

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF KANSAS

Darshawn L. Witherspoon v. Wyandotte County, et al.

No. 26-3065-JWL, United States District Court for the District of Kansas (April 28, 2026)

SUMMARY

The United States District Court for the District of Kansas dismisses Darshawn L. Witherspoon’s pro se civil rights action without prejudice under Federal Rule of Civil Procedure 41(b). The dismissal is based on Plaintiff’s failure to pay the filing fee by the court-ordered deadline and failure to notify the court of his change of address.

CASE DETAILS

COURT	United States District Court for the District of Kansas
WRITING FOR THE COURT	John W. Lungstrum
JURISDICTION	United States District Court for the District of Kansas
DECIDED	April 28, 2026
DOCKET	26-3065-JWL
DISPOSITION	dismissed
PROCEDURAL POSTURE	Pro se plaintiff brought a civil-rights action under 42 U.S.C. § 1983 and sought leave to proceed in forma pauperis. After determining that plaintiff was subject to the three-strikes provision of 28 U.S.C. § 1915(g), the court denied in forma pauperis status and ordered plaintiff to pay the filing fee by April 27, 2026. Plaintiff did not pay the fee or file a notice of change of address, and the court dismissed the action without prejudice under Federal Rule of Civil Procedure 41(b).
STANDARD OF REVIEW	The court applied Federal Rule of Civil Procedure 41(b), which permits dismissal for failure to prosecute or comply with the Federal Rules or a court order, including sua sponte dismissal. The court stated that no particular procedures are required for a dismissal without prejudice under Rule 41(b).
PRECEDENTIAL VALUE	Unpublished district court memorandum and order; nonprecedential value not specified in the opinion.

TOPICS

- civil procedure
- section 1983
- civil rights
- sanctions

PRACTICE AREAS

Civil procedure

Civil rights

Prisoner litigation

QUESTIONS PRESENTED

1. Whether the action should be dismissed without prejudice under Federal Rule of Civil Procedure 41(b) because plaintiff failed to pay the filing fee required by the court's order.
2. Whether mailing the court's order to plaintiff's last known address constituted service despite the order being returned as undeliverable after plaintiff left the facility.
3. Whether plaintiff's failure to file a notice of change of address supported dismissal for noncompliance with court rules and the court's order.

HOLDINGS

1. A district court may dismiss an action without prejudice under Federal Rule of Civil Procedure 41(b) when a plaintiff fails to comply with a court order requiring payment of the filing fee.
2. The court may dismiss an action sua sponte under Rule 41(b) for failure to comply with a court order and is not required to follow particular procedures when dismissing without prejudice.

KEY QUOTATIONS

“As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders.” (at 2)

“The failure to submit the fee by that date will result in the dismissal of this matter without prejudice and without additional prior notice.” (at 2)

FACTUAL BACKGROUND

Plaintiff, formerly in custody at the Wyandotte County Jail, alleged that officers tased him and left an object inside his body that caused him to hear voices. He also alleged that an officer claimed plaintiff threatened him and that he had been entrapped by a confidential informant in a separate incident. Plaintiff sought \$3 million in damages. After the court denied in forma pauperis status under the three-strikes provision, plaintiff failed to pay the required filing fee by the court-ordered deadline and failed to update his address.

PROCEDURAL HISTORY

The court previously found plaintiff subject to 28 U.S.C. § 1915(g), denied leave to proceed in forma pauperis, and granted him until April 27, 2026, to pay the \$405 filing fee. The order was mailed to plaintiff's address of record but returned as undeliverable because plaintiff had left the facility. Plaintiff neither paid the fee nor notified the court of a change of address. The court dismissed the action without prejudice for failure to comply with its order.

DISPOSITION

dismissed

CASES CITED

- Young v. U.S., 316 F. App'x 764, 771 (10th Cir. 2009)
- 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)

OPINION

Witherspoon

PER CURIAM.

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF KANSAS

DARSHAWN L. WITHERSPOON,

Plaintiff,

v. CASE NO. 26-3065-JWL

WYANDOTTE COUNTY, et al., Defendants.

MEMORANDUM AND ORDER

Plaintiff brings this pro se civil rights case under 42 U.S.C. § 1983. At the time of filing, Plaintiff was in custody at the Wyandotte County Jail in Kansas City, Kansas. Plaintiff alleges that officers tazed him and left something inside his body that is causing him to hear voices. (Doc. 1, at 2.) Plaintiff states that one of the officers claimed that Plaintiff threatened him, and Plaintiff claims that he “did time for that.” Id. at 3. He claims that he was entrapped when a CI “posed a Smoke Shop and inticed [sic] [Plaintiff] to deliver” and he “did time for that.” Id. at 4. Plaintiff seeks damages in the amount of \$3,000,000 for ruining his life. Id. at 5. On March 27, 2026, the Court entered a Memorandum and Order (Doc. 3) (“M&O”) finding that Plaintiff is subject to the “three-strikes” provision under 28 U.S.C. § 1915(g), and denying Plaintiff leave to proceed in forma pauperis. The Court granted Plaintiff until April 27, 2026, to submit the \$405 filing fee. The M&O provides 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. 3, at 3.) Plaintiff has failed to pay the filing fee by the Court’s deadline. The Court’s M&O was mailed to Plaintiff at his current address of record and was returned as undeliverable, with a notation that Plaintiff had left the facility. (Doc. 4.) The Court’s Local Rules provide that “[e]ach attorney or pro se party must notify the clerk of any change of address or telephone number.” D. Kan. Rule 5.1(b)(3). The Federal Rules of Civil Procedure provide that a paper is served by “mailing it to the person’s last known address—in which event service is complete upon mailing.” Fed. R. Civ. P. 5(b)(2)(C). Plaintiff has failed to provide the Court with a Notice of Change of Address. 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). Plaintiff has failed to pay the filing fee by the deadline set forth in the Court’s order. As a consequence, the Court dismisses this action without prejudice pursuant to Rule 41(b) for failure to comply with court orders. IT IS THEREFORE ORDERED BY THE COURT that this action is dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b). IT IS SO ORDERED. Dated April 28, 2026, in Kansas City, Kansas. S/ John W. Lungstrum
JOHN W. LUNGSTRUM
UNITED STATES DISTRICT JUDGE