

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00158-BNB

CARL B. FORD, No. 013957,

Plaintiff,

v.

MR. LOVINGER, Under Sheriff, Denver Sheriff Department,
ROBERT STAUCH, Denver Deputy Sheriff, and
JAMES HERRERA, Deputy [sic] Deputy Sheriff,
All Defendant's [sic] in There [sic] Official and Ind[i]vidual Capacitys [sic],

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

APR 19 2010

GREGORY C. LANGHAM
CLERK

ORDER GRANTING MOTION TO RECONSIDER AND REINSTATING CASE

Plaintiff, Carl B. Ford, filed *pro se* on April 12, 2010, a document titled "Motion to Order and Requesting Court to Intervene" asking the Court to reconsider and vacate the Order of Dismissal and the Judgment filed in this action on April 2, 2010. The Court must construe the document liberally because Mr. Ford is proceeding *pro se*. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). For the reasons stated below, the document will be construed liberally as a motion to reconsider, and the motion will be granted.

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). A motion to reconsider pursuant to Rule 59(e) must be filed no later

than twenty-eight days after entry of the judgment. **See** Fed. R. Civ. P. 59(e).

Mr. Ford's motion to reconsider in this action, which was filed within twenty-eight days of the Order of Dismissal and the Judgment, will be considered pursuant to Fed. R. Civ. P. 59(e). The three major grounds that justify reconsideration are: (1) an intervening change in the controlling law; (2) the availability of new evidence; and (3) the need to correct clear error or prevent manifest injustice. **See *Servants of the Paraclete v. Does***, 204 F.3d 1005, 1012 (10th Cir. 2000).

On February 22, 2010, Mr. Ford submitted to the Court a copy of his trust fund account statement with a notary public stamp by William H. Walters. On April 2, 2010, the Court dismissed this action without prejudice for Mr. Ford's failure, within the time allowed, to file a certified copy of his trust fund account statement from the appropriate prison official for the six-month period immediately preceding this filing. In his motion to reconsider, Mr. Ford clarifies what Mr. Walters failed to do on the February 22 statement, *i.e.*, explains that Mr. Walters is both a notary public and the appropriate prison official to provide him with the six-month certified account statement.

Upon consideration of the motion to reconsider and the entire file, the Court finds that circumstances exist that justify a decision to reconsider and vacate the order dismissing this action. Because Mr. Ford failed to cure a deficiency in this action due to an error by his case manager, an error outside of his control, the Court finds that the case must be reopened in order to prevent manifest injustice to Mr. Ford. **See *Servants of the Paraclete***, 204 F.3d at 1012. Therefore, the motion to reconsider will be granted. Accordingly, it is

ORDERED that the document titled "Motion to Order and Requesting Court to Intervene," which the Court has construed liberally as a Fed. R. Civ. P. 59(e) motion, is granted. It is

FURTHER ORDERED that the April 2, 2010, dismissal order and judgment are vacated. It is

FURTHER ORDERED that the Clerk of the Court is directed to reinstate and return this action to the *pro se* docket. It is

FURTHER ORDERED that Mr. Ford will be granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 by separate order.

DATED at Denver, Colorado, this 16th day of April, 2010.

BY THE COURT:



CHRISTINE M. ARGUELLO
United States District Judge, for
ZITA LEESON WEINSHIENK, Senior Judge
United States District Court

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

CERTIFICATE OF MAILING

Civil Action No. 10-cv-00158-BNB

Carl B. Ford
Prisoner No. 013957
Denver County Jail
P.O. Box 1108
Denver, CO 80201

I hereby certify that I have mailed a copy of the **ORDER** to the above-named individuals on 4/19/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk