IN THE UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF TEXAS

BEAUMONT DIVISION

JOHN D. NIES   §

VS.   §   CIVIL ACTION NO. 1:08cv823

WARDEN ALFORD   §

MEMORANDUM OPINION

Plaintiff John D. Nies, proceeding *pro se*, filed this civil

rights lawsuit pursuant to 42 U.S.C. § 1983.

Procedural Background

On January 7, 2009, the court entered an order directing

plaintiff to either pay the filing fee or submit a properly

certified application to proceed *in forma pauperis*. Plaintiff was

given 20 days to comply with the court's order. Plaintiff

acknowledged receipt of the court's order on January 13, 2009.

However, plaintiff has not paid the filing fee, submitted a

properly certified application to proceed *in forma pauperis* or

otherwise contacted the court.

Discussion

Federal Rule of Civil Procedure 41(b) authorizes a district

court to dismiss an action for failure to prosecute or for

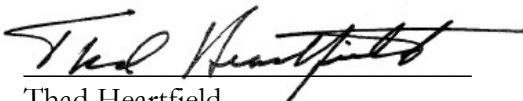failure to comply with any court order. *Larson v. Scott*, 157

F.3d 1030, 1031 (5th Cir. 1998). "This authority [under Rule 41(b)] flows from the court's inherent power to control its docket and prevent undue delays in the disposition of pending cases." *Boudwin v. Graystone Insurance Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985).

By failing to comply with the order described above, plaintiff has failed to diligently prosecute this case. As a result, this case will be dismissed for want of prosecution.

<u>Conclusion</u>

For the reasons set forth above, this lawsuit will be dismissed without prejudice pursuant to Federal Rule of Civil Procedure 41(b). If plaintiff wishes to have this case reinstated on the court's active docket, he may do so by submitting the required filing fee or a properly certified application to proceed *in forma pauperis* within 30 days of the date set forth below.

SIGNED this the **24** day of **February, 2009.**

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Thad Heartfield
United States District Judge