FILED
United States Court of Appeals
Tenth Circuit

November 18, 2020

Christopher M. Wolpert
Clerk of Court

**UNITED STATES COURT OF APPEALS**

**FOR THE TENTH CIRCUIT**

PATRICK C. LYNN,

Plaintiff - Appellant,

v.

DEBRA LUNDRY,

Defendant - Appellee.

No. 20-3138
(D.C. No. 5:20-CV-03116-EFM)
(D. Kan.)

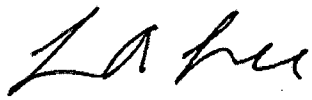
**ORDER**

On September 21, 2020, this court: (1) held that the Prison Litigation Reform Act, 28 U.S.C. § 1915(g), applies to this appeal; (2) ordered appellant Patrick C. Lynn to pay the full $505.00 appellate filing fee to the district court on or before October 21, 2020; and (3) advised Mr. Lynn that, if the district court did not receive timely payment in full of the appellate filing fee, this court would dismiss his appeal without further notice. *See* 28 U.S.C. § 1915(g); 10th Cir. R. 3.3(B), 10th Cir. R. 42.1. The court later extended the time for Mr. Lynn to pay to November 13, 2020.

This matter is now before the court because Mr. Lynn has not paid the appellate filing fee to the district court. Accordingly, the court dismisses Mr. Lynn's appeal for failure to prosecute. *See* 10th Cir. R. 3.3(B) and 42.1.

A copy of this order shall stand as and for the mandate of the court.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk



by: Lisa A. Lee
Counsel to the Clerk

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

**PATRICK C. LYNN,**

**Plaintiff,**

**v.** **CASE NO. 20-3116-EFM**

**DEBRA LUNDRY,**

**Defendant.**

**MEMORANDUM AND ORDER**

Plaintiff Patrick C. Lynn is a state prisoner now housed at El Dorado Correctional Facility in El Dorado, Kansas. Plaintiff filed this § 1983 action, primarily complaining about not being permitted to keep his prescribed heart medication on his person while he was housed at Hutchinson Correctional Facility.

The Court entered an Order (Doc. 4) 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, as well as Plaintiff's motion, and found no showing of imminent danger of serious physical injury. The Court also granted Plaintiff until May 14, 2020, to submit the $400.00 filing fee and extended the deadline to June 15, 2020, upon Plaintiff's motion. *See* Doc. 6. 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. 4, at 3; Doc. 6.) Plaintiff has failed to pay the filing fee by the deadline.

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 without a response from Plaintiff. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders. The Amended Motion for Order filed by Plaintiff (Doc. 22) is denied as moot.

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

**IT IS FURTHER ORDERED** that Plaintiff's Amended Motion for Order (Doc. 22) is **denied** as moot.

**IT IS SO ORDERED.**

**Dated on this 30th day of June, 2020, in Wichita, Kansas.**

Eric F Melgren

**ERIC F. MELGREN**
**U. S. District Judge**

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