

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

BRANDON LEE STEVENS,

Plaintiff,

vs.

CIVIL ACTION
No. 10-3224-SAC

SHELTON RICHARDSON, et al.,

Defendants.

MEMORANDUM AND ORDER

This matter comes before the court on plaintiff's motion to dismiss (Doc. 5), which the court liberally construes as a motion pursuant to Rule 41(a) of the Federal Rules of Civil Procedure. Rule 41(a) allows the voluntary dismissal of an action without prejudice upon the plaintiff's motion, and pursuant to Rule 41(a)(1)(I), a plaintiff may dismiss a claim or an action without prejudice where the defendant has not filed a response.

In the Tenth Circuit, a court considering a motion for voluntary dismissal should examine four non-exclusive factors: "the opposing party's effort and expense in preparing for trial; excessive delay and lack of diligence on the part of the movant; insufficient explanation of the need for dismissal; and the

present stage of the litigation." *County of Santa Fe, New Mexico v. Public Service Co. of New Mexico*, 311 F.3d 1031, 1048 (10th Cir. 2002).

Having examined the record, the court finds dismissal may be granted. Consistent with the criteria for dismissal in Rule 41(a)(1)(A)(I), there has been no response filed in this matter. The opposing party has not been served and will suffer no prejudice if this matter is dismissed, and plaintiff states he has obtained the relief he sought.

IT IS, THEREFORE, BY THE COURT ORDERED plaintiff's motion for voluntary dismissal (Doc. 5) is granted pursuant to Fed. R. Civ. P. 41(a). This dismissal is without prejudice.

IT IS FURTHER ORDERED plaintiff's motions for leave to proceed in forma pauperis (Doc. 2) and for judgment (Doc. 3) are denied as moot.

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

IT IS SO ORDERED.

Dated at Topeka, Kansas, this 7th day of June, 2011.

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