

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-00755-PAB

STEVE APODACA,

Plaintiff,

v.

ARISTEDES W. ZAVARAS, Executive Director of CDOC,
SUSAN JONES, CDOC Warden, C.S.P.,
WILLIAM CLASPELL, Investigator for Inspector General's Office, CDOC,
DR. PEGGY STEELE, CDOC Mental Health Therapist,
DR. JOSEPH W. WRIGHT, CDOC Medical Doctor,
DR. JAMES MICHAUD, Chief of Mental Health, CDOC,
JAMES A. OLSON, Case Manager III, CDOC,
DR. JOHN E. WESTCOT, CDOC Psychiatrist,
ZITA L. WEINSHIENK, U.S. District Judge, and
KATHLEEN BOYD, CDOC Nurse Practitioner,

Defendants.

AMENDED ORDER DENYING MOTION FOR EXTENSION OF TIME TO APPEAL,
TREATING *IN FORMA PAUPERIS* MOTION AS NOTICE OF APPEAL, AND
GRANTING MOTION FOR CLARIFICATION

Plaintiff, Steve Apodaca, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Colorado State Penitentiary in Cañon City. In an order filed on October 18, 2010, the Court dismissed the amended complaint, as amended, and the instant action without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for Plaintiff's failure to comply with the pleading requirements of Fed. R. Civ. P. 8.

On November 15, 2010, Mr. Apodaca filed in one document motions titled "Motion to Proceed In Forma Pauperis on Appeal," "Motion Requesting Extension of

Time to File Notice of Appeal,” and “Motion Requesting Clarification of Court’s Order of Dismissal Filed on October 18, 2010.” The Court must construe Mr. Apodaca’s filings liberally because he is representing himself. **See Haines v. Kerner**, 404 U.S. 519, 520-21 (1972); **Hall v. Bellmon**, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be the **pro se** litigant’s advocate. **Hall**, 935 F.2d at 1110. For the reasons stated below, the motion for an extension of time to file a notice of appeal will be denied, the motion for leave to proceed **in forma pauperis** on appeal will be treated as a notice of appeal, and the motion for clarification of the October 18 dismissal order will be granted.

Mr. Apodaca has filed his motion for extension of time in a timely manner. **See** Fed. R. App. P. 4(a)(5)(i), 4(a)(1). However, he fails to show excusable neglect or good cause. **See** Fed. R. App. P. 4(a)(5)(ii). Therefore, the motion for extension of time will be denied. The motion for leave to proceed **in forma pauperis** on appeal will be treated as a notice of appeal. Mr. Apodaca will be ordered to cure the deficiencies in his appeal by separate order.

In the motion for clarification, Mr. Apodaca asks whether he may appeal from the October 18 dismissal order and pursue his claims by initiating a new and separate action. The motion for clarification will be granted. Because the instant action was dismissed without prejudice, Mr. Apodaca may pursue his appeal in the instant action and pursue his claims by initiating a new action in this Court.

Accordingly, it is

ORDERED that the “Motion Requesting Extension of Time to File Notice of Appeal” is denied. It is

FURTHER ORDERED that the “Motion to Proceed In Forma Pauperis on Appeal” is treated as a notice of appeal. It is

FURTHER ORDERED that Plaintiff, Steve Apodaca, will be ordered to cure the deficiencies in his appeal by separate order. It is

FURTHER ORDERED that “Motion Requesting Clarification of Court’s Order of Dismissal Filed on October 18, 2010” is granted.

DATED at Denver, Colorado, this 19th day of November, 2010.

BY THE COURT:

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