previous order is due to Plaintiff’s willfulness and/or fault. Specifically, it appears that Plaintiff received the Court’s previous order, but chose not to comply therewith. As to the second factor, the Court finds that Plaintiff’s failure to comply with the Court’s order has not prejudiced Defendants. As to the third factor, the Court warned Plaintiff that if he failed to timely comply with its previous order, the Court would presume that Plaintiff is not a pauper, assess the full amount of fees, and order the case dismissed for want of prosecution. As to the fourth factor, the Court finds that alternative sanctions are not warranted. As set forth above, Plaintiff is a prisoner seeking to proceed *in forma pauperis* in this matter who has not responded to the Court’s previous order or otherwise communicated with the Court. On balance, the Court finds that these factors support dismissal of this action under Rule 41(b).

The Court also notes that, “while *pro se* litigants may be entitled to some latitude when dealing with sophisticated legal issues, acknowledging their lack of formal training, there is no cause for extending this margin to straightforward procedural requirements that a layperson can comprehend as easily as a lawyer.” *Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991). Nothing about Plaintiff’s *pro se* status prevented him from complying with the Court’s order, and Plaintiff’s *pro se* status does not mitigate the balancing of factors under Rule 41(b).

Accordingly, Plaintiff will be **ASSESSED** the filing fee of \$402.00 and this action will be **DISMISSED**. The custodian of Plaintiff's inmate trust account will be **DIRECTED** to submit to the Clerk, U.S. District Court, 900 Georgia Avenue, Suite 309, Chattanooga, Tennessee 37402, twenty percent (20%) of Plaintiff's preceding monthly income (or income credited to his trust account for the preceding month), but only when such monthly income exceeds \$10.00, until the full filing fee of \$400.00 has been paid to the Clerk's Office. *McGore v. Wrigglesworth*, 114 F.3d 601, 607 (6th Cir. 1997), *overruled on other grounds by Jones v. Bock*, 549 U.S. 199 (2007).

To ensure compliance with the fee-collection procedure, the Clerk will be **DIRECTED** to provide a copy of this memorandum opinion and the accompanying order to the Sheriff of Sullivan County and the Court's financial deputy. This order shall be placed in Plaintiff's institutional file and follow him if he is transferred to another correctional facility. The Court **CERTIFIES** that any appeal from this order would not be taken in good faith.

AN APPROPRIATE JUDGMENT ORDER WILL ENTER.

/s/
CURTIS L. COLLIER
UNITED STATES DISTRICT JUDGE