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Clerk, U.S. District Court, ILCD

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF ILLINOIS

MARQUIST BUCKNER,	)	
	)	
Plaintiff,	)	
v.	)	**No.: 16-cv-2058-JES**
	)	
SGT. ERIC AUSTIN, OFFICER JOHN DOE, and NURSE JANE DOE,	)	
	)	
Defendants.	)	

ORDER ON MOTION TO DISMISS

Plaintiff, a pretrial detainee, brought an action alleging excessive force and deliberate indifference to his serious medical needs at the Jerome Combs Detention Center. He named Sergeant Eric Austin, a John Doe Officer and Jane Doe Nurse. On August 22, 2016, the Court entered a scheduling order directing Plaintiff to identify the Doe Defendants within 60 days. Plaintiff has not identified the Doe Defendants, asked for aid in making the identification, or requested an extension in which to identify them.

Defendant Austin has filed a Motion to Dismiss/Motion for Sanctions pursuant to Federal Rules of Civil Procedure 37(b) and (d). Defendant requests dismissal as a sanction for Plaintiff's failure to provide disclosures, failure to engage in discovery, failure to respond to Defendant's motion to compel and failure to follow the Court's August 22, 2016 and December 22, 2016 orders. [ECF 21]. For the reasons indicating herein, Defendant's Motion to Dismiss/Motion for Sanctions is GRANTED.

MATERIAL FACTS

Plaintiff filed his complaint on February 12, 2016. On October 18, 2016, Defendant Austin served Plaintiff with discovery and on November 15, 2016, sent a HIPAA authorization for Plaintiff's signature. When Plaintiff failed to provide either discovery responses or the

signed HIPAA authorization, Defendant followed-up with a November 30, 2016 letter. Plaintiff still did not respond and, on December 19, 2016, Defendant filed a Motion to Compel [20]. The Court granted the motion on December 22, 2016, ordering Plaintiff to provide initial disclosures, responses to discovery, and a signed HIPAA Authorization within 21 days. It notified Plaintiff that the failure to do so could result in dismissal. Plaintiff did not comply and, on February 1, 2016, Defendant filed this motion to dismiss [ECF 21].

On February 8, 2017, the Court reserved ruling on the motion to dismiss and gave Plaintiff 14 days in which to respond or explain his lack of compliance. On February 27, 2017, after the time for response had passed, Plaintiff filed a one-page letter stating only that he did not know how to fill out the papers.

ANALYSIS

A complaint may be dismissed as a sanction under Rule 37(b) if a party "fails to obey an order to provide or permit discovery." *Watkins v. Nielsen*, 405 Fed. Appx. 42, 44 (7th Cir. 2010) (internal citations omitted); Fed.R.Civ.P. 37(b)(2)(A)(v). Dismissal is appropriate if the court finds the party's actions "displayed willfulness, bad faith, or fault, and if dismissal would be a proportionate response to the circumstances. *See Id.* at 44 (dismissing case as sanction for plaintiff's evasive discovery responses and failure to produce medical records within his control). The Seventh Circuit Court of Appeals has cautioned that sanctioning a party by dismissing a case is a "harsh sanction" which should "be employed only as a last resort." *Rice v. City of Chicago*, 333 F.3d 780, 786 (7th Cir. 2003). It recommended consideration of lesser sanctions, if appropriate. *Id*. at 785.

"[A]n award of sanctions must be proportionate to the circumstances surrounding the failure to comply with discovery." *Crown Life Ins. Co. v. Craig*, 995 F.2d 1376, 1382 (7th

Cir. 1993). "If the failure is inadvertent, isolated, no worse than careless, and not a cause of serious inconvenience either to the adverse party or to the judge or to any third parties, dismissal … would be an excessively severe sanction." *Id.* at 1382.

Here, Plaintiff failed to maintain any involvement in his case. The February 27, 2017 letter is the first document he filed since the complaint and *in forma pauperis* petition one year prior. He has failed to provide Rule 26 disclosures or answer discovery. Defendant claims prejudice and asserts that he cannot take Plaintiff's deposition without this information. This case is at a standstill due to Plaintiff's non-compliance, failure to respond to Defendant's motion to compel, and failure to comply with the Court's December 22, 2016 and February 8, 2017 orders. This failure is more that inadvertent, isolated or careless and has caused serious inconvenience to the Defendant. *Crown Life* at 1382. As a result, the Court finds that Plaintiff displayed willfulness, bad faith, or fault in this case.

The Court now considers whether less severe sanctions are appropriate. Potential sanctions include prohibiting Plaintiff from introducing matters not provided in disclosures and discovery, staying the proceedings until he complies with the Court's orders, striking all or portions of the pleadings, or ordering that he pay the expenses Defendant incurred in seeking his compliance. Fed.R.Civ.P. 37 (b)(2)(A) and (C). While the Court could prevent Plaintiff from introducing evidence not provided in disclosures and discovery, this does not address Defendant's complaint that he has been prejudiced by the inability to work-up the case. Furthermore, "excluding the medical evidence would have the same practical effect as dismissal." *Watkins* at 44. The same is true as to striking all or portions of the pleadings.

The Court finds that staying the proceedings to await Plaintiff's compliance is impractical as so far, he has shown no willingness to comply. Fining Plaintiff or ordering him

to pay Defendant's related expenses is not practical where the Plaintiff is indigent and could only pay a reduced partial filing fee. *See Watkins* at 46 (excluding evidence, staying proceedings, holding Plaintiff in contempt or assessing a fine would have been "fruitless".)

Plaintiff received adequate notice that his complaint could be dismissed for lack of compliance in the Court's December 22, 2016 and February 8, 2017 orders. He has been given several opportunities to comply with Rule 26 disclosures and discovery and has been informed that lack of compliance could mean the end of this case. While Plaintiff claims that he doesn't know how to proceed, he does not claim that he has attempted to obtain counsel on his own and does not explain his failure to sign and return the medical record authorization, a simple enough task.

The Court has considered the practical alternatives and finds dismissal of the Complaint to be the appropriate sanction for Plaintiff's repeated failure to comply with the rules and the Court's orders.

IT IS THEREFORE ORDERED:

1) Officer John Doe and Nurse Jane Doe are Dismissed for Plaintiff's failure to identify them as ordered in the Court's August 22, 2016 scheduling order.

2) Defendant Austin's Motion to Dismiss/Motion for Sanctions [ECF 21] is GRANTED. Plaintiff's complaint is dismissed, with prejudice. The clerk is directed to enter a judgment pursuant to Fed. R. Civ. P. 58.

3) Plaintiff must still pay the full docketing fee of $350 even though his case has been dismissed. The agency having custody of Plaintiff shall continue to make monthly payments to the Clerk of Court, as directed in the Court's prior order.

4) If Plaintiff wishes to appeal this dismissal, he must file a notice of appeal with this Court within 30 days of the entry of judgment. Fed. R. App. P. 4(a). A motion for leave to appeal in forma pauperis should set forth the issues Plaintiff plans to present on appeal. See Fed. R. App. P. 24(a)(1)(C). If Plaintiff does choose to appeal, he will be liable for the $505 appellate filing fee irrespective of the outcome of the appeal.

5/17/2017
ENTERED

s/James E. Shadid
JAMES E. SHADID
UNITED STATES DISTRICT JUDGE