

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

JAMES MATTHEW SIMMONS,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3162-SAC

(FNU) BEIR-WEAR, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner in state custody.¹ By an order entered on September 20, 2011, the court granted plaintiff to and including October 14, 2011, to submit a response to the court's earlier order directing him to submit an initial partial filing fee and to amend certain counts of the complaint to avoid dismissal. Plaintiff 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

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Since the commencement of this action, plaintiff has notified the court of a change of address.

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 been given notice of the court's intention to dismiss this matter in the absence of a response from him and concludes this matter should be dismissed for the reasons set forth in its order of September 20, 2011.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed 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 27th day of October, 2010.

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