

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 11-cv-02459-BNB

GREGG PHILIP McMURTRY,

Plaintiff,

v.

AMANDA NICHOLE BEATTY,
MARK YURKY,
CELESTE M. QUINONES,
MICKEY HECKENBACH,
MICHAEL E. ANDERSON,
JOHN M. O'DELL,
DEBORAH C. ALLEN,
BECKY R. LUCERO, and
REBECCA L. OAKES,

Defendants.

ORDER OF DISMISSAL

At the time Plaintiff, Gregg Philip McMurtry, initiated the instant action, he was incarcerated at the Buena Vista Correctional Facility. On October 3, 2011, Plaintiff submitted a Notice of Change of Address to the Court indicating he no longer is incarcerated and now is residing in Denver, Colorado.

In an order entered on November 2, 2011, Magistrate Judge Boyd N. Boland instructed Plaintiff that because he no longer is incarcerated he is obligated to pay the filing fee like any nonprisoner, solely on the basis of whether he qualifies for *in forma pauperis* status. See *Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); see also *McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re*

Prison Litigation Reform Act, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996). Magistrate Judge Boland ordered Plaintiff either to submit an Amended Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, or in the alternative to pay the \$350.00 filing fee in full if he desired to pursue his claims in this action. Plaintiff was warned that the action would be dismissed without further notice if he failed to comply with the November 2 Order within the time allowed.

Plaintiff has failed to communicate with the Court and has failed to comply with Magistrate Judge Boland's November 2 Order within the time allowed. The action, therefore, will be dismissed.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma pauperis* status will be denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he must also pay the full \$455 appellate filing fee or file a motion to proceed *in forma pauperis* in the United States Court of Appeals for the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24.

Accordingly, it is

ORDERED that the Complaint and action are dismissed pursuant to Fed. R. Civ. P. 41(b) because Plaintiff failed to comply with the order entered on November 2, 2011, within the time allowed. It is

FURTHER ORDERED that the Complaint and action are dismissed without prejudice. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied.

DATED at Denver, Colorado, this 13th day of December, 2011.

BY THE COURT:

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