

JUN 29 2016

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

JULIA C. DODLEY CLERK
BY: *[Signature]*
DEPUTY CLERK

RICHARD ALLEN JACKSON, JR.,)
Plaintiff,)
v.)
SOUTHERN HEALTH)
PARTNERS, INC., et al.,)
Defendants.)

Civil Action No. 7:15-cv-00637

MEMORANDUM OPINION

By: Hon. Michael F. Urbanski
United States District Judge

This matter is before the court upon plaintiff's response to the court's May 31, 2016, Notice directing him to respond to defendants' motion for summary judgment. In this response, Plaintiff asks the court to defer the disposition of this action due to his incarceration, indigence, and unfamiliarity with law. Plaintiff indicates he would rather pursue this matter after being released from incarceration.

Federal Rule of Civil Procedure 41(a)(2) permits plaintiff to voluntarily dismiss this action only by a court order because defendants already filed a motion for summary judgment. Defendants have not objected to plaintiff's request, and the parties will not be unfairly prejudiced. See, e.g., Phillips USA, Inc., v. Allflex USA, Inc., 77 F.3d 354, 358 (10th Cir. 1996) (discussing factors to consider when dismissing action pursuant to Fed. R. Civ. P. 41(a)(2)); Davis v. USX Corp., 819 F.2d 1270, 1273 (4th Cir. 1987) (same). The docket reveals that this action has not progressed very far, and defendants have not yet expended substantial efforts to respond. Accordingly, the court grants plaintiff's request for voluntary dismissal without prejudice and denies as moot any outstanding motion. Plaintiff is advised that the applicable statute of limitations restricts the time by which he may refile the action. See, e.g., Bay Area Laundry and Dry Cleaning Pension Trust Fund v. Ferbar Corp. of Cal., 522 U.S. 192, 201 (1997); Va. Code § 8.01-243.

ENTER: This 29th day of June, 2016.

[Signature: Michael F. Urbanski]

United States District Judge