No. 22-5546

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS BONANNO, SR.,

Plaintiff-Appellant,

v.

COMMONWEALTH OF VIRGINIA, Attorney Generals Office, Richmond, VA.; VIRGINIA EMPLOYMENT COMMISSION, RICHMOND, VA.; VIRGINIA LAND & IMPROVEMENT CORP. INC.; RICK NORMAN, Gen. Mgr. H.R. Dept. Safety Coordinator; PRINCE WILLIAMS CIRCUIT COURT,

Defendants-Appellees.

O R D E R

Before: GUY, KETHLEDGE, and BUSH, Circuit Judges.

Louis Bonanno, Sr., a Tennessee resident proceeding pro se, appeals the district court's dismissal of his civil action for failure to prosecute under Federal Rule of Civil Procedure 41(b). This case has been referred to a panel of the court that, upon examination, unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). Because we find no error in the district court's ruling, we affirm. We also deny Bonanno's motion for reconsideration of our previous order denying his motion to proceed in forma pauperis on appeal.

In an amended complaint, Bonanno sued the Attorney General's Office for the Commonwealth of Virginia, the Virginia Employment Commission, Virginia Land & Improvement Corporation ("VLIC"), the Prince William Circuit Court, and VLIC General Manager Rick Norman. The complaint has few discernable claims. It appears, however, to be one in a series of lawsuits that Bonanno has filed related to his employment with VLIC, which ended in 2013. *See Bonanno v. Cooper*, No. 1:14cv1605, 2015 WL 11111894, at *1-2 (E.D. Va. June 4,

2015) (summarizing litigation history and dismissing complaint against Norman and another VLIC manager). Liberally construing the complaint, Bonanno alleged that he was wrongfully denied reinstatement after taking medical leave for a work-related injury and was retaliated against for filing a complaint with the Occupational Safety and Health Administration, in violation of the Americans with Disabilities Act, 42 U.S.C. § 12101, et seq.; Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e, et seq.; and the Family and Medical Leave Act, 29 U.S.C. § 2601, et seq. He further alleged that the Virginia Employment Commission was negligent in handling his claim for unemployment benefits and denied him his rights to due process and equal protection in connection with that proceeding.

After service of the amended complaint and summons on three defendants—the Commonwealth of Virginia, the Virginia Employment Commission, and the Prince William Circuit Court—Bonanno filed motions for default judgment and summary judgment. The district court denied the motion for default judgment, explaining that Bonanno did not follow the two-step procedure set forth in Federal Rule of Civil Procedure 55 requiring that a party first request that a default be entered by the clerk before moving for a default judgment. *See* Fed. R. Civ. P. 55(a). The court denied the motion for summary judgment because Bonanno provided no supporting evidence and instead relied only on his pleadings and reassertions of his claims. The court also entered an order directing Bonanno to show cause as to why his claims against Norman and VLIC, who had not been served, should not be dismissed for failure to prosecute.

A few weeks later, Bonanno filed another motion for default judgment and for summary judgment. The district court denied the motions for the same reasons as before. The court also dismissed Bonanno's claims against Norman and VLIC, finding no good cause for Bonanno's failure to serve them.

The district court denied Bonanno's subsequent motion for reconsideration, again explaining that he must comply with Rule 55's two-step procedure before a default judgment could be entered. In a separate order, the court instructed Bonanno to file, within 10 days of the order, an application for default with the clerk or show cause why the action should not be dismissed

under Rule 41(b). The order explained that an application for entry of default must include "(1) an application for default; (2) an affidavit in support of entry of default; and (3) a proposed entry of default." And it provided a link to a page on the court's website where default judgment instructions and forms could be found. Finally, it warned Bonanno that failure to timely respond "may result in dismissal of this action without further notice."

Five days later, Bonanno filed a third motion for default judgment and an incomplete application for entry of default, which did not include a supporting affidavit or proposed entry of default. The application also requested default judgment only as to the Commonwealth of Virginia and VLIC, the latter of which had been dismissed for lack of service. Bonanno's filing did not seek an entry of default as to the remaining two served defendants. Approximately one month later, Bonanno filed another motion for default judgment. The district court reviewed these filings and concluded that, due to Bonanno's repeated failure to comply with its orders, dismissal with prejudice for failure to prosecute under Rule 41(b) was appropriate. The court therefore denied Bonanno's outstanding motions and entered an order of dismissal.

Bonanno appealed and filed a motion in this court to proceed in forma pauperis. After we denied that motion, Bonanno paid the filing fee, and a briefing schedule was issued. Bonanno has filed a brief and a motion for reconsideration of the order denying him in forma pauperis status on appeal. He argues that the district court should have entered a default judgment because the defendants never responded to any of his filings.

We review a Rule 41(b) dismissal for failure to prosecute under an abuse-of-discretion standard. *See Schafer v. City of Defiance Police Dep't*, 529 F.3d 731, 736 (6th Cir. 2008). Rule 41(b) provides for dismissal of an action where the plaintiff has failed "to prosecute or to comply with these rules or a court order." Fed. R. Civ. P. 41(b); *see Jourdan v. Jabe*, 951 F.2d 108, 109 (6th Cir. 1991) (noting that a district court may order dismissal under Rule 41(b) sua sponte). A district court has discretion to dismiss under Rule 41(b) if a party has actual "notice that dismissal is contemplated." *Harris v. Callwood*, 844 F.2d 1254, 1256 (6th Cir. 1988). Relevant factors include

> (1) whether the party's failure is due to willfulness, bad faith, or fault; (2) whether the adversary was prejudiced by the dismissed party's conduct; (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Wu v. T.W. Wang, Inc., 420 F.3d 641, 643 (6th Cir. 2005) (quoting *Knoll v. Am. Tel. & Tel. Co.*, 176 F.3d 359, 363 (6th Cir. 1999)). It is a plaintiff's burden to show that "his failure to comply was due to inability, not willfulness or bad faith." *United States v. Reyes*, 307 F.3d 451, 458 (6th Cir. 2002).

Bonanno has not met this burden. His repeated failure to comply with the requirements of Rule 55 before moving for default judgment was due to his own willfulness, bad faith, or fault. In total, Bonanno filed four procedurally improper motions for default judgment and a motion to reconsider one of those motions. After the court entered a separate order explicitly instructing Bonanno how to apply for an entry of default before moving for default judgment, Bonanno filed two more motions for default judgment and an incomplete application for entry of default that failed to comply with those instructions. Bonanno's failure to comply with the district court's orders and Rule 55 displayed a "reckless disregard for the effect of his conduct on those proceedings." *Schafer*, 529 F.3d at 737 (quoting *Wu*, 420 F.3d at 643). Bonanno offered no adequate explanation for his failure to comply with the district court's orders and has therefore failed to satisfy his burden of showing that his noncompliance was not due to willfulness or bad faith. *See Reyes*, 307 F.3d at 458.

The third factor also weighs in favor of dismissal. As noted, Bonanno was warned that failure to comply with the district court's order and Rule 55 would result in a dismissal for want of prosecution. Although there was no prejudice to the defendants and no indication that the district court considered a lesser sanction before dismissal, "a case is properly dismissed by the district court where there is a clear record of delay or contumacious conduct." *Knoll*, 176 F.3d at 363. Indeed, dismissal may be proper even if the court did not consider a lesser sanction where, as here, there is a clear record of delay. *See Harmon v. CSX Transp., Inc.*, 110 F.3d 364, 368-69 (6th Cir. 1997). Given that Bonanno had multiple opportunities to avoid the harsh sanction of

dismissal, the district court reasonably concluded that Bonanno would "continue to make such filings, wasting judicial time and resources along the way" unless it dismissed the matter. The district court did not abuse its discretion by dismissing the action under Rule 41(b). And because Bonanno has paid the appellate filing fee, we need not reconsider our decision to deny Bonanno's motion to proceed in forma pauperis—the motion for reconsideration is moot.

For these reasons, we **AFFIRM** the district court's judgment. Bonanno's motion for reconsideration of the order denying his motion to proceed in forma pauperis is **DENIED AS MOOT**.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

LOUIS BONANNO, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 2:20-CV-9-TAV-CRW
	)	
COMMONWEALTH OF VIRGINIA,	)	
VIRGINIA EMPLOYMENT	)	
COMMISSION, and	)	
PRINCE WILLIAMS CIRCUIT COURT,	)	
	)	
Defendants.	)	

