

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Civil Action No. 08-cv-01279-PAB-MJW

PAUL DESCHAINED,

Plaintiff,

v.

S. MCLAUGHLIN, Dr., MD,
ARISTEDES W. ZAVARAS, and
PAUL L. VOTH,

Defendants.

ORDER

This case comes before the Court on plaintiff Paul Deschaine's motion for reconsideration [Docket No. 102] and motion to dismiss [Docket No. 112]. Mr. Deschaine, a former inmate in the custody of the Colorado Department of Corrections ("CDOC"), brought this case against three CDOC personnel based on the medical treatment he received while incarcerated. On July 6, 2009, Magistrate Judge Michael J. Watanabe recommended [Docket No. 70] that the Court grant summary judgment to defendant Dr. Scott McLaughlin based upon Mr. Deschaine's failure to exhaust his claims. Mr. Deschaine filed objections [Docket No. 80] to this recommendation.

On March 9, 2010, following a *de novo* review, the Court accepted the recommendation of the magistrate judge and granted summary judgment to defendant McLaughlin [Docket No. 93]. However, because plaintiff's claims against the two other defendants – Aristedes W. Zavaras and Paul L. Voth – remained pending, the Court did

not issue a final judgment in this case. Despite this fact – and despite the rule that, typically, only a final judgment which disposes of the entire case may be appealed, see 28 U.S.C. § 1291 (2006); *United States v. Nixon*, 418 U.S. 683, 690-92 (1974); *Albright v. UNUM Life Ins. Co.*, 59 F.3d 1089, 1092 (10th Cir. 1995) – Mr. Deschaine filed a notice of appeal on March 17, 2010 [Docket No. 94]. On March 19, 2010, the Clerk of the Tenth Circuit Court of Appeals informed Mr. Deschaine of the apparent prematurity of his appeal [Docket No. 98] and subsequently dismissed the appeal when Mr. Deschaine failed to respond [Docket No. 107].

On March 30, 2010, Mr. Deschaine filed with this Court a motion to reconsider [Docket No. 102], which ostensibly requests the Court to reconsider the granting of summary judgment to defendant McLaughlin. However, rather than addressing the particulars of the Court’s order, Mr. Deschaine expresses the difficulties he has had understanding the procedures of this Court and the Court of Appeals. Therefore, because the motion presents no basis for reconsideration of the Court’s earlier ruling which granted summary judgment to defendant McLaughlin, the motion for reconsideration will be denied.

Most recently, Mr. Deschaine filed a motion to dismiss this case [Docket No. 112]. In that motion, Mr. Deschaine explains that, due to financial limitations, he is unable to prosecute his case any further. He also notes that, without the presence of defendant McLaughlin, this case cannot properly proceed. The Court, therefore, construes this most recent motion as a motion to dismiss the two remaining defendants, Zavaras and Voth, pursuant to Federal Rule of Civil Procedure 41(a)(2).

Because the Court concludes that such a dismissal is proper, the motion will be granted.

Accordingly, it is

ORDERED that plaintiff Paul Deschaine's motion for reconsideration [Docket No. 102] is DENIED. It is further

ORDERED that plaintiff Paul Deschaine's motion to voluntarily dismiss defendants Zavaras and Voth [Docket No. 112] is GRANTED. It is further

ORDERED that the Clerk of the Court shall forthwith enter Final Judgment in favor of defendants Scott McLaughlin, Aristedes W. Zavaras, and Paul L. Voth and against plaintiff Paul Deschaine.

DATED May 10, 2010.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge