

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02657-BNB

WILLIE T. HAYES,

Plaintiff,

v.

SCHERBARTH, Associate Warden,
JAMES FALK, Warden,
TOM CLEMMONS, Executive Director,
MAJOR REVORE,
MAJOR MICHELLE NYCHALLIGON,
LIEUTENANT HOFFMAN,
CASE MANAGER PETERSON,
BEV DOWIS, Medical Supervisor,
CASE MANAGER JOHN DOE, and
JENNIFER ANDERSON, Law Librarian, in their individual and official capacities,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Willie T. Hayes, was a prisoner in the custody of the Colorado Department of Corrections incarcerated at the Arkansas Valley Correctional Facility in Crowley, Colorado, when he initiated this action by filing *pro se* a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint. The Court since has learned that Mr. Hayes no longer is incarcerated and is residing at the St. Francis Center, 2323 Curtis Street, Denver, CO 80205.

On December 7, 2012, Magistrate Judge Boyd N. Boland entered an order (ECF No. 9) directing Mr. Hayes, since he no longer was incarcerated, either to pay the full \$350.00 filing fee or, alternatively, file on the Court-approved nonprisoner form a Motion

and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 within thirty days. Mr. Hayes has failed within the time allowed to comply with the December 7 order or otherwise to communicate with the Court in any way. Therefore, the complaint and the action will be dismissed.

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 Mr. Hayes files a notice of appeal he also must 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 Prisoner Complaint (ECF No. 1) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Willie T. Hayes, to comply within thirty days with the directives of the order of December 7, 2012, either by paying the full \$350.00 filing fee or, alternatively, filing on the Court-approved nonprisoner form a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915, and for his failure to prosecute. It is

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

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 17th day of January, 2013.

BY THE COURT:

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