ORDER

This matter is before the Court on review of plaintiff's recently-filed application for default [Doc. 41] and motions for a default judgment [Docs. 40, 42]. In this action, plaintiff asserts various claims against the Commonwealth of Virginia and related parties [Doc. 8]. Defendants never appeared in this action, and therefore, on October 15, 2020, plaintiff filed his first motion for a default judgment [Doc. 14]. However, the Court denied this motion, explaining that plaintiff needed to request that the clerk enter default before filing a motion for a default judgment [Doc. 26]. Rather than requesting that the clerk enter default, plaintiff filed a second motion for a default judgment [Doc. 32], and the Court denied plaintiff's motion and again explained that he first needed to request entry of default [Doc. 35]. In response, plaintiff filed a motion for reconsideration, again arguing the Court should enter a default judgment [Doc. 37]. For the third time, the Court denied plaintiff's motion and informed him that he first needed to seek entry of default [Doc. 38].

Moreover, in light of plaintiff's repeated failure to correctly seek entry of default and then a default judgment, the Court entered a separate order informing plaintiff of the correct procedure for securing a default judgment [Doc. 39]. In that order, the Court thoroughly detailed the process for securing a default, and the Court explicitly informed plaintiff that "[i]n an application for default, the plaintiff must submit the following: (1) an application for default; (2) an affidavit in support of entry of default; and (3) a proposed entry of default." What is more, the Court directed plaintiff to forms and instructions on the Court's website, and the Court provided a link to this website. In concluding, the Court notified plaintiff in emboldened, underlined, and capitalized text that failure to follow the provided instructions for seeking a default could result in this action being dismissed [*Id.*].

However, plaintiff recently filed two more motions for a default judgment and an insufficient application for default [Docs. 40, 41]. Despite the Court's clear instructions, plaintiff did not provide an affidavit in support of entry of default and a proposed entry of default. Moreover, plaintiff's application for default is facially inadequate as it requests default as to previously-dismissed defendant Virginia Land and Improvement Corp. and fails to request default as defendants Virginia Employment Commission and Prince Williams Circuit Court [Doc. 41].

Federal Rule of Civil Procedure 41(b) provides that a court may dismiss an action in which the plaintiff fails to prosecute the action or comply with the court's orders. In determining whether to dismiss an action on this basis, courts consider four factors:

> (1) whether the party's failure is due to willfulness, bad faith, or fault;
> (2) whether the adversary was prejudiced by the dismissed party's conduct;

> (3) whether the dismissed party was warned that failure to cooperate could lead to dismissal; and (4) whether less drastic sanctions were imposed or considered before dismissal was ordered.

Schafer v. City of Defiance Police Dep't, 529 F.3d 731, 737 (6th Cir. 2008) (citation omitted). The first factor is satisfied if the plaintiff has demonstrated "a reckless disregard for the effect of his conduct on" judicial proceedings. *Id.* (citation omitted). As to the third factor, "[p]rior notice, or the lack thereof, is . . . a key consideration." *Id.* (citation omitted); *see also Saulsberry v. Holloway*, 622 F. App'x 542, 547 (6th Cir. 2015) ("When a party receives a targeted warning that its failure to prosecute will lead to dismissal, but nonetheless persists in its noncompliance, this factor favors . . . dismissal." (citation omitted)). Dismissal is a harsh sanction and should only occur in cases involving extreme, "contumacious" conduct of the plaintiff. *Schafer*, 529 F.3d at 736–37 (citations omitted).

The Court finds that these factors weigh in favor of dismissing this case. As to the first factor, plaintiff's failure to prosecute this action and follow the Court's orders demonstrate plaintiff's willful violations of the Court's orders and a reckless disregard for the effects of his conduct on the proceedings in this case. This Court has informed plaintiff on numerous occasions that he must correctly submit a request for entry of default before filing a motion for a default judgment. And in the Court's most recent order, the Court thoroughly detailed the process for securing a default, enumerated the documents that must be submitted, and even provided a link to the Court's website to assist plaintiff. But at every stage, plaintiff has responded with a procedurally-improper motion for a default judgment. And most recently, plaintiff failed to submit an affidavit in support of entry of

default and a proposed entry of default, and plaintiff failed to name the correct defendants in his application for default. These facts demonstrate willful violations of this Court's orders. *See Birchfield v. Deutsche Bank Nat'l Tr. Co.*, No. 20-5491, 2021 U.S. App. LEXIS 7637, at *11–13 (6th Cir. Mar. 16, 2021) (finding a plaintiff's repeated failure to correctly follow the process for securing a default judgment to be willful when the court previously explained the process for securing a default judgment and provided a link to the court's website with relevant information).

