UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BRANDON REED, et. al.,	§	
	§	
Plaintiffs,	§	
	§	
v.	§	**CIVIL ACTION NO. 3:18-CV-1032-B**
	§	
MIKE RAWLINGS, et. al.,	§	
	§	
Defendants.	§	

MEMORANDUM OPINION AND ORDER

Before the Court is Defendant's Motion to Dismiss. Plaintiffs have failed to timely respond and to appear at a hearing in this case. As such, the Court finds that this case should be **DISMISSED** for two independent grounds: failure to prosecute and lack of standing.

I.

BACKGROUND

In the summer of 2017, the City of Dallas began considering whether to rename certain streets and other public places currently named for Confederate figures. Doc. 18, Defs.' App., 1. The Mayor appointed a Task Force to investigate and to hold public meetings on the issue. *Id.* at 8. The Task Force was responsible for making recommendations to City Council, which it did. *Id.* at 8, 34–39. On April 25, 2018, City Council, via resolution, voted not to follow the Task Force's recommendations regarding renaming streets, so no street names were changed. *Id.* at 47. According to the City, it did not change the procedure for seeking a street name change. Doc. 17, Defs.' Br. in Supp. of Mot. to Dismiss, 10.

Plaintiffs then filed suit against the Mayor and the City Councilmembers in their official capacities (collectively, "the City"). The crux of Plaintiffs' Complaint seems to be their confusion on whether the City Council Resolution on April 25, 2018, modified the Code and thus prohibits Plaintiffs from renaming streets like Marilla or Ewing. Doc. 6, Am. Compl., ¶ 42. Plaintiffs listed only Ewing and Marilla as streets that concern them, neither of which were submitted for City Council review. *See generally id.* (presenting evidence that Ewing and Marilla were linked to the Confederacy); Defs.' App., 47. Plaintiffs admitted also that—at least prior to April 2018—city ordinances specify a procedure for changing these street names. *Id.* ¶ 45. As the City points out, this street-name change process may be initiated only by: "an owner of property abutting the street," or certain city officials or commissions. Dallas City Code § 51A-9.302(b). According to the Code, a property owner who wishes to initiate the street-name change process must file an application that includes a petition indicating that at least fifty-one percent of the owners of all lots abutting the street favor the name change. *Id.* § 51A-9.303. Only one Plaintiff, Ishmael Muhammad, is alleged to own property on Ewing or Marilla, although mail has not been deliverable to him at his Ewing address. Am. Compl., ¶ 44; *e.g.,* Doc. 31 (certified mail unexecuted). But Plaintiffs have not alleged that Mr. Muhammad initiated the Code's street-name change process. *See* Am. Compl., ¶ 44.

Plaintiffs allege three causes of action against the City: (1) a "violation of First Amendment right to free speech by use of content based prior restraint"; (2) a "violation of due process rights"; and (3) a "violation of equal protection of law." *Id.* at 9–12. Besides their Original Complaint, this Amended Complaint is the only substantive briefing the Plaintiffs have filed in this case, despite receiving an extension of time to respond to the City's Motion to Dismiss. *See* Doc. 35, Defs.' Notice of No Responses, 1–2.

Named in the complaint are five individual plaintiffs and two entity plaintiffs.[1] The Court has only had direct contact with one—Plaintiff Stephen Benavides—through a telephone call on October 5, 2018. The Court has no valid mailing address for two other Plaintiffs—Mr. Muhammad and Brandon Reed. Mr. Muhammad and Mr. Reed were ordered to update their contact information with the Court by October 15, 2018, but have not. *Id.* No Plaintiff has registered with ECF. *See* Doc. 33, Order Setting Status Conf., 2.

In fact, as this case has continued, Plaintiffs have become more elusive and non-communicative. While Plaintiffs were originally represented by counsel, their counsel filed a motion to withdraw on August 6, 2018, which the Court granted on August 7, 2018. Doc. 14, Order Granting Mot. to Withdraw. Since then, Plaintiffs have been proceeding *pro se*. But as mentioned, the contact information they provided through their former counsel is incorrect, and they have not responded to this Court's orders to update that information. And despite a court order to do so, no Plaintiff called the Court to confirm attendance at the hearing. *See* Order Setting Status Conf., 2.

