

IN THE SUPERIOR COURT OF THE VIRGIN ISLANDS
DIVISION OF ST. CROIX

JAHIID JONES,	)	
	Plaintiff,	)
v.	)	CASE NO. SX-11-CV-0284
	)	ACTION for DAMAGES.
BARBARA I. HERRERA,	)	
<u>Defendant.</u>	)	

MEMORANDUM OPINION and ORDER OF DISMISSAL

THIS MATTER is before the Court following multiple Orders requiring action by Plaintiff to move his case forward, entered over a period of several years, most recently Order entered July 31, 2018. Plaintiff's repeated failure to comply with multiple Orders of the Court over the course of several years constitutes particularly egregious behavior characterized by an affirmative refusal to participate in these proceedings. As such, the Court *sua sponte* will dismiss Plaintiff's Complaint with prejudice pursuant to V.I. R. Civ. P 41(b) for Plaintiff's failure to comply with Orders of the Court.

Plaintiff filed his Complaint on June 2, 2011, alleging that Defendant negligently operated her motor vehicle resulting in an accident in which Plaintiff sustained injuries.¹ Pursuant to Amended Motion for Entry of Default, filed December 1, 2011 and Second Amended Motion for Entry of Default, filed October 25, 2012, Default was entered against Defendant Barbara Herrera on November 2, 2012.

When no further action was taken by Plaintiff, by Order entered August 18, 2014, Plaintiff was ordered to take steps to move this matter forward within 30 days. Plaintiff responded by his Motion to Request Hearing, filed September 12, 2014, seeking hearing date "to prove up damages." By Order entered April 23, 2015, hearing was scheduled for June 5, 2015 to allow Plaintiff to prove Defendant's liability and to establish damages. On June 2, 2015, Plaintiff filed Emergency Motion for Continuance of Damages Hearing, on grounds that the nominal Plaintiff had relocated off island, seeking a continuance until mid-December 2015. By Order entered June

¹ Plaintiff was born October 2, 1997. His Complaint was filed through his mother and next friend Chinell Herbert. Upon achieving the age of majority, Plaintiff was substituted as named Plaintiff by Order entered April 5, 2018.

4, 2015, that motion was granted and hearing on damages was rescheduled to December 10, 2015. By Motion for Continuance of Damages Hearing, filed November 20, 2015, counsel advised that she had been unsuccessful in attempting to reach her clients by telephone and U.S. certified mail regarding the scheduled hearing, and again sought a continuance. By Order entered December 1, 2015, the Court granted the requested continuance and ordered counsel to advise in writing within 21 days whether her clients would waive jury trial. Having received no response from Plaintiff one year later, by Order entered December 8, 2016, the Court ordered Plaintiff to advise in writing within 14 days regarding waiver of jury trial. Again, Plaintiff failed to respond.

Another year later, by Order entered February 22, 2017, the Court ordered Plaintiff to show cause in writing within 30 days why this case should not be dismissed under Federal Rule of Civil Procedure 41(b), then applicable pursuant to Superior Court Rule 7. By Notice to the Court, filed March 24, 2017, counsel advised that she “has been trying to locate Plaintiff for many years as both he and his mother failed to keep in touch with her to advise her of their whereabouts,” and that she had recently learned that “Plaintiff had been jailed in Florida.” Further, counsel reported that “Plaintiff’s mother advised counsel that Plaintiff does not wish to pursue this case,” and asked for an additional 30 days to advise the Court whether Plaintiff would agree to voluntarily dismiss the action or to have all matters heard by a magistrate judge. By Order entered April 20, 2017, Plaintiff was ordered to report to the Court within 30 days whether he would voluntarily dismiss the action or agree to its assignment to a magistrate judge. By Emergency Motion for Extension of Time, counsel sought an additional 30 days to submit her report, which motion was granted by Order entered May 25, 2017. By Notice to the Court filed June 28, 2017, counsel requested an additional 30 day extension, which was granted by Order entered July 13, 2017, requiring Plaintiff to report within 30 days whether he would voluntarily dismiss the case or agree to its designation to a magistrate judge. By Motion for Extension of Time, filed August 8, 2017, Plaintiff’s counsel sought another 30 day extension to seek information from Plaintiff who had not responded to counsel’s letters inquiring of Plaintiff’s intentions. That motion was also granted by Order entered August 29, 2017, requiring Plaintiff’s notification within 30 days.