The second factor does not weigh in favor of dismissal because defendants have not appeared in this action and thus have suffered no prejudice. However, the third factor weighs in favor of dismissal. The Court warned plaintiff in emboldened, underlined, and capitalized text that his failure to correctly move for entry of default and then a default judgment could result in dismissal of this action without additional notice.

Finally, the fourth factor weighs in favor of dismissal as no sanction short of dismissal is appropriate. This Court has repetitively guided plaintiff as to the correct procedure for securing a default judgment, yet plaintiff has responded with procedurally-improper motions for a default judgment as well as other frivolous filings. Unless this action is dismissed, plaintiff will continue to make such filings, wasting judicial time and resources along the way. *See id.* at *13–14 (finding that the district court "reasonably concluded that, unless it dismissed the matter, [the plaintiff] would 'continue to resist following the [c]ourt's rules and procedures, wasting further time and resources of the judiciary'" (second alteration in original)).

In light of this analysis and plaintiff's conduct, the Court concludes that dismissal under Rule 41(b) is appropriate. Therefore, this action is **DISMISSED WITH PREJUDICE**. Accordingly, plaintiff's outstanding motions for a default judgment [Docs. 40, 42] are **DENIED**. The Clerk of Court is directed to **CLOSE** this case.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

LOUIS BONANNO, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 2:20-CV-9-TAV-CRW
	)	
COMMONWEALTH OF VIRGINIA,	)	
VIRGINIA EMPLOYMENT COMMISSION,	)	
VIRGINIA LAND & IMPROVEMENT	)	
CORP. INC.,	)	
RICK NORMAN, and	)	
PRINCE WILLIAMS CIRCUIT COURT,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This civil case is before the Court on plaintiff's pro se motion for entry of a default judgment, a hearing as to default judgment, and summary judgment [Doc. 32].[1] As a general rule, pro se pleadings are to be "liberally construed" and "held to 'less stringent standards than formal pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citation omitted). The Court notes the instant motion reflects the second time plaintiff has requested a default judgment and summary judgment [*See* Doc. 26].

First, plaintiff requests a default judgment and a corresponding hearing. Federal Rule of Civil Procedure 55 sets forth the two-step procedure for requesting a default and a

[1] Plaintiff's motion also requests for the Court to "strike Defendant's Non-Answer's [sic]" [Doc. 32]. However, the Court is uncertain what relief plaintiff seeks by this language, and plaintiff does not otherwise explain what relief he seeks. As best, the Court can infer plaintiff is requesting the Court to take adverse action against defendants for their failure to defend this action. To the extent this is the relief plaintiff seeks, the Court addresses this request in responding to plaintiff's request for a default judgment.

default judgment. First, a party must request that the clerk enter a default. Fed. R. Civ. P. 55(a). Default is appropriate if "a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend[.]" *Id.* Second, after the clerk enters a default, the party may move for a default judgment. *Id.* R. 55(b). As the Court found with respect to plaintiff's first motion for a default judgment, the Court again finds that plaintiff's request for a default judgment is procedurally improper because plaintiff has not yet requested that the clerk enter a default, and therefore, plaintiff may not yet request a default judgment. As to plaintiff's request for a hearing regarding his request for a default judgment, the Court notes it has authority to rule on motions without a hearing and finds a hearing unnecessary in this case because plaintiff's request for a default judgment is plainly procedurally improper. *See Id.* R. 78(b); *see also* E.D. Tenn. L.R. 7.2. Accordingly, plaintiff's requests for a default judgment and a hearing are **DENIED**.

Second, plaintiff requests summary judgment. In support, plaintiff reasserts the basis for relief in his complaint, but plaintiff cites no evidence. Federal Rule of Civil Procedure 56(a) provides that "[t]he court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." In ruling on a motion for summary judgment, the court must draw "all reasonable inferences in favor of the nonmoving party." *McLean v. 988011 Ontario Ltd.*, 224 F.3d 797, 800 (6th Cir. 2000). As such, the moving party has the burden to conclusively show the lack of any genuine issue of material fact. *Smith v. Hudson*, 600 F.2d 60, 63 (6th Cir. 1979).

