

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

BILLY D. NOBLE,

Plaintiff,

v.

AUSTIN T. DESLAURIES, et al.

Defendants.

CIVIL ACTION

No. 06-3144-KHV

ORDER

Billy D. Noble brings suit under 42 U.S.C. § 1983 against various state employees in the Sexual Predator Treatment Program of Larned State Hospital, alleging violation of his procedural due process rights under the Fourteenth Amendment. This matter is before the Court on the Motion For Voluntary Dismissal Without Prejudice (Doc. #51) which plaintiff filed January 10, 2007. Defendants have not responded, and for reasons stated below, the Court sustains the uncontested motion.

Plaintiff's motion is governed by Rule 41(a)(2), Fed. R. Civ. P., which provides that "an action shall not be dismissed at the plaintiff's instance save upon order of the court and upon such terms and conditions as the court deems proper." Dismissal without prejudice is within the sound discretion of the Court, and the Court will generally allow such dismissal unless defendant will suffer some plain legal prejudice. See Clark v. Tansy, 13 F.3d 1407, 1411 (10th Cir. 1993); Dillard v. Douglas County Bank, No. 06-2028-KHV, 2006 WL 3026163, at *1 (D. Kan. Oct. 23, 2006).

Here, defendants have not raised concerns of prejudice, and the Court finds no clear prejudice to defendants in dismissing plaintiff's action without prejudice at this stage in the proceedings. Accordingly, the Court sustains plaintiff's motion to voluntarily dismiss the action without prejudice.

IT IS SO ORDERED.

Dated this 28th day of February, 2007 at Kansas City, Kansas.

s/ Kathryn H. Vratil
Kathryn H. Vratil
United States District Judge