

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

Civil Action No. 08-cv-02107-PAB-MJW

JOHN DAVIS,

Plaintiff,

v.

CITY OF AURORA, a Home Rule Municipality,
by and through its governing body the City Council,
DANIEL J. OATES, individually and in his official capacity as Chief of Police,
ED TAUER, individually and in his official capacity as Mayor,
DANIEL BYRD, individually,
ERIC BUGGE, individually,
JEREMY SEXTON, individually,
GENNIFER WOLF, individually,
JILL BILL, individually,
MICHAEL WOODYARD, individually, and
DONALD AINSWORTH, individually,

Defendants.

ORDER

This matter is before the Court on the Stipulation for Dismissal with Prejudice [Docket No. 198] filed by plaintiff John Davis and defendant Donald Ainsworth wherein those parties stipulate to the dismissal of this case as to Mr. Ainsworth only.

Pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure,¹ the parties may voluntarily dismiss a case without a court order by filing: “(i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment;

¹ The parties’ stipulation cites “Rule 41(a)(1)(B), Colorado Rules of Civil Procedure.” Docket No. 198 at 1. The Court assumes this is due to a clerical error and for the purposes of this Order the Court will construe the parties stipulation as seeking dismissal pursuant to Fed. R. Civ. P. 41(a)(1)(B).

or (ii) a stipulation of dismissal signed by all parties who have appeared.” Fed. R. Civ. P. 41(a)(1)(A). Mr. Ainsworth has filed an answer, Docket No. 22, and all of the parties who have appeared in the case have not signed the stipulation. Docket No. 198 at 2. Therefore, Rule 41(a)(1)(A) is inapplicable.

Nevertheless, Rule 41(a)(2) allows for the dismissal of all claims against a particular defendant. Accordingly, the Court construes the stipulation as a motion to dismiss all claims against defendant Donald Ainsworth pursuant to Rule 41(a)(2).

Therefore, it is

ORDERED that the Stipulation for Dismissal with Prejudice [Docket No. 198] is **CONVERTED** into a Rule 41 Motion for Dismissal with Prejudice and is **GRANTED**. It is further

ORDERED that, pursuant to Fed. R. Civ. P. 41(a), all of plaintiff’s claims against defendant Donald Ainsworth are dismissed with prejudice, with each party to bear his own attorney’s fees and costs. It is further

ORDERED that this case shall be closed in its entirety.

DATED December 22, 2011.

BY THE COURT:

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