

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
LYNCHBURG DIVISION**

TIMOTHY WAYNE DILLARD,

Plaintiff,

v.

UNITED STATES OF AMERICA,
ROY LUKE WEST

Defendants

CIVIL NO. 6:07cv00008

MEMORANDUM OPINION and ORDER

JUDGE NORMAN K. MOON

This matter is before the Court on Plaintiff's Motion to Dismiss Complaint, filed on June 18, 2007 (docket entry no. 5).

Plaintiff's complaint alleges that in June 2005 on Taylor Street in Lynchburg, Virginia, Defendant Roy Luke West ("West"), an employee of the United States Postal Service, negligently caused an automobile accident in which Plaintiff was injured. Plaintiff sued under the Federal Tort Claims Act, seeking more than \$360,000 in damages.

Summonses were issued to Plaintiff, but he states in his motion that he has not yet served Defendants. In the motion, Plaintiff states that he has settled his claim with Defendants and he requests that this case be dismissed with prejudice and that each party bear its own costs and expenses.

I will construe Plaintiff's motion as a stipulation of dismissal pursuant to Rule 41 of the Federal Rules of Civil Procedure. Rule 41(a)(1)(i) states that "an action may be dismissed by the plaintiff without order of court ... by filing a notice of dismissal at any time before service by the adverse party of an answer or of a motion for summary judgment, whichever first occurs." Fed. R. Civ. P. 41(a)(1)(i). Here, Defendants have not yet filed an answer or a motion for summary

judgment. As such, Plaintiff may dismiss this action without court order. And although the default rule is that dismissal under Rule 41(a)(1) is without prejudice, *see* Fed. R. Civ. P. 41(a)(1) (“Unless otherwise stated in the notice of dismissal or stipulation, the dismissal is without prejudice”), Plaintiff here has requested that the case be dismissed with prejudice.

For the foregoing reasons, Plaintiff’s motion (docket entry no. 5) is hereby GRANTED, this case is DISMISSED WITH PREJUDICE, and the clerk is ordered to STRIKE this case from the Court’s docket.

It is so ORDERED.

The Clerk of the Court is hereby directed to send a certified copy of this Opinion and Order to all counsel of record.

ENTERED: _____
United States District Judge

Date