

United States District Court
Southern District of Texas

ENTERED

January 20, 2023

Nathan Ochsner, Clerk

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

JAMES LEE POLK,

Plaintiff,

vs.

BELL UNIT MAILROOM,

Defendant.

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CIVIL ACTION NO. H-22-4196

MEMORANDUM OPINION DISMISSING CASE

The plaintiff, James Lee Polk (TDCJ # 1533696), filed an action under 42 U.S.C. § 1983 against the Bell Unit Mailroom, alleging that several mailroom employees are violating his civil rights by mishandling his mail. (Docket Entry No. 1). The court ordered Polk to file an amended complaint using the approved form for prisoner actions under § 1983. (Docket Entry No. 3). The court also notified Polk that he must either pay the \$402.00 filing fee for a civil rights action or file a properly supported motion to proceed without prepaying the filing fee. (*Id.*). The court provided Polk with the appropriate forms and warned him that any failure to timely comply with the court's order could result in dismissal of his action without further notice under Federal Rule of Civil Procedure 41(b).

Polk has since filed a one-page letter that does not respond to the court's order in any way. (Docket Entry No. 5). But to date, Polk has not filed an amended complaint as ordered, and he has neither paid the filing fee nor filed a motion for leave to proceed without prepaying the filing fee. His time to do so under the court's order has expired. Polk's failure to pursue this action forces the court to conclude that he lacks due diligence. Dismissal for want of prosecution is appropriate. *See* FED. R. CIV. P. 41(b); *Larson v. Scott*, 157 F.3d 1030, 1031 (5th Cir. 1998) (a

district court may dismiss an action on its own for failure to prosecute or to comply with any court order).

Polk is advised that he may seek relief from this order under Federal Rule of Civil Procedure 60(b) if he can show good cause for failing to comply with the court's order and the local rules. Any motion under Rule 60(b) must be accompanied by an amended complaint on the proper form and either the filing fee of \$402.00 or a properly supported motion to proceed without prepaying the filing fee, including a certified copy of his inmate trust fund account statement.

Polk's complaint, (Docket Entry No. 1), is dismissed without prejudice for want of prosecution.

SIGNED on January 20, 2023, at Houston, Texas.

A handwritten signature in black ink, reading "Lee H. Rosenthal". The signature is written in a cursive style with a large, sweeping flourish at the end.

Lee H. Rosenthal
United States District Judge