

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

CHESTER WOULARD, :
 :
 Plaintiff, :
 :
 v. : Civil Action No. 01-350 JJF
 :
 DR. ALFORD B. BROWN and DR. :
 KEITH IVENS, :
 :
 Defendants. :

Chester Woulard, Wilmington, Delaware.
Pro Se Plaintiff.

James E. Drnec, Esquire of MORRIS, JAMES, HITCHENS & WILLIAMS
LLP, Wilmington, Delaware.
Attorney for Dr. Alford B. Brown.

MEMORANDUM OPINION

February 24, 2004

Wilmington, Delaware

Farnan, District Judge.

Presently before the Court is the Motion to Dismiss (D.I. 54-1) or to Compel Discovery (D.I. 54-2) filed by Dr. Alford B. Brown. For the reasons discussed, the Court will grant the Motion to Dismiss and deny the Motion to Compel Discovery as moot.

BACKGROUND

Chester Woulard filed this action against Dr. Alford Brown and Dr. Keith Ivens (also referred to as "Dr. Ivings" by Plaintiff) alleging malpractice and violations of Section 1983. Plaintiff is pro se.

On May 28, 2002, after Defendants failed to respond to Plaintiff's complaint, Plaintiff filed a motion for default judgment. On September 30, 2002, stating its reluctance to decide a case other than on the merits, the Court denied Plaintiff's motion, but ordered Dr. Brown to respond to Plaintiff's Complaint not later than October 30, 2002. On October 30, 2002, James Drnec, Dr. Brown's attorney, filed an entry of appearance for Dr. Brown as well as Dr. Brown's Answer to the Complaint, request for production, and interrogatories.

On August 8, 2003, Dr. Brown filed a Motion Dismiss or to Compel Discovery (D.I. 54). In his motion, Dr. Brown contends that Plaintiff's suit should be dismissed for failure to prosecute or for failure to respond to interrogatories and

produce discovery. In the alternative, Dr. Brown requests that the Court compel Plaintiff to either comply with discovery or dismiss Plaintiff's case. Dr. Brown also requests that he be awarded costs and attorney's fees.

Plaintiff has not responded to Dr. Brown's motion and has taken no action in the case since February 5, 2003. On November 3, 2003, the Court ordered Plaintiff to either respond to Dr. Brown's motion or have the Court render its decision on the papers submitted. Plaintiff has not responded to the Court's order, and, therefore, the Court will decide the Motion to Dismiss or to Compel.

DISCUSSION

Federal Rule of Civil Procedure 41(b) provides that "[f]or failure of the plaintiff to prosecute or to comply with these rules or any order of court, a defendant may move for dismissal of an action or of any claim against the defendant."

The Third Circuit has enumerated several factors relevant to a district court's exercise of discretion when dismissing cases for failure to prosecute: "(1) the extent of the party's personal responsibility; (2) the prejudice to the adversary; (3) a history of dilatoriness; (4) willful conduct; (5) alternative sanctions; and (6) the meritoriousness of the claim." Poulis v. State Farm Fire and Cas. Co., 747 F.2d 863, 868 (3d Cir. 1984). A court's dismissal of a case for failure to prosecute is reviewed for

abuse of discretion. United States v. USX Corp., 68 F.3d 811, 818 (3d Cir. 1995).

Federal Rule of Civil Procedure 37(d) ("Rule 37(d)") provides that if a party fails "to serve answers or objections to interrogatories submitted under Rule 33, after proper service of the interrogatories" or "to serve a written response to a request for inspection submitted under Rule 34, after proper service of the request," then "the court in which the action is pending on motion may make such orders in regard to the failure as are just."

On the record before the Court, dismissal of the action is appropriate at this time. Plaintiff has not responded to Defendant Brown's motion and one order of the Court and has not done anything to prosecute the action since February 5, 2003. The Court further finds that, in light of the dismissal, an award of costs and attorney's fees is not warranted.

An appropriate Order will be entered.

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 KEITH IVENS :
 :
 Defendants. :

O R D E R

At Wilmington, this 24th day of February 2004, for the
reasons discussed in the Memorandum Opinion issued this date;

IT IS HEREBY ORDERED that:

- 1) Dr. Alford B. Brown's Motion to Dismiss (D.I. 54-1) is **GRANTED**;
- 2) Dr. Brown's Motion to Compel (D.I. 54-2) is **DENIED**
as moot;
- 3) Dr. Brown's request for costs and attorney's fees
is **DENIED**.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

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FINAL JUDGMENT IN A CIVIL CASE

For the reasons set forth in the Court's Memorandum Opinion
and Order dated February 24, 2004;

IT IS ORDERED AND ADJUDGED that judgment be and is hereby
entered in favor of Defendant, Dr. Alford B. Brown, and against
Plaintiff, Chester Woulard.

JOSEPH J. FARNAN, JR.
UNITED STATES DISTRICT JUDGE

Dated: February 24, 2004

DEBORAH L. KRETT
(By) Deputy Clerk