

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA
MARTINSBURG**

RAYMOND KENNETH BROOKS, JR.,

Plaintiff,

v.

**CIVIL ACTION NO. 3:13-CV-168
(JUDGE GROH)**

BILL BARNEY and JOHN WILGEROTH,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS

Currently pending before the Court is the *pro se* Plaintiff's Motion to Dismiss, filed on January 23, 2014 [Doc. 86]. In this motion, the Plaintiff states that he is seeking a dismissal of this case. He does not specify whether he seeks a dismissal with or without prejudice. As of the filing of this motion, the Defendants have not answered the complaint or filed a motion for summary judgment.

Federal Rule of Civil Procedure 41(a)(1)(A)(i) provides that a "plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment." "This 'dismissal is available as a matter of unconditional right . . . and is self executing, i.e., it is effective at the moment the notice is filed with the clerk and no judicial approval is required.'" *Finley Lines Joint Protective Bd. v. Norfolk S. Corp.*, 109 F.3d 993, 995 (4th Cir. 1997) (citations omitted). Further, "[u]nless the notice . . . states otherwise, the dismissal is without prejudice." **FED. R. CIV. P. 41(a)(1)(B).**

Here, the Court construes the Plaintiff's motion as a notice of dismissal filed pursuant to Rule 41(a)(1)(A)(i) because the Plaintiff is seeking to dismiss this case before the Defendants filed an answer or a motion for summary judgment. The Plaintiff therefore has a right to dismiss this case voluntarily. See **FED. R. CIV. P. 41(a)(1)(A)(i)**. Because his motion does not state that he is seeking a dismissal with prejudice, the dismissal is presumed to be without prejudice. **FED. R. CIV. P. 41(a)(1)(B)**. Accordingly, the Court **GRANTS** the Plaintiff's Motion to Dismiss. The Court hereby **DISMISSES** this case **WITHOUT PREJUDICE**. The Court further **ORDERS** that this case be **STRICKEN** from this Court's docket.

It is so **ORDERED**.

The Clerk is directed to transmit copies of this Order to all counsel of record herein and to send a copy by certified mail, return receipt requested, to the *pro se* plaintiff.

DATED: January 24, 2014.



GINA M. GROH
UNITED STATES DISTRICT JUDGE