

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

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RUSSELL MILLER,

Plaintiff,

v.

ERIE INSURANCE COMPANY,

Defendant.

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ORDER

15-cv-223-wmc

On April 13, 2015, plaintiff's counsel filed this civil action on Russell Miller's behalf under 28 U.S.C. § 1332, alleging that Erie Insurance Company breached its insurance contract with Miller by refusing to pay for hail damage to his home.

The court issued a summons on April 15, 2015, and twice, on June 1 and July 15, directed plaintiff to file proof of service promptly. In the second of these notices, the court also scheduled a telephonic status conference for August 12, 2015, indicating that the court expected plaintiff's counsel to explain why the case had not yet moved forward. Not only did plaintiff fail to file proof of service despite two warnings, but plaintiff's counsel also failed to call in for the telephonic conference on August 12, and the court was only able to reach counsel's answering machine that day after the scheduled time for the conference had passed.

Having filed this action on April 13, 2015, plaintiff's 120-day period to serve defendant ran on August 11, 2015. *See* Fed. R. Civ. P. 4(m). To date, plaintiff's counsel has still offered *no* just cause for plaintiff's failure to file proof of service, nor has he moved the court to extend the time permitted for plaintiff to serve defendant.

Accordingly, the complaint will now be dismissed without prejudice for want of prosecution under the inherent power necessarily vested in a court to manage its own docket. *See* Fed. R. Civ. P. 41(b); *Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31 (1962); *Ohio River Co. v. Carrillo*, 754 F.2d 236, 238 n.5 (7th Cir. 1985).

ORDER

IT IS ORDERED that the complaint filed by plaintiff Russell Miller is DISMISSED without prejudice for want of prosecution. Plaintiff is advised that relief from this order may be granted upon a showing of good cause.

Entered this 13th day of August, 2015.

BY THE COURT:

/s/

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WILLIAM M. CONLEY  
District Judge