

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-01202-BNB

CHARLES ROBERT SHEPARD,

Plaintiff,

v.

STATE OF COLORADO, INC.,
ARAPAHOE COUNTY DISTRICT COURT, INC., and
COLORADO DEPARTMENT OF CORRECTIONS, INC.,

Defendants.

FILED
UNITED STATES DISTRICT COURT
DENVER, COLORADO

SEP 14 2010

GREGORY C. LANGHAM
CLERK

ORDER OF DISMISSAL

Plaintiff, Charles Robert Shepard, is a prisoner in the custody of the Colorado Department of Corrections (DOC). Mr. Shepard initiated this action by filing *pro se* a document titled "Petition of Removal and Complaint In Rem, With Arrest of the Vessel Supported by Affidavit, for Possession of the Vessel Wrongfully Taken Under Rule D and Request for Exoneration and Liability Under Rule F." On July 28, 2010, Mr. Shepard filed a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915.

On August 4, 2010, Magistrate Judge Boyd N. Boland entered an order granting the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and allowing Mr. Shepard to proceed *in forma pauperis* in this action. Pursuant to § 1915(b)(1), Magistrate Judge Boland ordered Mr. Shepard either to pay an initial partial filing fee of \$27.00 or to show cause why he has no assets and no means by which to

pay the initial partial filing fee. In order to show cause, Mr. Shepard was directed to file a current certified copy of his inmate trust fund account statement. Mr. Shepard was warned that the complaint and the action would be dismissed without further notice if he failed either to pay the initial partial filing fee or to show cause within thirty days.

According to the certified account statement submitted in support of the motion seeking leave to proceed *in forma pauperis*, the balance in Mr. Shepard's inmate account on July 20, 2010, was \$97.21, and the available balance was \$32.57.

On August 23, 2010, Mr. Shepard filed a document titled "Request for Stay of Execution Pending Exigent Decision on Procedural Estoppel" arguing that he cannot pay the initial partial filing fee within the time allowed because of the DOC banking procedures. Mr. Shepard also alleges in the document filed on August 23 that payment of the filing fee would create a hardship because of his medications, medical clothing, and other obligations, and he states that he would be willing to consider a more reasonable payment plan.

On September 1, 2010, Mr. Shepard filed a document titled "Objection to Order, and Complaint in Rem as Estoppel on the Record and for Judicial Notice With Attached Interrogatory and Demand for Finding of Fact and Conclusion of Law Pursuant to F.R.Cv.P. Rule C(6)(b)" arguing that requiring him to pay a filing fee violates his constitutional rights to due process and access to the courts. Those arguments lack merit. *See Shabazz v. Parsons*, 127 F.3d 1246, 1248-49 (10th Cir. 1997) (upholding constitutionality of filing fee provisions of Prison Litigation Reform Act).

Mr. Shepard has failed within the time allowed either to pay the initial partial filing fee or to show cause as directed why he is unable to pay the initial partial filing fee.

Although Mr. Shepard alleges in the document filed on August 23 that paying the initial partial filing fee would impose a hardship, he has not submitted a current certified copy of his inmate trust fund account statement to demonstrate that he is unable to pay the initial partial filing fee. Therefore, the instant action will be dismissed. Accordingly, it is

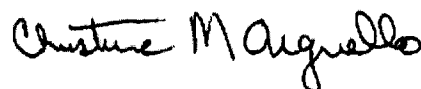
ORDERED that the "Petition of Removal and Complaint In Rem, With Arrest of the Vessel Supported by Affidavit, for Possession of the Vessel Wrongfully Taken Under Rule D and Request for Exoneration and Liability Under Rule F" is denied. It is

FURTHER ORDERED that the Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiff failed within the time allowed either to pay the initial partial filing fee or to show cause as directed why he was unable to pay the initial partial filing fee. It is

FURTHER ORDERED that the "Request for Stay of Execution Pending Exigent Decision on Procedural Estoppel" filed on August 23, 2010, is denied as moot.

DATED at Denver, Colorado, this 13th day of September, 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-01202-BNB

Charles Robert Shepard
Reg. No. 99669
Fort Lyon Corr. Facility
P.O. Box 1000
Ft. Lyon, CO 81038

I hereby certify that I have mailed a copy of the **ORDER AND JUDGMENT** to the
above-named individuals on 9/14/10

GREGORY C. LANGHAM, CLERK

By: 

Deputy Clerk