

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

COMMUNITY LEARNING ACADEMY,)
INC.: DIR. SANDRA JONES,)

Plaintiff,)

v.)

C.A. No. 02-127-KAJ

THE BOARD OF EDUCATION OF)
THE MILFORD SCHOOL DISTRICT,)
ROBERT SMITH,)
MARVIN SCHELHOUSE,)

Defendants.)

ORDER

Before me is a “Motion for Final Judgment Order” (Docket Item [“D.I.”] 42; the “Motion”) filed by *pro se* plaintiff Sandra Jones. This Motion is the latest in a series of odd litigation tactics undertaken by Ms. Jones against the defendants. Difficulties began at least as early as the time when the Ms. Jones purported to represent a corporate entity as a co-plaintiff. Despite repeated encouragement from this Court, both through the Magistrate Judge and the undersigned, plaintiff refused to either obtain counsel or to recognize that the corporate plaintiff would need to be dismissed from the action. (See D.I. 20, 25, 27 and 35.) Now, rather than turn to the merits of whatever dispute she might have with the defendants, it appears that the plaintiff, through this Motion, is attempting to reargue or reassert matters which she has failed to prevail on, including on a petition to obtain a writ of mandamus from the United States Court of Appeals for the Third Circuit. (See D.I. 36, 42.) I can only conclude from the plaintiff’s assertion that she will “not participate as a guinea pig while this Court continue [sic]

violating my constitutional rights to procedural due process, and equal protection under both state and federal laws and the rules of the court[,]" that Ms. Jones has no intention of prosecuting this action further unless and until she has an opportunity to appeal earlier decisions in the case. (D.I. 42 at ¶ 6.) Given her track record in this matter, as well as the title of the Motion and her refusal to follow the orderly litigation process required by the rules and orders of this court, I will place the plaintiff in the position she apparently would like to be in, but not by granting her motion. I will, instead, dismiss the action for failure to prosecute.

Under Rule 41(b) of the Federal Rules of Civil Procedure, as well as under the inherent power of the court, a case may be dismissed with prejudice for want of prosecution. See *Spain v. Gallegos*, 26 F.3d 439, 454-44 (3d Cir. 1994) (citing *Marshall v. Sielaff*, 492 F.2d 917, 918-919 (3d Cir. 1974)). The authority to dismiss for lack of prosecution, both on defendants' motion and *sua sponte*, is an inherent "...control necessarily vested in courts to manage their own affairs so as to achieve the orderly and expeditious disposition of cases." *Id.* (quoting *Link v. Wabash Railroad Co.*, 370 U.S. 626, 630-6313 (1962)). Whether or not to dismiss a case for lack of prosecution is left to trial court's discretion. See *Dyotherm Corp. v. Turbo Machine Co.*, 392 F.2d 146 (3d Cir 1968).

Generally, courts are required to consider six factors when entertaining a Rule 41(b) dismissal: (1) the extent of the party's personal responsibility; (2) the prejudice to the adversary caused by the failure to meet scheduling orders and respond to discovery; (3) a history of dilatoriness; (4) whether the conduct of the party or the attorney was willful or in bad faith; (5) the effectiveness of sanctions other than

dismissal; and (6) the meritoriousness of the claim or defense. *Emerson v. Thiel College*, 296 F.3d 184, 190 (3d Cir. 2002) (citing *Poulis v. State Farm Fire and Cas. Co.*, 747 F.2d 863, 868 (3d Cir. 1984)). However, in contrast to situations in which a court must balance factors because the plaintiff does not desire to abandon her case but has encountered problems in going forward, in this case, Ms. Jones has “willfully refused to prosecute her remaining claims” until she has an opportunity to appeal earlier decisions in this case. See, *Gallegos*, 26 F.3d at 455 (dismissal under Rule 41(b) proper where plaintiff willfully refused to prosecute remaining claims after receiving adverse ruling on different claims in same case). In such circumstances, *sua sponte* dismissal under Federal Rule of Civil Procedure 41(b) is proper. See *id.* (citing *Zagano v. Fordham Univ.*, 900 F.2d 12, 14 (2d Cir. 1990)).

Accordingly, IT IS HEREBY ORDERED that the Motion (D.I. 42) is DENIED, and it is further ordered that this action is DISMISSED pursuant to Federal Rule of Civil Procedure 41(b).

Kent A. Jordan
UNITED STATES DISTRICT JUDGE

March 15, 2004
Wilmington, Delaware