

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-01897-BNB

STEPHEN THENE SPARKS,

Plaintiff,

v.

TEJINDER SINGH, Physician Assistant,
LISA HANKS, Nurse,
TED LAWRENCE, Physician Assistant/Acting Health Service Administrator,
MICHAEL AASEN, MD,
ROBBIE QUICK, Health Service Administrator, and
TOM CLEMENTS, C.D.O.C.

Defendants.

ORDER

Plaintiff, Stephen Thene Sparks, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Fremont Correctional Facility in Cañon City, Colorado. Mr. Sparks, acting *pro se*, initiated this action by filing a Prisoner Complaint. On July 25, 2012, Mr. Sparks was granted leave to proceed pursuant to 28 U.S.C. § 1915 and was instructed to pay a \$3.00 initial partial filing fee, which he did on August 20, 2012.

Pursuant to § 1915(b)(2), Mr. Sparks is “required to make monthly payments of 20 percent of the preceding month’s income credited to his account” until the filing fee is paid in full. In the Court’s July 25 Order, Mr. Sparks was instructed either to make the required monthly payments or to show cause each month why he has no assets and no means by which to make the monthly payment. In order to show cause, Mr. Sparks was directed to file a current certified copy of his inmate trust fund account statement. Mr.

Sparks was warned that a failure to comply with the requirements of § 1915(b)(2) would result in the dismissal of this action.

Mr. Sparks did not submit a payment for September or October,¹ or in the alternative submit a current, certified account statement showing why he has no assets and no means to make the monthly payment. On November 2, 2012, the Court entered an order instructing Mr. Sparks to show cause by November 23, 2012, why this action should not be dismissed for failure to comply with the Court's July 25 Order and the requirements of § 1915(b)(2).

Mr. Sparks responded to the Order to Show Cause on November 13, 2012. In the response, he asserts that he has been paying down Case No. 06-1113 as ordered by this Court. He also asserts that he has been unemployed for the past four months due to two facility transfers and to complications he is having caused by a drug that he is taking for his diabetes. As a result, he claims that he is relying on family support to purchase a new typewriter and supplies in addition to needed hygiene items. Mr. Sparks also asserts he has attempted to comply with the Court's orders and requests that the Court accept his banking history in support that the CDOC is collecting the required fees.

Although the prison is automatically disbursing funds for payment in Case No. 06-1113, which is an appeal to the Tenth Circuit, in this case Mr. Sparks must make the arrangements for his monthly payment to the Court. It currently is not the prison's responsibility in this case either to automatically pay a monthly fee or to show cause

¹ The Court notes that Mr. Sparks has not made a payment for November or December or in the alternative shown cause why he is unable to make a monthly payment.

why Mr. Sparks is not able to do so. Nonetheless, given Mr. Sparks' apparent confusion and the Court's recent implementation of a new procedure requiring the prison to automatically disburse funds from inmate's accounts for payment of fees due to this Court, the Court will direct Mr. Sparks to complete the attached authorization form that allows the prison, in the future, to disburse a monthly payment from his account when funds are available. Once Mr. Sparks has signed and returned the authorization form to the Court, the Court will proceed to review the merits of Mr. Sparks' action. Accordingly, it is

ORDERED that the Order to Show Cause entered on November 2, 2012, is discharged. It is

FURTHER ORDERED that Mr. Sparks complete and return the attached authorization form to the Court within thirty days of the date of this Order. It is

FURTHER ORDERED that the Court will review the merits of Mr. Sparks' Complaint once the authorization form is returned. It is

FURTHER ORDERED that if Mr. Sparks fails to submit the authorization form within the time allowed the Court will once again consider dismissal of the action for failure to comply with 28 U.S.C. § 1915(b).

DATED December 27, 2012, at Denver, Colorado.

BY THE COURT:

s/ Boyd N. Boland
United States Magistrate Judge

Attachment

AUTHORIZATION

I, _____, request and authorize the agency holding me in custody to calculate and disburse funds from my inmate trust fund account or institutional equivalent in the amounts specified by 28 U.S.C. § 1915(b). This authorization is furnished in connection with this civil action and I understand that the total filing fee of \$350.00 is due and will be paid from my inmate trust fund account or institutional equivalent regardless of the outcome of this case.

Prisoner Name (please print): _____

Prisoner Signature: _____