

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
EASTERN DIVISION

EDWIN T. SMITH,)	
)	
Plaintiff,)	
)	
VS.)	No. 15-1056-JDT-egb
)	
MATTHEW CARSON, ET AL.)	
)	
Defendants.)	

ORDER ADOPTING REPORT AND RECOMMENDATION,
GRANTING MOTION TO DISMISS (ECF NO. 39),
CERTIFYING AN APPEAL WOULD NOT BE TAKEN IN GOOD FAITH
AND DENYING LEAVE TO APPEAL *IN FORMA PAUPERIS*

Plaintiff Edwin T. Smith, a resident of Brownsville, Tennessee, filed a *pro se* civil complaint and a motion for leave to proceed *in forma pauperis* on March 19, 2015. (ECF Nos. 1 & 2.) United States Magistrate Judge Edward G. Bryant granted leave to proceed *in forma pauperis*. (ECF No. 5.) On September 30, 2015, Magistrate Judge Bryant ordered that process be issued and served on four Defendants: the City of Brownsville, Matthew Carson, Chris Lea and Roy Turner. (ECF No. 6.) Following service of process, the Defendants filed answers to the complaint. (ECF Nos. 23 & 33.) On January 6, 2016, all except Defendant Carson also filed a motion to dismiss for failure to state a claim, pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF No. 27.)

The Magistrate Judge notified the parties on January 27, 2016, that a scheduling conference would be held on February 24, 2016. (ECF No. 34.) At the appointed time, counsel for the Defendants appeared for the conference as directed, but Plaintiff did not appear. (Minutes, ECF No. 37.) Therefore, Magistrate Judge Bryant issued an order directing Plaintiff to show cause, within

fourteen days, why sanctions should not be imposed against him pursuant to Federal Rule of Civil Procedure 16(f). (ECF No. 36.) It was noted in the order that Plaintiff had telephoned the Magistrate Judge's chambers on February 18, 2016, to explain that he had just been released from the hospital and would not be able to attend the scheduling conference. Plaintiff was advised by chambers staff that he must contact opposing counsel to notify them that he could not attend and to work out an alternate date for the conference. However, Defendants' counsel advised that Plaintiff did not contact their offices. (*Id.* n.1.)

Plaintiff did not respond to the show cause order, and on May 3, 2016, Defendants filed a joint motion to dismiss for failure to comply with the Court's order and for failure to prosecute, pursuant to Federal Rule of Civil Procedure 41(b). (ECF No. 39.) However, Plaintiff also did not respond to the motion to dismiss. Therefore, on May 24, 2016, Magistrate Judge Bryant issued a Report and Recommendation ("R&R") in which he recommended granting Defendants' Rule 41(b) motion. Objections to the R&R were required to be filed on or before June 10, 2016. *See* Fed. R. Civ. P. 72(b)(2); *see also* Fed. R. Civ. P. 6(d). However, Plaintiff has filed no objections.

As Plaintiff has made no attempt to comply with the Magistrate Judge's order and apparently does not intend to prosecute this case, the R&R is ADOPTED. Defendants' motion to dismiss pursuant to Rule 41(b) is GRANTED.¹

Pursuant to the Federal Rule of Appellate Procedure 24(a), it is CERTIFIED that any appeal in this matter by Plaintiff would not be taken in good faith. Leave to proceed on appeal *in forma pauperis* is, therefore, DENIED. Accordingly, if Plaintiff files a notice of appeal, he must also pay

¹ The prior motion to dismiss for failure to state a claim (ECF No. 27) is DENIED as moot.

the full \$505 appellate filing fee or file a motion to proceed *in forma pauperis* and supporting affidavit in the Sixth Circuit Court of Appeals.

The Clerk is directed to prepare a judgment.

IT IS SO ORDERED.

s/ **James D. Todd**
JAMES D. TODD
UNITED STATES DISTRICT JUDGE