

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

JERRY ROGERS :
 : CIVIL ACTION
 v. :
 :
 CORRECTIONAL OFFICER :
 PATTERSON and CORRECTIONAL : NO. 97-6744
 OFFICER TINDAL :

M E M O R A N D U M

WALDMAN, J.

October 30, 1998

Presently before the court is defendants' motion for dismissal of this civil rights action as a sanction for plaintiff's continuing failure to respond to discovery requests and to comply with court orders.

After providing their self-executing disclosures, defendants served interrogatories and a request for production of certain documents on plaintiff on April 7, 1998. Plaintiff did not respond. On April 21, 1998, the court entered an order directing the parties to proceed diligently to ensure that discovery was completed by September 22, 1998 and that the case could be tried by November 1, 1998. Plaintiff still provided no responses to defendants' discovery requests.

On August 3, 1998, defense counsel sent plaintiff a letter requesting compliance with his discovery obligations. Plaintiff made no response. Defendants then filed a motion to

compel compliance to which plaintiff did not respond. By order of August 20, 1998, the court directed plaintiff to respond to defendants' outstanding discovery requests by September 9, 1998 or show cause why sanctions should not be imposed. Plaintiff has done neither. The discovery period has now ended and the case is subject to call for trial imminently.

A court may dismiss an action as a sanction against a party who fails to obey an order to provide discovery. See Fed. R. Civ. P. 37(b)(2)(C). A court may dismiss an action as a sanction against a party who fails to comply with the Federal Rules of Civil Procedure, including discovery rules, or any order of the court. See Fed. R. Civ. P. 41(b). A court also has the inherent power to dismiss a case that cannot be disposed of expeditiously because of the willful inaction or dilatoriousness of a party. See Chambers v. NASCO, Inc., 501 U.S. 32, 34 (1991); Link v. Wabash R.R. Co., 370 U.S. 626, 630-32 (1962). See also, Hewlett v. Davis, 844 F.2d 109, 114 (3d Cir. 1988).

In assessing a motion to dismiss as a sanction, a court generally considers the so-called Poullis factors. See Anchorage Assoc. v. V.I. Bd. of Tax Review, 922 F.2d 168, 177 (3d Cir. 1990); Hicks v. Feeney, 850 f.2d 152, 156 (3d Cir. 1988); Poullis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir.

1987).¹ Not all of the Poulis factors need be satisfied to warrant such a sanction. See Hicks, 850 F.2d at 156.

Plaintiff is proceeding pro se and was personally to respond to the discovery requests. The court must assume that he is personally responsible for the total failure to engage in discovery and the disregard of the court's orders.

The inability during the allotted discovery period to obtain even basic information from a plaintiff regarding his claim is clearly prejudicial to a defendant in his attempt to defend against and obtain a prompt resolution of a lawsuit. See Adams v. Trustees, N.J. Brewery Trust Fund, 29 F.3d 863, 874 (3d Cir. 1994) (prejudice encompasses deprivation of information from non-cooperation with discovery and the need to expend resources to compel discovery).

Defendant is not complaining about an isolated breach. Plaintiff has been totally recalcitrant in honoring his discovery obligations, as well as court orders to provide discovery. Particularly in the absence of any explanation, plaintiff's persistent failure to honor discovery obligations and court orders must be viewed as "a willful effort to both evade and

¹ These factors include the extent of the party's responsibility for the failure properly to litigate; prejudice to the adverse party; any history of dilatoriness by the recalcitrant party; the willfulness of the offending conduct; the adequacy of other sanctions; and, the merit of the underlying claims.

frustrate discovery." Morton v. Harris, 628 F.2d 438, 440 (5th Cir. 1980) (Rule 37(b)(2)(C) dismissal warranted for continuing failure to comply with court ordered discovery). See also Jourdan v. Jabe, 951 F.2d 108, 110 (6th Cir. 1991) (Rule 41(b) dismissal warranted where pro se inmate plaintiff fails to engage in discovery); McDonald v. Head Criminal Court Supervisor Officer, 850 F.2d 121, 124 (2d Cir. 1988) (Rule 37(b)(2)(C) dismissal of pro se excessive force claim warranted for failure to comply with court discovery order); Williams v. Kane, 107 F.R.D. 632, 634 (E.D.N.Y. 1985) (pro se inmate's claim he was beaten without cause by corrections officers dismissed pursuant to Rules 37(b)(2)(C) & 41(b) for failure to provide court ordered discovery); Booker v. Anderson, 83 F.R.D. 284, 289 (N.D. Miss. 1979).

A monetary sanction should be commensurate with and likely to deter the type of violations at issue. See National Hockey League v. Metro. Hockey Club, Inc., 427 U.S. 639, 643 (1976). Plaintiff is an inmate who is proceeding in forma pauperis. Any meaningful monetary sanction, even one relatively modest to an individual of means, is likely uncollectible and if collected, would likely rival dismissal in palatability. See Plevy v. Scully, 89 F.R.D. 665, 667 (W.D.N.Y. 1981) (imposing monetary sanction on indigent incarcerated plaintiff would be "hollow gesture").

The meritoriousness of a claim must be determined from the face of the pleadings. See C.T. Bedwell Sons v. International Fidelity Ins. Co., 843 F.2d 683, 696 (3d Cir. 1988); Poulis, 747 F.2d at 870. This factor is thus of limited practical utility in assessing dismissal under Rule 37 or 41. If a claim as alleged lacks merit, it would be subject to dismissal under Rule 12(b)(6) without the need to weigh other factors. Plaintiff's facial allegations are sufficient to withstand a Rule 12(b)(6) motion at least as to defendant Patterson.² Nevertheless, the court cannot conscientiously characterize plaintiff's case as meritorious in view of his refusal to subject it to scrutiny through the normal discovery process.³

Plaintiff's flagrant violation of the federal rules and court scheduling and discovery orders, the resulting delay and diversion of resources, the absence of any justification and the prejudice to defendant militate in favor of dismissal. Plaintiff invoked the judicial process and then effectively thwarted discovery, making impossible the proper and efficient litigation

² Plaintiff alleged that when returning from work he was "thrown against a wall," "manhandled" and "beaten" by CO Patterson for no reason. The most one can discern from plaintiff's submission about defendant Tindal is that he charged plaintiff with misconduct for fighting with another inmate who plaintiff claims had initiated the fight.

³ The misconduct report attached to plaintiff's complaint suggests that plaintiff refused three orders to return to his housing unit and hit CO Patterson in the jaw when he attempted to escort plaintiff.

of this action.⁴ The jurisprudence on sanctions for such abuse and the power of the court to manage its docket can have little practical meaning or effect if a court were not to dismiss this action in these circumstances.

Accordingly, defendants' motion will be granted and this case will be dismissed. An appropriate order will be entered.

⁴ A pro se litigant has the same responsibility as any other to respond to discovery requests and to obey court orders. See, e.g., McDonald, 850 F.2d at 124 ("all litigants including pro ses have an obligation to comply with court orders"); Padro v. Heffelfinger, 110 F.R.D. 333, 335 (E.D. Pa. 1986) (pro se prisoner plaintiffs "are required to respond to notices from the court and to defendants' discovery requests").

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O R D E R

AND NOW, this day of October, 1998, upon
consideration of defendants' Motion for Sanctions (Doc. #21) and
in the absence of any response by plaintiff thereto, consistent
with the accompanying memorandum, **IT IS HEREBY ORDERED** that said
Motion is **GRANTED** and, pursuant to Fed. R. Civ. P. 37(b)(2)(C) &
41(b), the above action is **DISMISSED**.

BY THE COURT:

JAY C. WALDMAN, J.