

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

ARTHUR TAYLOR, JR.,)

Plaintiff,)

v.)

PULLIAM, ET AL.,)

Defendants.)

Case No. 7:14CV00641

OPINION

By: James P. Jones
United States District Judge

Arthur Taylor, Jr., Pro Se Plaintiff; Mary Foil Russell, Hale & Russell, Bristol, Tennessee, for Defendant Wang.

This matter is before me on the defendant Dr. Laurence Wang’s Motion to Dismiss, or in the Alternative for Summary Judgment, filed October 19, 2015. The next day, the court mailed a notice advising the plaintiff that the court would give him 21 days “to submit any further counter-affidavits or other relevant evidence contradicting, explaining or avoiding Defendant’s evidence” before ruling on defendants’ motion. (Notice, ECF No. 37) The notice warned Mr. Taylor:

If Plaintiff does not respond to Defendant’s pleadings, the Court will assume that Plaintiff has lost interest in the case, and/or that Plaintiff agrees with what the Defendant states in their responsive pleading(s). If Plaintiff wishes to continue with the case, it is necessary that Plaintiff respond in an appropriate fashion. Plaintiff may wish to respond with counter-affidavits or other additional evidence as outlined above. *However, if Plaintiff does not file some response within the twenty-one (21) day period, the Court may dismiss the case for failure to prosecute.*

(*Id.*) (emphasis in original.)

Since mailing the notice to the plaintiff, the court has received no further communication from him about this case, and the deadline for his response to Defendant Wang's motion has passed. Accordingly, I conclude that, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, the plaintiff has failed to prosecute this action. *See Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989) (stating pro se litigants are subject to time requirements and respect for court orders and dismissal is an appropriate sanction for non-compliance); *Donnelly v. Johns-Manville Sales Corp.*, 677 F.2d 339, 340-41 (3d Cir. 1982) (recognizing a district court may sua sponte dismiss without prejudice an action pursuant to Fed. R. Civ. P. 41(b)). Accordingly, I will dismiss the plaintiff's claims against the defendant Wang without prejudice and deny the defendant's pending motion as moot.

A separate Order will be entered herewith.

DATED: December 8, 2015.

/s/ James P. Jones
United States District Judge