

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

FRANK RODRIGUEZ,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3179-SAC

USP LEAVENWORTH, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter is a civil rights action filed by a prisoner in federal custody. By an order entered on September 14, 2011, the court granted plaintiff to and including October 14, 2011, to submit an initial partial filing fee, or, in the alternative, to submit a motion for voluntary dismissal. Plaintiff was advised the failure to file a timely response might result in the dismissal of this matter without additional prior notice to the plaintiff. The copy of the order mailed to plaintiff was returned as undeliverable and was remailed to a new address. 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). See also *Theede v. U.S. Department of Labor*, 172 F.3d 1262 (10th Cir. 1999)(affirming dismissal where pro se plaintiff's failure to object to magistrate judge's recommendation of dismissal was due to plaintiff's failure to inform the court of his correct address).

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 14, 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. 5) 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, 2011.

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