

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

MAY 22 2019

JULIA C. DUDLEY, CLERK
BY: *[Signature]*
DEPUTY CLERK

RICHARD NAHWOOKSY, JR.,)	
)	
Plaintiff,)	CASE NO. 7:18CV00479
)	
v.)	<u>MEMORANDUM OPINION</u>
)	
MARCUS ELAM, <u>ET AL.</u> ,)	By: Hon. Jackson L. Kiser
)	Senior United States District Judge
Defendants.)	

Plaintiff Richard Nahwooksy, Jr., a Virginia inmate proceeding pro se, filed this civil rights action pursuant to 42 U.S.C. § 1983. Defendants J. Clifton, Marcus Elam, and J.A. Woodson filed a motion to dismiss on February 20, 2019. On February 21, the court mailed a notice advising Mr. Nahwooksy that the court would give him twenty-one (21) days to submit any further counter-affidavits or other relevant evidence contradicting, explaining or avoiding the defendants' evidence before ruling on their motions. The notice warned Mr. Nahwooksy:

If Plaintiff does not respond to Defendant[s'] pleading[], 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[]. 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. 24] (emphasis in original).) Mr. Nahwooksy filed a motion for an extension of time to respond to the defendants' motion, which the court granted by order entered March 20, 2019. Since issuing that order, the court has received no further communication from Mr. Nahwooksy about this case, and the deadline for his response to the defendants' motion has passed. Accordingly, the court concludes that, pursuant to Rule 41(b) of the Federal Rules of Civil

Procedure, Mr. Nahwooksy has failed to prosecute this action. See generally Ballard v. Carlson, 882 F.2d 93 (4th Cir. 1989).

Having duly notified the parties that Mr. Nahwooksy's failure to respond to the defendants' dispositive motion would be interpreted as failure to prosecute and would be cause for dismissal of the action without prejudice, the court will dismiss the case accordingly. A separate order will enter this day.

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

The Clerk is directed to send copies of this memorandum opinion and accompanying order to Mr. Nahwooksy and to counsel of record for the defendants.

ENTERED this 22nd day of May, 2019.


SENIOR UNITED STATES DISTRICT JUDGE