

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

MARCUS D. MITCHELL, Sr.

Plaintiff,

v.

CASE NO. 11-3063-SAC

JOHN GROH,
et al.,

Defendants.

O R D E R

Upon screening the complaint filed herein, the court entered a Memorandum and Order on April 15, 2011, setting forth deficiencies in the complaint. Mr. Mitchell was ordered to submit the requisite financial information to support his motion to proceed without prepayment of fees, and to show cause why this action should not be dismissed.

In response to the court's Memorandum and Order, plaintiff has submitted financial records from the Sedgwick County Detention Facility for December 5, 2010 through April 2, 2011. These indicate that plaintiff had sufficient deposits and balances to be assessed a partial filing fee. However, he apparently has been released from custody. For the sole purpose of dismissing this action, the court finds that plaintiff is not required to pay an initial partial filing fee and should not be assessed the full filing fee at this time.

Plaintiff has not responded in any manner to the court's

Order that he show cause why this action should not be dismissed for the reasons stated in its Memorandum and Order of April 15, 2011. "Rule 41(b) authorizes a district court, upon a defendant's motion, to order the dismissal of an action for failure to prosecute as well as for failure to comply with the Federal Rules of Civil Procedure or 'a court order'." Young v. U.S., 316 Fed.Appx. 764, 771 (10th Cir. Mar. 12, 2009)(citing Fed.R.Civ.P. 41(b)). "This rule has been interpreted as permitting district courts to dismiss actions sua sponte when one of these conditions is met." Id. (citing Link v. Wabash R.R. Co., 370 U.S. 626, 630-31 (1962); Olsen v. Mapes, 333 F.3d 1199, 1204 n. 3 (10th Cir. 2003)). "In addition, it is well established in this circuit that a district court is not obligated to follow any particular procedures when dismissing an action without prejudice under Rule 41(b). Id. at *6 (citations omitted). The court finds that this action must be dismissed pursuant to Rule 41(b) on account of plaintiff's failure to comply with the court's prior Memorandum and Order requiring him to show cause why this action should not be dismissed.

IT IS THEREFORE BY THE COURT ORDERED that plaintiff's Motion to Proceed Without Prepayment of Fees (Doc. 2) is granted based upon the information currently before the court and for the sole purpose of dismissing this action.

IT IS FURTHER ORDERED that this action is dismissed, without prejudice, on account of plaintiff's failure to comply with

the court's Memorandum and Order entered on April 15, 2011.

IT IS SO ORDERED.

Dated this 2nd day of August, 2011, at Topeka, Kansas.

s/Sam A. Crow

U. S. Senior District Judge