

UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

TODD LUH,)
)
Plaintiff,)
)
vs.) Case No. 13-4189-CV-C-FJG-P
)
FULTON STATE HOSPITAL, et al.,)
)
Defendants.)

ORDER DISMISSING CASE

This case was filed *pro se* pursuant to 42 U.S.C. § 1983. Plaintiff's claims stem from his confinement at the Fulton State Hospital. Since filing this case, Plaintiff has been released, and he now resides in Imperial, Missouri.

Previously, the Court dismissed this case without prejudice pursuant to Federal Rule of Civil Procedure 41(b). Doc. 9. Plaintiff appealed, and the Court of Appeals remanded for consideration of certain claims. Doc. 20. On July 11, 2016, the Court ordered the parties to commence discovery on the remanded claims, with discovery to be completed by December 16, 2016. Doc. 29. Subsequent case history is set out in this chronology:

ñ November 14, 2016. The Court stayed proceedings based on Plaintiff's claim that he suffered from a temporary physical disability. The Court advised the parties that the stay would be lifted and that discovery would resume on December 5, 2016, unless, prior to that date,

Plaintiff filed evidence showing that his disability continued. Doc. 36.

- ñ December 6, 2016. Because Plaintiff filed no evidence of continued disability, the Court lifted the stay and ordered the parties to resume discovery, with the deadline for completing discovery extended to March 17, 2017. Doc. 37.
- ñ January 4, 2017. The Court construed papers filed by Plaintiff to be another request to stay proceedings and denied the request as untimely and insufficiently supported. Doc. 39.
- ñ January 26, and March 1, 2017. Plaintiff filed papers that the Court construed to be requests to stay proceedings. Docs. 40 and 44.
- ñ April 14, 2017. The Court referred this case to Magistrate Judge Matt Whitworth for the purpose of conducting a hearing on Plaintiff's requests to stay proceedings. Doc. 46.
- ñ April 20, 2017. Judge Whitworth conducted a telephone hearing during which Plaintiff stated that he would be able to resume discovery in two weeks. Doc. 48; see Doc. 57 (transcript of hearing). Additionally, the parties indicated that they would consent to Judge Whitworth conducting all further proceedings, including a trial, if needed. *Id.* Following the telephone hearing, Plaintiff filed an interlocutory appeal. Doc. 49.
- ñ May 15, and July 6, 2017. The Court of Appeals ~~dismissed~~ Plaintiff's appeal, and the Court withdrew the referral to Judge Whitworth when the parties failed to file consent forms. Docs. 53 and 56.
- ñ August 7, 2017. The Court ordered the parties to resume discovery, with discovery to be completed by October 6, 2017. Doc. 60.

- ñ October 5, 2017. The Court granted Defendants' motion to extend the deadline to complete discovery (including Plaintiff's deposition) to November 6, 2017. Doc. 69.
- ñ October 17, 2017. Defendants filed a motion for an order compelling Plaintiff to respond to their interrogatories and to produce documents. Doc. 70.
- ñ October 23, 2017. Plaintiff responded to Defendants' motion to compel with a filing entitled "What a Bunch of Weasels," in which he requested an "indefinite extension of time to file any further responses or any other kind of documents in this case." Doc. 73.
- ñ October 26, 2017. The Court granted Defendants' motion to compel and denied Plaintiff's request for an "indefinite extension." Doc. 74. The Court ordered Plaintiff to provide Defendants with the requested discovery by November 2, 2017, or within one week from the date on which the Court ~~Appeals~~ issues its mandate if Plaintiff appealed and the appeal was unsuccessful. *Id.* The Court cautioned Plaintiff that the deadlines would not be extended and that his failure to comply with the Court's order would result in the dismissal of this case. *Id.*
- ñ November 2, 2017. Plaintiff filed an interlocutory appeal challenging, *inter alia*, the Court's order granting Defendants' motion to compel. Doc. 75.
- ñ December 7, 2017. The Court of Appeals dismissed Plaintiff's appeal and issued its mandate, Docs. 84 and 85, making Plaintiff's deadline for providing Defendants with the discovery sought via their motion to compel December 14, 2017.

The record contains no certificate or other indication that Plaintiff has provided Defendants with the discovery the Court ordered him to provide.

While Plaintiff's second interlocutory appeal was pending, on November 3, 2017, Defendants attempted to depose Plaintiff. Doc. 79-2. Plaintiff ended the deposition by leaving before defense counsel could question him about the substance of the ~~remanded~~ ~~admiss~~s. *Id.* at 38-39. The Court has reviewed the deposition transcript and would characterize Plaintiff's testimony as quibbling, abusive, and not responsive to the questions he was asked.

