

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

DAVID WILSON,

Plaintiff,

ORDER

v.

14-cv-551-wmc

DALIA SULIENE and KAREN ANDERSON,

Defendants.

State inmate David Wilson filed a proposed civil action pursuant to 42 U.S.C. § 1983 against two health care providers at the Columbia Correctional Institution. He has requested leave to proceed *in forma pauperis* and he was directed to make an initial partial payment of the full filing fee in the amount of \$136.65. To date, Wilson has not paid the initial partial filing fee as directed. Instead, Wilson has now filed a motion to withdraw his complaint and he asks for a “full refund” of the filing fee. The court will grant Wilson’s motion in part.

The court construes Wilson’s motion as a request for voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(A), which allows dismissal upon the plaintiff’s request before the opposing party serves either an answer or a motion for summary judgment. Because no responsive pleading has been requested or received in this case, the motion will be granted and the case will be dismissed without prejudice. *See Smith v. Potter*, 513 F.3d 781, 782-83 (7th Cir. 2008) (observing that a plaintiff’s motion for voluntary dismissal filed before the opposing party serves either an answer or dispositive motion

automatically effects dismissal of the case); *see also Nelson v. Napolitano*, 657 F.3d 586, 587-88 (7th Cir. 2011) (discussing the effect of a voluntary dismissal under Rule 41(a)) (collecting cases). Wilson's request for a refund will be denied, however, because he has paid no part of the filing fee in this case.

ORDER

IT IS ORDERED that:

1. The motion for voluntary dismissal filed by plaintiff David Wilson (Dkt. # 5) is GRANTED; Wilson's request for a refund of the filing fee is DENIED.
2. The complaint is DISMISSED without prejudice pursuant to Fed. R. Civ. P. 41(a). The clerk's office shall terminate all pending motions and close this case.

Entered this 15th day of August, 2014.

BY THE COURT:

/s/

WILLIAM M. CONLEY
District Judge