

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-00673-BNB

CLAUDE McCLAIN,

Plaintiff,

v.

BLAKE R. DAVIS, Warden,
ASST WARDEN,
A. BARKER, Unit Manager,
S. BEICKER, Case Manager,
S. CEDENO, Unit Counselor,
C. PORCKO, Unit Case Manager,
B. VAUGHN, Medical Administrator, Records Only, and
DR. SAVER, ADX,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Claude McClain, is in the custody of the United States Bureau of Prisoner and currently is incarcerated at the Florence Federal Prison Camp in Florence, Colorado. Mr. McClain, acting *pro se*, initiated this action by filing a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. In an order entered on April 25, 2012, Magistrate Judge Boyd N. Boland granted Mr. McClain leave to proceed pursuant to § 1915 and instructed him to pay a \$.50 initial partial filing fee. Magistrate Judge Boland also instructed Mr. McClain that if he is unable to pay the initial partial filing fee he must file a current certified account statement that shows cause why he has no assets and no means by which to pay the fee.

Magistrate Judge Boland warned Mr. McClain that the action would be dismissed without further notice if either he failed to pay the initial partial fee within thirty days or in the alternative he failed to show cause why he is unable to do so. On May 1, 2012, Mr. McClain filed two letters and a certified prisoner trust fund account statement. The statement indicated Mr. McClain had an available balance of \$47.25 on March 29, 2012. Mr. McClain also stated in one of the letters that he was sending a \$1.00 postage stamp as payment of the initial partial filing fee.

Neither the letters nor the March 29 account statement comply with the April 25 Order. The account statement is not current, but even if it were, Mr. McClain has failed to show cause why he is unable to pay the initial partial filing fee when his account statement shows he has a balance of \$47.25. Furthermore, Mr. McClain cannot pay any part of the filing fee with postage stamps. Also, Mr. McClain's cost to mail correspondence to the Court does not offset the filing fee that is owed. The action will be dismissed without prejudice for failure to comply with the April 25 Order.

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 Mr. McClain files a notice of appeal he must also pay the full \$455.00 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 without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure either to pay the initial partial filing fee or in the alternative to show cause. It is

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

FURTHER ORDERED that all pending motions are denied as moot

DATED at Denver, Colorado, this 4th day of June, 2012.

BY THE COURT:

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