

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Honorable Marcia S. Krieger

Civil Action No. 10-cv-02815-MSK-MJW

GARY LENSKY, an individual;
RAFI CANETI, an individual; and
ZACHARY PEDIGO, an individual,

Plaintiffs,

v.

COUNTY OF HUERFANO, COLORADO, a political subdivision of the State of Colorado;
BRUCE NEWMAN, Sheriff of Huerfano County, Colorado, in his personal and official
capacity;
KEVIN VALLEJOS, Deputy Sheriff of Huerfano County, Colorado, in his personal capacity;
HANK MARTIN, Deputy Sheriff of Huerfano County, Colorado, in his personal capacity;
RAY WALSH, Dpeuty Sheriff of Huerfano Coutny, Colorado, in his personal capacity;
ROGER CAIN, Commissioner of Huerfano County, Colorado, in his personal and official
capacity; and
NICK ARCHULETTA, Road and Bridge Supervisor of Huerfano County, Colorado, in his
personal and official capacity,

Defendants.

ORDER DISMISSING ALL CLAIMS

This matter comes before the Court on the Plaintiffs’ Motion to Dismiss Without Prejudice (#12), to which no response has been filed. The Plaintiffs initiated this action in November 2010 by filing a Complaint (#1). The Plaintiffs have not served any Defendant in this action as of this date. On motion by the Plaintiffs (#9), the Court ordered (#11) that the Plaintiffs could effectuate service either through the waiver provisions of Fed. R. Civ. P. 4(d) or by the United States Marshal Service pursuant to Fed. R. Civ. P. 4(c)(3). The Plaintiffs now represent that they are unable to comply with their duties to prosecute the action and request that the action

be dismissed with prejudice.

Pursuant to Fed. R. Civ. P. 41(a)(1), a plaintiff may dismiss an action without a court order by filing a notice of dismissal before the opposing party has served either an answer or a motion for summary judgment. This is exactly the situation here. No defendant has filed an answer or a motion for summary judgment; in fact, no defendant has been served. All three of the Plaintiffs have signed the motion for voluntary dismissal (#12). Although a notice of dismissal is effective without action by the Court, because the Plaintiffs have filed the notice as a motion, the Court addresses it here.

IT IS ORDERED that

- (1) The Plaintiffs' Motion to Dismiss Without Prejudice (#12) is **GRANTED**.
- (2) Pursuant to Fed. R. Civ. P. 41(a)(1), all of the claims in this action are **DISMISSED WITHOUT PREJUDICE**.
- (3) The Clerk of Court is directed to close this case.

Dated this 7th day of June, 2011

BY THE COURT:



Marcia S. Krieger
United States District Judge