Pending before the Court is Defendants' motion for the involuntary dismissal of this case pursuant to Federal Rule of Civil Procedure 41(b), citing Plaintiff's refusal to participate in discovery. Doc. 79. In his reply to Defendants' motion, Plaintiff states, *inter alia*, that he is "willing at any time to attend another deposition if the defense is finished with the Captain Kangaroo Hour." Doc. 81. Plaintiff attached to his reply a letter to whom it may concern from Jay R. McDonald, M.D., in which Dr. McDonald refers to Plaintiff's "ongoing fatigue and poor state of health." Doc. 81-1. Dr. McDonald does not indicate in his letter that Plaintiff is unable to answer interrogatories, produce documents, and answer deposition questions. See *id.*

The Court has wide latitude in imposing sanctions, including dismissal, for a party's failure to participate in discovery. See *Aziz v. Wright*, 34 F.3d 587, 588-89 (8th Cir. 1994), cert. denied, 513 U.S. 1090 (1995). The Court finds that Defendants' motion to

dismiss should be granted because (1) Plaintiff refused to be deposed and walked out of his deposition, and (2) the status of discovery in this case is largely unchanged from July 11, 2016, when the Court ordered the parties to commence discovery on the remanded claims, and the Court attributes this status mainly to Plaintiff's refusal to participate in discovery in good faith.

Accordingly, Defendants' motion for an extension of time (Doc. 82) is denied as moot, Defendants' motion to dismiss (Doc. 79) is granted, and this case is dismissed for Plaintiff's refusal to participate in discovery.

So **ORDERED**.

/s/ Fernando J. Gaitan, Jr.
FERNANDO J. GAITAN, JR.
UNITED STATES DISTRICT JUDGE

Kansas City, Missouri,

Dated: December 21, 2017.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION

JUDGMENT IN A CIVIL CASE

Todd Luh,

Plaintiff,

v.

Case No. 13-4189-CV-C-FJG-P

Fulton State Hospital, et al.,

Defendants.

- JURY VERDICT.** This action came before the Court for a trial by jury. The issues have been tried and the jury has rendered its verdict.
- DECISION OF THE COURT.** This action came for consideration before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED: ORDERED that Defendants' motion for an extension of time (Doc. 82) is denied as moot, Defendants' motion to dismiss (Doc. 79) is granted, and this case is dismissed for Plaintiff's refusal to participate in discovery.

Entered on: December 21, 2017.

PAIGE WYMORE-WYNN
CLERK OF COURT

/s/ C. Davies
(By) Deputy Clerk

UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No: 18-1161

Todd James Luh

Plaintiff - Appellant

v.

Fulton State Hospital; John Lyskowski; John Brown, Nurse; Robby Morris, Head of Security/Biggs Unit; Curtis Jacobs, FSH former employee; Heather Putt, Nurse; Pat Oney, Nurse; Shelly Salmons, Nurse; Nurse Cassandra Sailor, Nurse; Mary Pearson, Nurse; Rocky Martin, FSH former employee; Delbert Groves, Social Worker; Chad Graham, Recreational Therapist; Cheryl Maddox, Director of Nursing; Rita Thackeray, FSH Dietitian; Bruce Harry, Dr.; Russ DeTrempe, Director of Biggs; Marty Martin-Forman, C.O.O.; Jill Morales, Biggs former Head of Security; Angela Wright, FSH former employee; Tenlay Watson, Head Nurse; Dr. Ponce; Dr. Sethy; Jenifer Millikin, Nurse; Sue Bradford, Nurse; Debbie Thompson, FSH employee; Kim South, FSH employee; Robert Hamilton, FSH Security Aide; Garret Wilson, Nurse; John Bucklew, Dr.; Dr. Selbert Chernoff; Sara Linenfelser, FSH former employee; Betty Jill Mireles; Tammy Olson

Defendants - Appellees

Appeal from U.S. District Court for the Western District of Missouri - Jefferson City
(2:13-cv-04189-FJG)

JUDGMENT

Before GRUENDER, BOWMAN and ERICKSON, Circuit Judges.

The court has reviewed the original file of the United States District Court. Appellant's application to proceed in forma pauperis is granted. The full \$505 appellate filing and docketing fees are assessed against the appellant. Appellant may pay the filing fee in installments in accordance with 28 U.S.C. § 1915(b). The court remands the assessment and collection of those fees to the district court.

It is ordered by the court that the judgment of the district court is summarily affirmed.

See Eighth Circuit Rule 47A(a).

The motion of the appellees for an extension of time to file a response is denied as moot

July 03, 2018

Order Entered at the Direction of the Court:
Clerk, U.S. Court of Appeals, Eighth Circuit.

/s/ Michael E. Gans

**Additional material
from this filing is
available in the
Clerk's Office.**