However, Rule 56 also provides that a party must support the assertion that a fact cannot be genuinely disputed by:

> (A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or
>
> (B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

Fed. R. Civ. P. 56(c). Here, plaintiff cites no particular evidence to support his motion and does not explain how any materials in the record support summary judgment as to any particular claim; he merely reasserts the basis for his complaint and generally cites all exhibits attached to his complaint. *See id.* R. 56(a), (c). Therefore, plaintiff has again not established that there is no genuine dispute as to any material fact or that he is entitled to judgment as a matter of law. Accordingly, plaintiff's request for summary judgment is **DENIED**.

In conclusion, for the reasons discussed above, plaintiff's motion for a default judgment, a hearing, and summary judgment is [Doc. 32] is **DENIED**.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE

LOUIS BONANNO, SR.,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No.: 2:20-CV-9-TAV-CRW
	)	
COMMONWEALTH OF VIRGINIA,	)	
VIRGINIA EMPLOYMENT COMMISSION,	)	
VIRGINIA LAND & IMPROVEMENT	)	
CORP. INC.,	)	
RICK NORMAN, and	)	
PRINCE WILLIAMS CIRCUIT COURT,	)	
	)	
Defendants.	)	

MEMORANDUM OPINION AND ORDER

This civil action is before the Court on plaintiff's Motion: To Enforce Rights Show Cause Order [Doc. 33] as well as plaintiff's responses to the Court's show cause order [Docs. 29–30]. It appears that plaintiff's motion serves as a response to the Court's show cause order, which stated that plaintiff's claims against defendants Virginia Land and Improvement Corp., Inc. ("Virginia Land") and Rick Norman ("Norman") could be dismissed if plaintiff failed to show cause by May 26, 2021, why his claims against Virginia Land and Norman should not be dismissed due to failure to effectuate service [Doc. 27].[1] As a general rule, pro se pleadings are to be "liberally construed" and "held to 'less stringent standards than formal

[1] The Court notes plaintiff's request for oral argument on the instant motion under Federal Rule of Appellate Procedure 34(a) [*See* Doc. 33 p. 1]. However, this rule only applies in proceedings before United States courts of appeals. Fed. R. App. P. 1(a)(1). What is more, the Court has authority to rule on motions without a hearing and finds a hearing unnecessary in this case because plaintiff's motion and responses to the Court's show cause order are clearly frivolous for the reasons expressed herein. *See* Fed. R. Civ. P. 78(b); *see also* E.D. Tenn. L.R. 7.2.

pleadings drafted by lawyers.'" *Estelle v. Gamble*, 429 U.S. 97, 106 (1976) (citation omitted). The Court notes that plaintiff's filings neither indicate that Virginia Land or Norman have been served nor detail how plaintiff has attempted to effectuate service; instead, his filings merely repeat the merits of his claims.

As noted in the Court's show cause order, a plaintiff has 90 days to serve a defendant after filing a complaint. Fed. R. Civ. P. 4(m). If the plaintiff does not serve a defendant and lacks good cause, "the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." *Id.* The district court has discretion to determine whether to dismiss an action or enlarge the period of time in which service may be made. *See Henderson v. United States*, 517 U.S. 654, 662 (1996); *see also Hirst v. Verizon Wireless Servs.*, No. 5:18-CV-589-JMH, 2019 WL 1102201, at *1–2 (E.D. Ky. Mar. 8, 2019). However, "if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period." Fed. R. Civ. P. 4(m).

The Court notes that plaintiff is proceeding in forma pauperis in this action [Doc. 7]. Generally, where a plaintiff proceeds in forma pauperis, "the district court bears the responsibility for issuing the plaintiff's process to a United States Marshal, who then must effect service upon the defendants *once the plaintiff has properly identified them*," and "failure by the district court and the Marshals Service to carry out their duties may constitute good cause under" Rule 4(m) to excuse a delay in service. *Ferrell v. Comm'r of Soc. Sec.*, No. 17-5835, 2018 U.S. App. LEXIS 1493, at *5 (6th Cir. Jan. 22, 2018) (emphasis added) (citations omitted). However, the burden of the Marshal's Office to effectuate service vests

only after the plaintiff "request[s] service upon the appropriate defendant[s] and attempt[s] to remedy any apparent service defects of which [the] plaintiff has knowledge." *Id.* at *5–6 (citation omitted); *see also Owens v. Riley*, No. 11-1392, 2012 U.S. App. LEXIS 4560, at *9–12 (6th Cir. Jan. 6, 2012).

