

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

DARSHAWN WITHERSPOON,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3092-SAC

STATE OF KANSAS, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is before the court on a civil rights action filed pursuant to 42 U.S.C. § 1983. On July 21, 2010, the court directed plaintiff to show cause why this matter should not be dismissed for failure to state a claim upon which relief may be granted and to clarify the legal basis for his claim appearing in Count III.

Plaintiff was granted an extension of time to and including September 20, 2010, to file a response and was advised the failure to file a timely response might result in the dismissal of this matter without additional prior notice. Plaintiff has filed no response.

A federal court has the inherent power to act sua sponte to dismiss an action for failure to prosecute. *Link v. Wabash R.*

Co., 370 U.S. 626, 630-31 (1962). Federal Rule of Civil Procedure 41(b) authorizes the involuntary dismissal of an action for failure to prosecute or to comply with procedural rules or orders of the court. While the text of Rule 41(b) contemplates such dismissal upon the motion of a defendant, the rule has been interpreted to allow the sua sponte dismissal of an action. *Link, id.*; *Rogers v. Andrus Transp. Services*, 502 F.3d 1147, 1151 (10th Cir. 2007).

The court finds plaintiff has failed to prosecute this action and has received adequate notice of the court's intention to dismiss this matter for lack of prosecution.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed pursuant to Rule 41(b) for lack of prosecution.

IT IS FURTHER ORDERED plaintiff's motion for leave to proceed in forma pauperis (Doc. 2) is denied.

A copy of this order shall be transmitted to the plaintiff.

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 19th day of October, 2010.

S/ Sam A. Crow
SAM A. CROW
United States Senior District Judge

