

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 10-cv-02691-LTB

DOUGLAS BURNS,

Plaintiff,

v.

SGT. STACEY BUFORD,
JOHN DOE, Colorado Attorney General,
R. N. WOLFF,
LT. M. MEEHAN,
TED LAURANCE, P.A.,
DR. AASEN,
DR. VAHIL,
P.A. TEJINDER SINGH,
NURSE OR P.A.'S JOHN AND JANE DOE'S at DWCF Infirmary,
RUDY HERRERA, and
JOHN DAVIS,

Defendants.

ORDER DIRECTING PLAINTIFF TO SUPPLEMENT THE RECORD

Plaintiff, Douglas Burns, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the Arkansas Valley Correctional Facility in Crowley, Colorado. Mr. Burns initiated this action by filing *pro se* a prisoner complaint pursuant to 28 U.S.C. § 1343, 42 U.S.C. § 1983, and other statutory authority. He asked for declaratory relief and money damages, among other relief. He was granted leave to proceed pursuant to the federal *in forma pauperis* statute, 28 U.S.C. § 1915.

On February 7, 2011, the Court ordered Mr. Burns to file within thirty days an amended complaint that complied with the pleading requirements of Rule 8 of the

Federal Rules of Civil Procedure. See ECF No. 9. In an order of March 15, 2011 (ECF No. 10), the Court dismissed the complaint (ECF No. 3) and the action without prejudice for failure to (1) pay the initial partial filing fee or show cause why he was unable to do so; (2) file an amended complaint that complied with Fed. R. Civ. P. 8 and the directives of the February 7 order for an amended complaint; and (3) for failure to prosecute. Judgment was entered on the same day. On May 27, 2011, the Court entered a minute order explaining that the case had been dismissed and denying all of Mr. Burns' motions as moot. On June 8, 2011, the Court denied Mr. Burns' motion to reconsider. See ECF No. 29. On June 16, 2011, the Court entered an amended order denying reconsideration. See ECF No. 31.

Mr. Burns appealed to the United States Court of Appeals for the Tenth Circuit (Tenth Circuit). On November 29, 2011, the Tenth Circuit vacated the May 27 order insofar as it denied the Fed. R. Civ. P. 60(b) motion and the amended June 16 order in its entirety, and remanded the case for this Court to consider Mr. Burns' motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure after Mr. Burns has been allowed to submit his evidence supporting his claim of non-receipt of the February 7 order to file an amended complaint.

Therefore, Mr. Burns will be directed within thirty days from the date of this order to submit his evidence supporting his claim of non-receipt of the February 7 order. If Mr. Burns fails to supplement the record as directed within the time allowed, the Court will consider the Fed. R. Civ. P. 60(b) motion without such evidence.

This matter also is before the Court on four pending motions Mr. Burns filed on January 17, 2012. In the "Motion to Waive Filing Fee or Monthly Payment" (ECF No.

44) and “Supplemental Motion to Proceed In Forma Pauperis Under the Original 28 U.S.C. § 1915 and Waive the Filing Fees” (ECF No. 46) Mr. Burns asks to waive the filing fee or monthly payment. Mr. Burns was informed in the order of November 4, 2010 (ECF No. 2), which granted him leave to proceed *in forma pauperis* pursuant to § 1915, that he would be required to pay the full amount of the \$350.00 filing fee through monthly payments or show cause each month as directed in the November 4 order why he has no assets and no means by which to make the monthly payment. If Mr. Burns is unable to make a monthly payment, he has the option to show cause as directed why he is unable to do so. Therefore, the motions will be denied.

The “Motion to Proceed on the Original Record” (ECF No. 45) will be denied as premature. At this point in this case, Defendants have not yet been served. Therefore, Plaintiff need only submit originals to the Court of any documents he chooses or is directed to file. Finally, the “Tenative [sic] Motion for Subpoena’s [sic] at Court Expense” (ECF No. 47) also will be denied as premature.

Accordingly, it is

ORDERED that Plaintiff, Douglas Burns, **within thirty (30) days from the date of this order**, supplement the record by submitting his evidence supporting his claim of non-receipt of the order of February 7, 2011, directing him to file an amended complaint. It is

FURTHER ORDERED that, if Mr. Burns fails to supplement the record as directed within the time allowed, the Court will consider the motion pursuant to Rule 60(b) of the Federal Rules of Civil Procedure without such evidence. It is

FURTHER ORDERED that the “Motion to Waive Filing Fee or Monthly Payment” (ECF No. 44) and “Supplemental Motion to Proceed In Forma Pauperis Under the Original 28 U.S.C. § 1915 and Waive the Filing Fees” (ECF No. 46), both of which Plaintiff, Douglas Burns, filed on January 17, 2012, are denied. It is

FURTHER ORDERED that the “Motion to Proceed on the Original Record” (ECF No. 45) and the “Tenative [sic] Motion for Subpoena’s [sic] at Court Expense” (ECF No. 47), both of which Mr. Burns filed on January 17, 2012, are denied as premature.

DATED at Denver, Colorado, this 13th day of February, 2012.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
United States District Court