

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO  
Judge Christine M. Arguello**

Civil Action No. 09-cv-01466-CMA-BNB

MICHAEL GENE YOUNG,

Plaintiff,

v.

SGT. FRANKMORE, and  
CO. PEARSON,

Defendants.

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**ORDER GRANTING PLAINTIFF'S MOTION TO DISMISS WITHOUT PREJUDICE**

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This matter is before the Court on Plaintiff's Motion to Dismiss this action without prejudice (Doc. #29). Plaintiff, a *pro se* prisoner and inmate at a Colorado state correctional facility, filed this 42 U.S.C. § 1983 action against Defendants, employees of the state facility, for alleged "Cruel and Unusual Punishment, Malicious & Sadistic Use of Force" arising from an alleged confrontation concerning Plaintiff's sunglasses. Plaintiff now seeks to withdraw this action because of medical conditions which presently render him unable to prosecute this action.

The Court notes that, at this juncture in the proceedings, Plaintiff may dismiss his action without leave of court. See F. R. Civ. P. 41(a) (a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party serves an answer or a motion for summary judgment). No answer or motion for summary

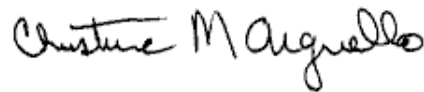
judgment has been filed in this case. Rather, Defendants filed a Motion to Dismiss on October 9, 2009 (Doc. # 17). However, a motion to dismiss does not affect a plaintiff's right to voluntarily dismiss his lawsuit. See *Muller v. TSC Indus.*, No. 92-4084, 1992 WL 223766, at \*1 (D. Kan. Aug. 26, 1992). Further, Fed. R. Civ. P. 41 sets forth a "bright line rule" for voluntary dismissal and "does not provide discretion for the court to consider other reasons for preventing dismissal." *Id.*

Accordingly, for the foregoing reasons it is ORDERED that Plaintiff's Motion to Dismiss Without Prejudice (Doc. # 29) is GRANTED.

IT IS FURTHER ORDERED that this case is DISMISSED WITHOUT PREJUDICE.

DATED: February 02, 2010

BY THE COURT:



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CHRISTINE M. ARGUELLO  
United States District Judge