

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS

REGINALD WATSON,

Plaintiff,

v.

CASE NO. 19-3227-SAC

(fnu) CLARK, et al.,

Defendants.

ORDER OF DISMISSAL

This matter is a civil action filed by a prisoner in federal custody. By its order of August 27, 2020, the Court denied plaintiff's request for a stay and directed him to file a status report concerning his use of the administrative grievance procedures on or before September 24, 2020. Plaintiff was advised that the failure to file a response as directed might result in the dismissal of this matter, but he failed to file a response.

As explained in the order of August 27, 2020, if plaintiff has remaining available remedies, this action is premature. The Prison Litigation Reform Act governs this matter and provides that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title, or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). This provision is mandatory. *See Ross v. Blake*, --- U.S. ----, 136 S. Ct. 1850, 1856 (2016).

Because plaintiff has failed to respond to the Court's order, and because he has not provided the grievance materials identified as

exhibits to the complaint, the Court concludes this matter may be dismissed without prejudice. Rule 41(b) of the Federal Rules of Civil Procedure "authorizes a district court, upon a defendant's motion, to order the dismissal of an action for failure to prosecute or for failure to comply with the Federal Rules of Civil Procedure or 'a court order.'" *Young v. U.S.*, 316 F. App'x 764, 771 (10th Cir. 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)." *Young*, 316 F. App'x at 771-72 (citations omitted).

Due to plaintiff's failure to respond, this matter will be dismissed without prejudice.

IT IS, THEREFORE, BY THE COURT ORDERED this matter is dismissed without prejudice.

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

DATED: This 23rd day of October, 2020, at Topeka, Kansas.

S/ Sam A. Crow

SAM A. CROW

U.S. Senior District Judge