

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02360-BNB

CORRI DITTIMUS, a/k/a DERRICK ANDERSON,

Plaintiff,

v.

[NO DEFENDANT NAMED],

Defendant.

ORDER OF DISMISSAL

Plaintiff, Corri Dittimus, also known as Derrick Anderson, initiated this action by filing *pro se* a statutory notice of intent to sue (ECF No. 1) stating that he intended to file an action seeking damages for allegedly unconstitutional conditions of confinement. On September 5, 2012, Magistrate Judge Boyd N. Boland entered an order directing Mr. Dittimus to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland ordered Mr. Dittimus to file a Prisoner Complaint and either to pay the filing fee or to file a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 that is supported by a certified copy of his inmate trust fund account statement. Mr. Dittimus was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

On September 14, 2012, the copy of Magistrate Judge Boland's September 5 order that was mailed to Mr. Dittimus was returned to the Court undelivered because the inmate name, Corri Dittimus, and prisoner number did not match. That same day,

Magistrate Judge Boland entered a minute order directing the clerk of the Court to re-mail to Plaintiff, using both the name Corri Dittimus and the alias Derrick Anderson, a copy of Magistrate Judge Boland's September 5 order. Mr. Dittimus also was directed to cure the deficiencies within thirty days from the date of the minute order.

Mr. Dittimus has failed to cure the deficiencies within the time allowed because he has failed to file a Prisoner Complaint and he has failed either to pay the filing fee or to file a properly supported Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies.

Furthermore, 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 also must 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. Dittimus failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 24th day of October, 2012.

BY THE COURT:

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