

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00160-BNB

GUY THEMIS,

Plaintiff,

v.

MR. BIVENS, Acting Corrections Officer at S.C.F., Individual and Official Capacity,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Guy Themis, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado Territorial Correctional Facility in Canon City, Colorado. Mr. Themis initiated this action by submitting to the Court a *pro se* Prisoner Complaint pursuant to 42 U.S.C. § 1983 and a Motion and Affidavit for Leave to Proceed Under 28 U.S.C. § 1915 on January 20, 2012.

On February 2, 2012, Magistrate Judge Boyd N. Boland ordered Mr. Themis to cure a deficiency in this action by filing a certified copy of his prisoner's trust fund statement for the 6-month period immediately preceding the filing. Mr. Themis submitted a certified trust fund statement on February 10, 2012. Magistrate Judge Boland granted him leave to proceed *in forma pauperis* by order dated February 13, 2012.

The February 13 Order requires Mr. Themis to pay the full amount of the \$350.00 filing fee in installments and directs him to pay an initial partial filing fee of \$13.00 within thirty days or to show cause why he has no assets and no means to pay the initial fee

by filing a current certified copy of his trust fund account statement. The Order warns Mr. Themis that if he fails to have the initial partial filing fee sent to the Clerk of the Court by the designated deadline or to show cause why he has no assets and no means by which to pay the initial fee the Complaint would be dismissed without further notice.

Mr. Themis has not communicated with the Court since February 10, 2012. Mr. Themis has now failed either to pay the initial partial filing fee within the time allowed, as designated in the February 13 Order, or in the alternative to show cause why he has no assets and no means by which to pay the designated fee. Therefore, the action will be dismissed for failure to comply with Magistrate Judge Boland's February 13 Order.

Finally, the Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this order would not be 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 Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for Mr. Themis' failure either to pay an initial partial filing fee of \$13.00 or to show cause why he has no assets and no means by which to pay the designated fee. It is

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

DATED at Denver, Colorado, this 22nd day of March, 2012.

BY THE COURT:

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