

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 08-cv-02622-BNB

THERESA GARCIA,

Plaintiff,

v.

ALVIN LaCABE,
DEPUTY SHERIFF KESSLER,
DEPUTY SHERIFF CASADOS,
DEPUTY SHERIFF GONZALEZ,
JANE DOES I THROUGH X,
JOHN DOES I THROUGH X, and
BILL LIVINGIER,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

JAN 15 2009

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

At the time Plaintiff Theresa Garcia initiated the instant action, she was in the custody of the Colorado Department of Corrections and was incarcerated at the LaVista Correctional Facility in Pueblo, Colorado. On December 12, 2008, she submitted to the Court a Change of Address indicating that she no longer is incarcerated.

Ms. Garcia initiated this action by filing a *pro se* Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. In an order entered on December 15, 2008, Magistrate Judge Boyd N. Boland instructed Ms. Garcia that because she no longer is incarcerated she is obligated to pay the filing fee like any nonprisoner, solely on the basis of whether she qualifies for *in forma pauperis* status. *See Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir.

1997); *see also McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2^d Cir. 1996).

Magistrate Judge Boland ordered Plaintiff either to submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, or in the alternative to pay the \$350.00 filing fee in full if she desired to pursue her claims in this action.

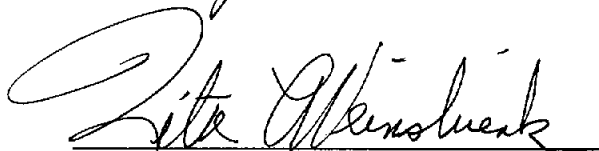
Plaintiff was warned that the action would be dismissed without further notice if she failed to comply with the December 15, 2008, Order within the time allowed.

Plaintiff now has failed to communicate with the Court, and as a result she has failed to comply with Magistrate Judge Boland's December 15, 2008, Order within the time allowed. Accordingly, it is

ORDERED that the action is dismissed without prejudice because Plaintiff failed to prosecute and to comply with the December 15, 2008, Order within the time allowed.

DATED at Denver, Colorado, this 14 day of January, 2009.

BY THE COURT:


ZITA L. WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 08-cv-02622-BNB

Theresa Garcia
4211 ½ S. Acoma St.
Englewood, CO 80113

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the above-named individuals on 1/15/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk