

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01844-BNB

LARRY C. MILLER,

Plaintiff,

v.

MR. BURL McCLELLAR, ACC/SOTMP (SOTMP Manager),
MR. SAMUEL DUNLAP, ACC/SOTMP (SOTMP Program Director),
MR. BRIAN KOCH, ACC/SOTMP (Primary Therapist),
MR. THOMAS OHLIN, ACC/SOTMP (Asst. Director),
MISS REEVIS, ACC/SOTMP Therapist,
MRS. MARQUEZ, ACC/SOTMP Therapist,
CO. SEXUAL OFFENDER MANAGEMENT BOARD, and
COLORADO DEPARTMENT OF CORRECTIONS (Tom Clements Executive Director),

Defendants.

ORDER DISMISSING CASE

Plaintiff, Larry C. Miller, is a prisoner in the custody of the Colorado Department of Corrections (DOC). On September 10, 2012, Mr. Miller filed *pro se* a Prisoner Complaint (ECF No. 12) asserting claims arising out of his termination from the DOC sex offender treatment program. On October 2, 2012, Magistrate Judge Boyd N. Boland ordered Mr. Miller to file an amended Prisoner Complaint that clarifies the claims he is asserting in this action. On October 15, 2012, Mr. Miller filed a letter to the Court (ECF No. 17) in which he asks to terminate this lawsuit so that he can devote his attention to another lawsuit he recently filed. See *Miller v. Clements*, No. 12-cv-02677-BNB (D. Colo. filed Oct. 9, 2012).

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Miller

“may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” No response has been filed by any Defendant in this action. Therefore, the Court will construe Mr. Miller’s October 15 letter as a notice of voluntary dismissal. A voluntary dismissal pursuant to Rule 41(a)(1)(A) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. See J. Moore, Moore’s Federal Practice ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. See *Hyde Constr. Co.*, 388 F.2d at 507. Accordingly, it is

ORDERED that Plaintiff’s letter to the Court (ECF No. 17) filed on October 15, 2012, is construed as a notice of voluntary dismissal. It is

FURTHER ORDERED that the instant action is dismissed without prejudice pursuant to Plaintiff’s notice of voluntary dismissal. It is

FURTHER ORDERED that the voluntary dismissal is effective as of October 15, 2012, the date the notice of voluntary dismissal was filed in this action.

DATED at Denver, Colorado, this 17th day of October, 2012.

BY THE COURT:

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