

**IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION**

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|--------------------------------|---|--------------------------|
| DAVID D. MAYS, |) | |
| |) | |
| Plaintiff, |) | |
| |) | |
| v. |) | NO. 3:19-cv-01082 |
| |) | |
| MICHAEL PARRIS, ET AL., |) | JUDGE CAMPBELL |
| |) | |
| Defendants. |) | |

MEMORANDUM AND ORDER

Plaintiff David D. Mays, an inmate of the Morgan County Correctional Complex proceeding pro se, filed a complaint under 42 U.S.C. § 1983 (Doc. No. 1) and a one-page, handwritten application for leave to proceed in forma pauperis (IFP) (Doc. No. 2) on November 25, 2019.

On January 23, 2020, the Court notified Plaintiff that his IFP application was deficient because it did not contain a sufficient affidavit of poverty and was not supported by a trust fund account statement confirming his poverty during his previous six months of incarceration. (Doc. No. 4.) The Court ordered Plaintiff to either cure this deficiency or pay the full filing fee within 28 days, and explicitly warned him that failure to do so could result in the dismissal of this action for failure to prosecute. (*Id.* at 2.)

To date, well past the 28-day deadline, Plaintiff has failed to respond to the Court's Order. Dismissal of this action is therefore required.

Federal Rule of Civil Procedure 41(b) states that, “[i]f the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.” Fed. R. Civ. P. 41(b). Moreover, “[i]t is clear that the district court [has] the power

under Rule 41(b), Fed. R. Civ. P., to enter a sua sponte order of dismissal.” *Carter v. City of Memphis*, 636 F.2d 159, 161 (6th Cir. 1980) (citing *Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962)). Dismissal of this action is appropriate in view of Plaintiff’s fault in failing to comply with the Court’s Order, despite having been warned that such failure could lead to dismissal. *Choate v. Emerton*, No. 2:16-cv-00037, 2018 WL 3656505, at *2 (M.D. Tenn. Aug. 2, 2018), *report and recommendation adopted*, 2018 WL 4076955 (M.D. Tenn. Aug. 27, 2018). Under Rule 41(b), dismissal for failure to prosecute can be either with or without prejudice. In view of Plaintiff’s pro se status, as well as the preference for disposing of cases on their merits, the Court finds dismissal without prejudice to be the appropriate disposition here. *See id.* (citing *Mulbah v. Detroit Bd. of Educ.*, 261 F.3d 586, 591 (6th Cir. 2011)).

Accordingly, this action is **DISMISSED WITHOUT PREJUDICE** for want of prosecution and for failure to comply with the Court’s Order.


The filing fee is nevertheless to be assessed against the prisoner in this circumstance. *See In re Prison Litig. Reform Act*, 105 F.3d 1131, 1132 (6th Cir. 1997) (“If the prisoner does not comply with the district court’s directions, the district court shall presume that the prisoner is not a pauper, and assess the inmate the full amount of fees.”). Accordingly, the entire \$400.00 fee is hereby **ASSESSED**, as follows:

The warden of the facility in which Plaintiff is currently housed, as custodian of Plaintiff’s trust account, is **DIRECTED** to submit to the Clerk of Court, as an initial payment, the greater of: (a) 20% of the average monthly deposits to Plaintiff’s credit at the jail; or (b) 20% of the average monthly balance to Plaintiff’s credit for the six-month period immediately preceding the filing of the complaint. 28 U.S.C. § 1915(b)(1). Thereafter, the custodian shall submit 20% of Plaintiff’s preceding monthly income (or income credited to Plaintiff for the preceding month), but only when

the balance in his account exceeds \$10.00. 28 U.S.C. § 1915(b)(2). Payments shall continue until the \$400.00 filing fee has been paid in full to the Clerk of Court. 28 U.S.C. § 1915(b)(3).

The Clerk of Court **MUST** send a copy of this Order to the warden of the facility where Plaintiff is housed to ensure compliance with that portion of 28 U.S.C. § 1915 pertaining to the payment of the filing fee. If Plaintiff is transferred from his present place of confinement, the custodian must ensure that a copy of this Order follows Plaintiff to his new place of confinement, for continued compliance with the Order. All payments made pursuant to this Order must be submitted to the Clerk of Court for the United States District Court for the Middle District of Tennessee, 801 Broadway, Nashville, TN 37203.

It is so **ORDERED**.



WILLIAM L. CAMPBELL, JR.
UNITED STATES DISTRICT JUDGE