Following the passing of the 2017 hurricanes, Plaintiff filed his Motion to Stay on January 12, 2018. Therein, counsel advised that Plaintiff had “advised counsel that he would like to go forward with his case.” Reporting that Plaintiff “will not be released from jail until the year 2021,”

Plaintiff sought an indefinite stay of these seven year old proceedings. That request was denied by Order entered January 29, 2018, and the matter was scheduled for jury selection and trial on April 16, 2018. By Order entered March 27, 2018, final pretrial conference was scheduled for April 5, 2018.

On March 28, 2018, counsel filed her Motion to Withdraw as Counsel, stating that she had “asked Mr. Jones for direction as to his case and he has not responded,” and further advising that Mr. Jones has failed to communicate with counsel and therefore she cannot prepare and/or present his case.” Counsel for Plaintiff appeared at the scheduled April 5, 2018 pretrial conference, at which time the Court orally granted her motion to withdraw.² By Order entered April 5, 2018, counsel’s Motion to Withdraw was granted, to become effective upon counsel’s filing of proof of service on Plaintiff of both her Motion to Withdraw and the April 5, 2018 Order. The Order also continued the trial without new date, and required Plaintiff within 30 days of service to have new counsel enter an appearance, or to advise the Court in writing that he intended to proceed *pro se*. Counsel’s withdrawal of representation of Plaintiff became effective upon filing of Notice to the Court on April 20, 2018, with attached proof of service to the facility where Plaintiff was housed. Following Plaintiff’s noncompliance with the April 5, 2018 Order, the Court entered an Order on July 31, 2018, requiring Plaintiff within 21 days to have new counsel enter an appearance or, alternatively, to advise the Court in writing that he intends to represent himself in prosecuting the case going forward. Plaintiff has failed to comply with or otherwise acknowledge that Order, and has not advised the Court in any manner.

On account of the foregoing litany of Orders imposing deadlines with which Plaintiff has failed to comply or respond to, or to even acknowledge, Plaintiff’s Complaint will be dismissed with prejudice pursuant to Virgin Islands Rule of Civil Procedure 41(b).

Rule 41(b) states that “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.” V.I. R. Civ. P. 41(b) (emphasis added).³ Thus, the use of the disjunctive in the text indicates that Rule 41(b)

² Despite her default status, Defendant Herrera, having been served with notice of the conference, personally appeared. The Court advised her of the fact that default had been entered against her and informed her of her right to review and copy the case file and that she should seek legal advice.

³ Although the text of the Rule references dismissal pursuant to motion, the Court unquestionably possesses the inherent power to act *sua sponte* to review matters for dismissal for the same reasons contemplated by

contemplates at least three different situations in which dismissal is appropriate: 1) failure to prosecute; 2) failure to comply with applicable rules of procedure; and 3) failure to comply with a court order.

In *Halliday v. Footlocker Specialty Inc.*, and its progeny, the Supreme Court of the Virgin Islands established that the Superior Court must conduct an analysis of the six “*Poulis* factors” before dismissing a case for *failure to prosecute* under Rule 41. *See Halliday*, 53 V.I. at 511; *see also Molloy v. Independence Blue Cross*, 56 V.I. 155, 185-86 (V.I. 2012).⁴ However, the Supreme Court has also implicitly endorsed precedent of the Third Circuit to the effect that, in certain circumstances “based on particularly egregious behavior of the plaintiff, generally characterized by an affirmative refusal to participate in proceedings,” a plaintiff’s demonstrated disrespect and disregard for the Court can justify dismissal without analysis of the *Poulis/Halliday* factors. *See Molloy*, 56 V.I. at 187 (noting that the Supreme Court’s precedent established in *Halliday* and its progeny is still consistent with the Third Circuit’s *Poulis* framework, because the cases in which the Third Circuit dismissed without analyzing the *Poulis* factors were categorically different). As noted in *Molloy*, such cases include those in which courts dismiss claims pursuant to their inherent power under Rule 41(b) to dismiss a plaintiff’s complaint for failure to comply with a court order. *See Molloy*, 56 V.I. at 186-87 n.9 (citing, *inter alia*, *Guyer v. Beard*, 907 F.2d 1424, 1429 (3d Cir. 1990) (affirming dismissal without review of the *Poulis* factors for refusal to comply with a court order after repeated refusals to sign a court-ordered power of attorney)).

