

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

DONALD LEE PIPPIN, JR.,

Plaintiff,

v.

LT. ROBERT BLECHL, 2nd Shift Security
at OSCI (now Capt. and 1st Shift),

Defendant.

ORDER

04-C-582-C

Plaintiff Donald Lee Pippin filed this action while he was an inmate at the Waupun Correctional Institution in Waupun, Wisconsin. In early March 2005, plaintiff notified the court that he had been released from prison and was living in Tampa, Florida. Plaintiff remained active in the prosecution of his case until November 2005, when he asked that the court stay all proceedings for at least 30 days to allow him to hire a lawyer to prosecute his case for him. Subsequently, defendant moved for summary judgment and a briefing schedule was established under which plaintiff had until January 17, 2006, in which to oppose the motion. The briefing schedule was mailed to plaintiff at his last known address: P.O. Box 2380329, Tampa, Florida, 33682. Plaintiff did not file a response to defendant's motion. Indeed, he has not communicated with the court in any way since late November 2005.

Plaintiff's failure to oppose defendant's motion or to communicate with the court in any way concerning his case for nearly four months is a strong indication that he is no longer interested in prosecuting the case.

Dismissals for failure to prosecute are covered by Fed. R. Civ. P. 41(b). Under that rule, a court may dismiss an action for a plaintiff's failure to prosecute and the dismissal will operate as an adjudication upon the merits. In other words, plaintiff will be barred from raising the same claim against the same defendant in a future lawsuit. I am aware that dismissal with prejudice pursuant to Rule 41(b) for the failure to prosecute is a "harsh penalty" that is appropriate "only in extreme circumstances." See Palmer v. City of Decatur, 814 F.2d 426, 428 (7th Cir.1987). Nonetheless, I conclude that such dismissal may be warranted under the circumstances presented by this case.

There are "infinitely variable" circumstances in which Rule 41(b) dismissal might be warranted. Ball v. City of Chicago, 2 F.3d 752, 755 (7th Cir. 1993). The Seventh Circuit has developed several criteria that a district court should consider before dismissing a case on this ground. Among them are: 1) the frequency and magnitude of the plaintiff's missed deadlines; 2) the effect of the delay on the court's schedule; 3) the prejudice to other litigants; and 4) the possible merits of the lawsuit. Williams v. Chicago Board of Education, 155 F.3d at 853, 857 (7th Cir. 1998). In addition, except in an instance not material to this lawsuit, the Seventh Circuit requires that "an explicit warning" be provided before a lawsuit

is dismissed for the failure to prosecute. See id. (quoting Ball, 2 F.3d at 755).

After considering these criteria, I conclude that I will offer plaintiff one last opportunity to oppose defendant's motion and, if he fails to do so, I will dismiss this action pursuant to Rule 41(b). Plaintiff has missed his deadline for opposing defendant's motion by four months. Aside from the overarching obligation to move a case forward, a plaintiff has a particular obligation to respond to a dispositive motion and prove the factual and legal bases for his claim. Kirksey v. R.J. Reynolds Tobacco Co., 168 F.3d 1039, 1041 (7th Cir. 1999). In addition, defendant has expended substantial taxpayer dollars to defend against the suit. He should not be required to defend against plaintiff's claims a second time at some point in the future. These two criteria alone are sufficient to warrant a dismissal with prejudice.

Therefore, IT IS ORDERED that if, by April 7, 2006, plaintiff fails to submit a response to defendant's proposed findings of fact, together with additional findings of fact, if necessary, and a brief and evidentiary materials in opposition to defendant's motion, or to show cause why he is unable to do so, then the Clerk shall enter judgment in favor of the defendants, dismissing this case with prejudice pursuant to Fed. R. Civ. P. 41(b) for

plaintiff's failure to prosecute.

Entered this 22nd day of March, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge