

**UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF
OHIO, EASTERN DIVISION**

Eddie Van Oliver, III v. Mental Health Industry, et al.

Oliver v. Mental Health Industry · No. 2:25-cv-01380 · Decided January 8, 2026

SUMMARY

A magistrate judge recommends dismissing Eddie Van Oliver, III's civil action under Federal Rule of Civil Procedure 41(b) for failure to prosecute. The recommendation is based on Plaintiff's failure to pay the filing fee or file a properly supported motion to proceed in forma pauperis despite court orders and an express warning that noncompliance could result in dismissal.

OPINION

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF OHIO EASTERN DIVISION EDDIE VAN OLIVER, III, Plaintiff, v. Civil Action 2:25-cv-1380 Judge Edmund A. Sargus, Jr. Magistrate Judge Chelsey M. Vascura MENTAL HEALTH INDUSTRY, et al., Defendants. REPORT AND RECOMMENDATION This matter is before the undersigned for a Report and Recommendation on Plaintiff's failure to comply with the Court's December 1, 2025 and December 18, 2025 Orders requiring him to either (1) move for leave to proceed in forma pauperis, or (2) pay the \$405.00 filing fee.

(ECF Nos. 2, 3.) Plaintiff was expressly cautioned that "failure to comply... will result in dismissal of this action for failure to prosecute." (ECF No. 2.) To date, however, Plaintiff has failed to comply with the Court's Orders. He has neither paid the filing fee, nor filed a properly supported motion for leave to proceed in forma pauperis, nor requested an extension of time to do so.

Under the circumstances presented here, the undersigned recommends dismissal of Plaintiff's action under Rule 41(b). The Court's inherent authority to dismiss a plaintiff's action with prejudice because of his failure to prosecute is expressly recognized in Rule 41(b), which provides in pertinent part: "If the plaintiff fails to prosecute or to comply with these rules or a court order, a defendant may move to dismiss the action or any claim against it.

Unless the dismissal order states otherwise, a dismissal under this subdivision (b)... operates as an adjudication on the merits." Fed. R. Civ. P. 41(b); *Link v. Walbash R.R. Co.*, 370 U.S. 626, 629–31 (1962). "This measure is available to the district court as a tool to effect 'management of its docket and avoidance of unnecessary burdens on the taxsupported courts [and] opposing parties.'" *Knoll v. AT & T*, 176 F.3d 359, 363 (6th Cir.

1999) (internal citations omitted). The Sixth Circuit directs the district courts to consider four factors in deciding whether to dismiss an action for failure to prosecute under Rule 41(b): (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) (citing *Knoll*, 176 F.3d at 363). "Although typically none of the factors is outcome dispositive,... a case is properly dismissed by the district court where there is a clear record of delay or contumacious conduct." *Schafer*, 529 F.3d at 737 (quoting *Knoll*, 176 F.3d at 363).

Here, Plaintiff failed to comply with the Court's Orders instructing him to pay the \$405.00 filing fee or file a properly supported motion for leave to proceed in forma pauperis. (See ECF Nos. 2, 3.) Moreover, the Court explicitly cautioned Plaintiff that failure to comply may result in dismissal of this action. See *Stough v. Mayville Cmty. Schs.*, 138 F.3d 612, 615 (6th Cir.

1998) ("[p]rior notice, or the lack thereof, is... a key consideration" in whether dismissal under rule 41(b) is appropriate). Plaintiff's failure to timely comply with the clear order of the Court, which established a reasonable deadline for compliance, constitutes bad faith or contumacious conduct. See *Steward v. Cty. of Jackson, Tenn.*, 8 F. App'x 294, 296 (6th Cir.

2001) (concluding that a plaintiff's failure to comply with a court's order "constitute[d] bad faith or contumacious conduct and justify[d] dismissal"). Moreover, because Plaintiff has disregarded the Court's Orders, the undersigned concludes that no alternative sanction would protect the integrity of the pretrial process. It is therefore RECOMMENDED that the Court DISMISS THIS ACTION under Rule 41(b) for failure to prosecute.

PROCEDURE ON OBJECTIONS If any party objects to this Report and Recommendation, that party may, within fourteen (14) days of the date of this Report, file and serve on all parties written objections to those specific proposed findings or recommendations to which objection is made, together with supporting authority for the objection(s). A District Judge of this Court shall make a de novo determination of those portions of the Report or specified proposed findings or recommendations to which objection is made.

Upon proper objections, a District Judge of this Court may accept, reject, or modify, in whole or in part, the findings or recommendations made herein, may receive further evidence or may recommit this matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1).

The parties are specifically advised that failure to object to the Report and Recommendation will result in a waiver of the right to have the District Judge review the Report and Recommendation de novo, and also operates as a waiver of the right to appeal the decision of the District Court

adopting the Report and Recommendation. See *Thomas v. Arn*, 474 U.S. 140 (1985); *United States v. Walters*, 638 F.2d 947 (6th Cir.

1981). IT IS SO ORDERED. /s/ Chelsey M. Vascura CHELSEY M. VASCURA UNITED STATES MAGISTRATE JUDGE

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