In this case, Plaintiff has not merely failed to prosecute his claim, but has failed to comply with, or to even to respond to or acknowledge, multiple Orders of this Court over a period of years. Thus, it is precisely the type of case—“based on particularly egregious behavior of the plaintiff, generally characterized by an affirmative refusal to participate in proceedings,”—envisioned by

the Rule. Both the decisions of the Supreme Court in *Halliday v. Footlocker Specialty, Inc.*, 53 V.I. 505, 511 n.8 (2010) (“[t]he record here is undisputed that Appellee did not file a Rule 41(b) motion”) and the Third Circuit in *Poulis v. State Farm Fire & Casualty Co.*, 747 F.2d 863, 865 (3d Cir. 1984) (“the district court, *sua sponte*, dismissed the case with prejudice”) concerned appeals of *sua sponte* trial court orders dismissing plaintiffs’ complaints.

⁴ These cases interpret Fed. R. Civ. P. 41(b), as previously applicable per Superior Court Rule 7. Following implementation of the Virgin Islands Rules of Civil Procedure, such dismissals are now governed by the identical V.I. R. Civ. P. 41(b), such that precedent interpreting the federal rule is equally applicable to the interpretation of V.I. R. Civ. P. 41(b).

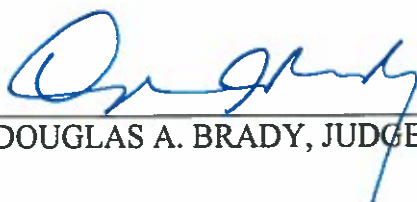
the Supreme Court in *Molloy*, wherein, wholly consistent with *Halliday* and its progeny, a plaintiff's claims may nonetheless be dismissed without analysis of the *Poulis* factors, not merely for failing to prosecute its case, but for repeatedly refusing to comply with Orders of the Court. *See Molloy*, 56 V.I. at 186-87.

Therefore, based upon the egregious behavior of Plaintiff herein, characterized by his affirmative refusal to participate in these proceedings, Plaintiff's Complaint will be dismissed with prejudice pursuant to V.I. R. Civ. P. 41(b) for his repeated failure to comply with the Orders of the Court. In light of the foregoing, it is hereby

ORDERED that Plaintiff's Complaint is DISMISSED with prejudice for his repeated failure to comply with the Orders of the Court. It is further

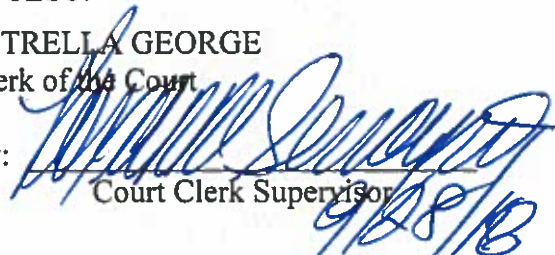
ORDERED that the Clerk shall cause a copy of this Order to be served on Plaintiff Jahiid Jones by certified mail, return receipt requested, at Lawtey Correctional Institution, P.O. Box 2000, Lawtey, FL 32058 (DC no. T70045; telephone no. 904-782-2000); to Plaintiff's former counsel; and by personal service upon Defendant Barbara I. Herrera.

Dated: September 26, 2018


DOUGLAS A. BRADY, JUDGE

ATTEST:

ESTRELLA GEORGE
Clerk of the Court

By: 

Court Clerk Supervisor
9/28/18

Distribution List:

Jahiid Jones, by certified mail
Pamela L. Colon, Esq.
Barbara I. Herrera, by personal service