

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

DARSHAWN WITHERSPOON,

Plaintiff,

v.

CASE NO. 21-3286-SAC

WYANDOTTE COUNTY, KANSAS, et al.,

Defendants.

ORDER

Plaintiff, Darshawn Witherspoon, who is currently in custody at the Wyandotte County Detention Center, brings this *pro se* civil rights case against Wyandotte County, Kansas, and the Wyandotte County Jail. The allegations in his Complaint are largely incomprehensible, but appear to relate to his state criminal case.

The Court entered an Order (Doc. 3) finding Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g). The Court examined the Complaint and found no showing of imminent danger of serious physical injury. The Court granted Plaintiff until January 28, 2022, 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. 3, at 2.) Plaintiff has failed to pay the filing fee by the deadline set forth in the order. Instead, Plaintiff filed a motion for leave to proceed *in forma pauperis* (Doc. 4). In the motion, Plaintiff alleges that he has the money to pay the fee as soon as he obtains his debit card from his property. Plaintiff submitted the motion on December 30, 2021, and to this date has not paid the filing fee or sought an extension of time to submit the 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 ORDERD THAT Plaintiff’s motion for leave to proceed *in forma pauperis* (Doc. 4) is **denied as moot**.

IT IS SO ORDERED.

Dated March 10, 2022, in Topeka, Kansas.

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