

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION**

ABEL J. DEDEAUX

PLAINTIFF

v.

CIVIL ACTION NO. 1:24-cv-22-TBM-RPM

**CITY OF BAY ST. LOUIS, *in Hancock
County, MS, et. al.***

DEFENDANTS

ORDER OF DISMISSAL WITHOUT PREJUDICE

This matter is before the Court *sua sponte* on the Plaintiff's failure to comply with a Court Order. Dedeaux filed this action on January 24, 2024, asserting various claims arising out of an alleged robbery on January 23, 2023, at the Economy Inn in Bay St. Louis, Mississippi. Dedeaux filed his Amended Complaint [2] on January 31, 2024, adding Ochsner Medical Center-Hancock County as a defendant. On March 25, 2024, Defendant Ochsner Medical Center-Hancock County filed a Motion to Dismiss [13]. Dedeaux's response in opposition was due to be filed by April 8, 2024, but Dedeaux did not respond.

Accordingly, the Court entered an Order to Show Cause [17] on April 24, 2024, ordering Dedeaux to demonstrate why this matter should not be dismissed for failure to prosecute on or before May 8, 2024. The Order cautioned that failure to comply may result in the dismissal of his lawsuit without prejudice. [17], pg. 2. To this date, Dedeaux has yet to respond to the Order to Show Cause, the pending Motion to Dismiss, or otherwise contacted the Court about his case. For the reasons discussed below, this case is dismissed for failure to prosecute.

Federal Rule of Civil Procedure 41(b) governs motions to dismiss for failure to prosecute and provides:

If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it. Unless the dismissal order states otherwise, a dismissal under this subdivision (b) and any dismissal not under this rule—except one for lack of jurisdiction, improper venue, or failure to join a party under Rule 19—operates as an adjudication on the merits.

FED. R. CIV. P. 41(b).

“District courts may . . . dismiss cases *sua sponte* [and] *sua sponte* dismissal is appropriate when a plaintiff fails to prosecute her case.” *Carver v. Atwood*, 18 F.4th 494 (5th Cir. 2021) (internal citation omitted). Moreover, a Rule 41(b) dismissal may be with or without prejudice. *Long v. Simmons*, 77 F.3d 878, 879-80 (5th Cir. 1996). But “[l]esser sanctions such as . . . dismissal without prejudice are usually appropriate before dismissing with prejudice[.]”¹ *Nottingham v. Warden, Bill Clements Unit*, 837 F.3d 438, 441 (5th Cir. 2016) (internal citations omitted).

Here, since filing this *pro se* suit in January 2024, Dedeaux missed his first deadline to respond to Ochsner Medical Center’s Motion to Dismiss [13] and then did not respond to the Court’s Order to Show Cause [17]—despite being warned of the consequences. *See* [17] (“He is further warned that his failure to respond to this Order, or advise the Court of any change in address, may result in dismissal for failure to prosecute without further notice. *See Link v. Wabash R.R. Co.*, 370 U.S. 626, 630-31, 82 S. Ct. 1386, 8 L. Ed. 2d 734 (1962).”). Accordingly, the Court finds that this lawsuit should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) for failure to prosecute.

¹ Dismissal with prejudice is appropriate only when there is “a showing of (a) a clear record of delay or contumacious conduct by the plaintiff, and (b) where lesser sanctions would not serve the best interests of justice.” *Griggs v. S.G.E. Mgmt., L.L.C.*, 905 F.3d 835, 844 (5th Cir. 2018). At this stage, the facts of this case do not warrant a with prejudice dismissal.

IT IS THEREFORE ORDERED AND ADJUDGED that this matter is DISMISSED WITHOUT PREJUDICE.

IT IS FURTHER ORDERED that Defendant Ochsner Medical Center-Hancock County's Motion to Dismiss [13] is DENIED as MOOT.

THIS, the 22nd day of May, 2024.

A handwritten signature in blue ink, appearing to read "Taylor B. McNeel", is written over a horizontal line.

TAYLOR B. McNEEL
UNITED STATES DISTRICT JUDGE