The City filed a Motion to Dismiss based on Federal Rules of Civil Procedure 12(b)(6) and 12(b)(1) on August 9, 2018, shortly after Plaintiffs' counsel withdrew and left Plaintiffs to proceed *pro se*. Doc. 17, Defs.' Mot. to Dismiss. Due to the confusion around where the Motion should be served, Defendants refiled it on August 31, 2018. Doc. 20, Am. Doc. In response to an email from

[1] On September 4, 2018, the entity plaintiffs (the People's Assembly of Dallas, and the Commemoration Committee to Honor Roy Williams and Marvin E. Crenshaw) were ordered to appear with counsel by October 4, 2018. Doc. 23. They have not done so, and failed to appear at the hearing. This alone would be sufficient to dismiss them from the case. *See Southwest Express Co. Inc. v. Interstate Commerce Comm'n*, 670 F.2d 53, 55 (5th Cir. 1982) ("Corporations and partnerships, both of which are fictional legal persons, obviously cannot appear for themselves personally. . . . [T]hey must be represented by licensed counsel.") (quoting *Turner v. Am. Bar Ass'n*, 407 F. Supp. 451, 476 (N.D. Tex. 1975).

Mr. Benavides, Defendants agreed to not oppose a motion for extension of time to respond and find counsel, which this Court granted on September 7, 2018. Defs.' Notice of No Responses, 2; Doc. 25, Order Granting Mot. to Extend. The deadline for a response was October 4, 2018. Doc. 25, Order. To date, Plaintiffs have failed to respond or request another extension.

On October 15, 2018, the Court held a hearing to address whether any Plaintiff would continue with the case. Not a single Plaintiff appeared, despite both this Court's diligence in procuring their attendance and efforts by Defendants to contact Plaintiffs. For example, the Court telephoned both former counsel and Mr. Benavides. Former counsel had no better contact information for Plaintiffs, and while Mr. Benavides assured the Court that all Plaintiffs had received notice of the Court's orders, he did not provide any updated contact information. The City even attempted to identify a more current address for Mr. Muhammad, and forwarded this Court's order accordingly. Doc. 35, Defs.' Notice of No Responses, 1–2.

Plaintiffs' absence alone warrants dismissal of all claims. In addition, the Court has reviewed the City's Motion to Dismiss and finds that Plaintiffs also do not have standing to bring the claims pleaded. As such, the Court **DISMISSES** the Plaintiffs' claims.

II.

LEGAL STANDARD

"In deciding a Rule 12(b)(6) motion to dismiss, the court evaluates the sufficiency of the plaintiff's complaint by accepting all well-pleaded facts as true, viewing them in the light most favorable to the plaintiff." *TF-Harbor LLC v. City of Rockwall Tex.*, 18 F. Supp. 3d 810, 816 (N.D. Tex. 2014) (internal quotations omitted) (reviewing standing). To survive the motion, plaintiffs must plead "enough facts to state a claim to relief that is plausible on its face." *Id.* (citing *Bell Atl. Corp.*

v. Twombly, 550 U.S. 544, 570 (2007) (internal quotations omitted). "Factual allegations must be enough to raise a right to relief above the speculative level[.]" *Twombly*, 550 U.S. at 555.

A Rule 12(b)(1) motion to dismiss for lack of jurisdiction can support either a facial or factual challenge to subject matter jurisdiction. *TF-Harbor*, 18 F. Supp. 3d at 817. A facial challenge is one in which a party does not include evidence with its motion, and a court uses the 12(b)(6) standard to assess the plaintiff's pleadings. *Id.* A factual challenge is one in which a party includes evidence. Then "the court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case." *Id.* (quoting *Williamson v. Tucker*, 645 F.2d 404, 413 (5th Cir. 1981)).

III.

ANALYSIS

A. Dismissal Based on Failure to Prosecute

When a plaintiff fails to respond to a motion to dismiss and fails to otherwise meaningfully participate in a case despite repeated opportunities to do so, the district court is within its discretion to dismiss the case. *Boudwin v. Graystone Ins. Co., Ltd.*, 756 F.2d 399, 401 (5th Cir. 1985) (discussing how a "district court may dismiss *sua sponte*, with or without notice to the parties" a claim for failure to prosecute).

Here, lesser sanctions than dismissal have been pursued, and additional measures would be ineffective. For example, the Court has already communicated an explicit warning to Plaintiffs that their claims could be dismissed through its Order Setting a Status Conference (Doc. 33). Because Plaintiffs have failed to register for ECF, the Court has sent this and other orders to Plaintiffs in an attempt to impress upon Plaintiffs the need to participate in the case. The Court even called Mr. Benavides, who acknowledged that he and his co-Plaintiffs were aware of the repercussions of a

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