

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

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|--|---|------------------------------|
| RICHARD EDWARD HAIRSTON |) | |
| |) | Case No. 7:15CV00126 |
| Plaintiff, |) | |
| |) | |
| v. |) | ORDER |
| |) | |
| |) | |
| MARTINSVILLE CITY JAIL, <i>et al</i> , |) | By: Elizabeth K. Dillon |
| |) | United States District Judge |
| Defendant(s). |) | |
| |) | |

This matter is before the court upon defendants’ Motion to Dismiss, filed June 4, 2015. On June 5, 2015, the court mailed a notice advising Mr. Hairston 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. The notice warned Mr. Hairston:

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[s] state[] 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.

(Notice, ECF No. 18) (emphasis in original.)

Since mailing the notice to Mr. Hairston, the court has received no further communication from him about this case, and the deadline for his response to defendants’ motion has passed. Accordingly, the court finds that, pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, Mr. Hairston has failed to prosecute this action. *See generally. Ballard v. Carlson*, 882 F.2d 93 (4th Cir. 1989) (explicit warning of dismissal is significant factor).

The court having duly notified the parties that Mr. Hairston's failure to respond to defendant's dispositive motion would be interpreted as failure to prosecute and would be cause for dismissal of the action without prejudice, it is hereby ORDERED that this action is DISMISSED without prejudice for failure to prosecute; defendants' motion (ECF No. 16) is DISMISSED without prejudice; and the action is stricken from the active docket of the court.

Mr. Hairston is advised that if he intends to proceed with this action, he must petition the court within 30 days of the entry of this order for a reinstatement of this action. Any motion for reinstatement should provide specific explanation for Mr. Hairston's failure to respond in a timely fashion to defendants' dispositive motion.

The Clerk is directed to send a copy of this order to the plaintiff and to counsel of record for the defendants.

Entered: July 15, 2015

Elizabeth K. Dillen
United States District Judge