The Court finds that dismissal pursuant to Rule 4(m) is appropriate in this case. As noted, it is true that the Marshal's Office must effectuate service for a plaintiff proceeding in forma pauperis (such as plaintiff here). But plaintiff never "properly identified" Virginia Land and Norman so as to vest the Marshal's Office's obligation to effectuate service. *See Ferrell*, 2018 U.S. App. LEXIS 1493, at *5. Specifically, plaintiff neither requested that the Marshal's Office serve these defendants nor filed the necessary documents for service of process, even after the Court warned plaintiff of defects in service. *See id.*; *Owens*, 2012 U.S. App. LEXIS 4560, at *9–12. Indeed, had plaintiff properly requested service, the Marshal's Office presumably would have served these defendants because the Marshal's Office served the defendants for which plaintiff requested service [*See* Docs. 11–13]. As a result of plaintiff's actions, approximately 15 months—well over the 90-day requirement under Rule 4(m)—have passed since the filing of the Amended Complaint, and nothing in the record indicates plaintiff served or even attempted to serve Virginia Land or Norman.[2]

---

[2] It is true that plaintiff's instant motion contains an exhibit, which is a service receipt indicating Virginia Land received service [Doc. 33-1 p. 3]. However, this exhibit does not indicate Virginia Land received a copy of the complaint or summons as required by Federal Rule of Civil Procedure 4; in fact, the service receipt is dated the same date plaintiff filed his motion, and this suggests Virginia Land received service of the motion rather than the complaint and summons [*See id.*].

Separately, plaintiff's first response to the Court's show cause order asserts Virginia Land and Norman received service [Doc. 29 p. 1], but the record does not substantiate this assertion. Thus, nothing the record reflects that Virginia Land or Norman have received proper service.

In sum, then, the Court's show cause order clearly warned plaintiff that failing to show cause by May 26, 2021, as to why plaintiff has not served Virginia Land and Norman could result dismissal. Nevertheless, plaintiff has neither caused these defendants to receive service nor attempted to show why service has not occurred despite that six months have passed since the Court's order. Rather, plaintiff's filings responding to the Court's order merely repeat the merits of plaintiff's claims without discussing service [*See generally* Docs. 29–30, 33]. Accordingly, the Court finds that no good cause excuses plaintiff's failure to serve Virginia Land or Norman and that plaintiff is at fault for failure of service. *See Owens*, 2012 U.S. App. LEXIS 4560, at *9–12. Thus, the Court finds dismissal of Virginia Land and Norman under Rule 4(m) is appropriate.

For the foregoing reasons, plaintiff's motion [Doc. 33] is **DENIED**, and in light of the Court's show cause order and plaintiff's failure to adequately respond, defendants Virginia Land and Norman are hereby **DISMISSED** from this action. The remaining defendants in this case are therefore the Commonwealth of Virginia, the Virginia Employment Commission, and Prince Williams Circuit Court.

IT IS SO ORDERED.

s/ Thomas A. Varlan
UNITED STATES DISTRICT JUDGE

No. 22-5546

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LOUIS BONANNO, SR.,

Plaintiff-Appellant,

v.

COMMONWEALTH OF VIRGINIA, Attorney Generals Office, Richmond, VA.; VIRGINIA EMPLOYMENT COMMISSION, RICHMOND, VA.; VIRGINIA LAND & IMPROVEMENT CORP. INC.; RICK NORMAN, Gen. Mgr. H.R. Dept. Safety Coordinator; PRINCE WILLIAMS CIRCUIT COURT,

Defendants-Appellees.

O R D E R

Before: GUY, KETHLEDGE, and BUSH, Circuit Judges.

Louis Bonanno, Sr., has filed a petition for rehearing of this court's order of June 26, 2023, affirming the district court's dismissal of his civil action for failure to prosecute under Federal Rule of Civil Procedure 41(b) and denying his motion for reconsideration of this court's order denying his motion to proceed in forma pauperis on appeal.

Upon consideration, this panel concludes that it did not misapprehend or overlook any point of law or fact when it issued its order. *See* Fed. R. App. P. 40(a)(2).

We therefore **DENY** the petition for rehearing.

ENTERED BY ORDER OF THE COURT

Deborah S. Hunt, Clerk

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