

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

CHARLEY JAMES HUGHES, JR.,

Plaintiff,

v.

CASE NO. 21-3033-SAC

PATTI KEEN, et al.,

Defendants.

ORDER

Plaintiff, Charley James Hughes, Jr., is a state prisoner housed at the Hutchinson Correctional Facility in Hutchinson, Kansas (“HCF”). Plaintiff filed this §1983 action against three defendants alleging his constitutional rights were violated when his mail was censored and destroyed.

The Court entered an Order (Doc. 6) denying Plaintiff’s motion to proceed *in forma pauperis*, finding Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g). The Court examined the Complaint and attachments and found no showing of imminent danger of serious physical injury. The Court also granted Plaintiff until March 11, 2021, to submit the \$402.00 filing fee. The Court’s order provided that “[t]he failure to submit the fee by that date will result in the dismissal of this matter without prejudice and without additional prior notice.” (Doc. 6, at 2.)

Plaintiff has filed no response to the Court’s Order. As of the date of this Order, Plaintiff has failed to pay the filing fee.

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).

The time in which Plaintiff was required to submit the filing fee has passed. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.

IT IS THEREFORE BY THE COURT ORDERED that this action is **dismissed without prejudice** pursuant to Fed. R. Civ. P. 41(b).

IT IS FURTHER ORDERED that Plaintiff Motion for Leave to Proceed in forma pauperis (Doc. 4) and Motion for Waiver (Doc. 5) are **denied**.

IT IS SO ORDERED.

Dated March 29, 2021, in Topeka, Kansas.

s/ Sam A. Crow _____
SAM A. CROW
U. S. Senior District Judge