

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 09-cv-01740-ZLW

ANTHONY S. DEMBRY,

Applicant,

v.

PAM PLOUGHE, Acting Warden, and
THE ATTORNEY GENERAL OF THE STATE OF COLORADO,

Respondents.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 23 2009

GREGORY C. LANGHAM
CLERK

ORDER DENYING MOTION TO RECONSIDER

Applicant Anthony S. Demby is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado Territorial Correctional Facility. Mr. Demby filed a Letter with the Court on September 10, 2009, in which he challenges the Court's dismissal of this action for failure to pay the \$5.00 filing fee. The Court must construe the pleading liberally because Mr. Demby is a *pro se* litigant. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). The September 10, 2009, pleading, therefore, will be construed as a Motion to Reconsider and will be denied for the reasons stated below.

A litigant subject to an adverse judgment, and who seeks reconsideration by the district court of that adverse judgment, may "file either a motion to alter or amend the judgment pursuant to Fed. R. Civ. P. 59(e) or a motion seeking relief from the judgment pursuant to Fed. R. Civ. P. 60(b)." **Van Skiver v. United States**, 952 F.2d 1241, 1243

(10th Cir. 1991). Mr. Dembry filed the document within ten days after the Order of Dismissal and the Judgment was entered in the instant action. The Court, therefore, finds that the Motion to Reconsider is filed pursuant to Rule 59(e). **See *Van Skiver***, 952 F.2d at 1243.


On September 2, 2009, the Court dismissed this action because Mr. Dembry failed to pay the \$5.00 filing fee. On July 23, 2009, the Court determined that Mr. Dembry has \$268.66 in his inmate account and did not qualify to proceed pursuant to 28 U.S.C. § 1915 in this action. Mr. Dembry failed to communicate with the Court or to pay the \$5.00 fee within the time allowed.

In the Motion to Reconsider, Mr. Dembry asserts that he requested money to be withdrawn from his account on July 28, 2009, for payment to the Court. He also has attached to the Letter a copy of a "Request for Money Order" that he submitted to prison staff for the withdrawal of the \$5.00 from his inmate account for payment of the filing fee. To the extent Mr. Dembry asserts that he paid the \$5.00 filing fee, the financial division of the Court has no record of a check from Mr. Dembry that would have been applied for payment in the instant action. Mr. Dembry also has not provided to the Court a copy of a receipt from the Court verifying that he has made the payment. The Court, therefore, concludes that Mr. Dembry fails to demonstrate some reason why the Court should reconsider and vacate the September 2, 2009, Order of Dismissal. Mr. Dembry is reminded that the instant action was dismissed without prejudice, and he may, if he desires, seek to file a new action. Accordingly, it is

ORDERED that the September 10, 2009, Letter is construed as a Motion to Reconsider filed pursuant to Fed. R. Civ. P. 59(e) and is denied.

DATED at Denver, Colorado, this 21 day of Sept, 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. 09-cv-01740-BNB

Anthony S. Dembrey
Prisoner No. 104886
Colorado Territorial Corr. Facility
P.O. Box 1010
Cañon City, CO 81215-1010

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 9/23/09

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk