

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-02998-BNB

JOSEPH JON DREISMEIER,

Plaintiff,

v.

TOM CLEMENTS (Executive Director CDOC),
JAMES FALK (Warden SCF),
RICHARD MISCHIARA (C/O IV at SCF),
C/O MCCORMICK (C/O III at SCF),
C/O CONEY (C/O II at SCF),
C/O BRUNKHARDT (C/O I at SCF), and
LARRY GRAHAM (Investigator for Inspector General's Office),

Defendants.

ORDER OF DISMISSAL

Plaintiff, Joseph Jon Dreismeier, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the correctional facility in Sterling, Colorado. Mr. Dreismeier initiated this action by filing *pro se* a civil rights complaint (ECF No. 1) for injunctive relief and money damages asserting claims pursuant to 42 U.S.C. § 1983 that his rights under the United States Constitution have been violated.

On December 7, 2012, he cured a deficiency in the case by filing an amended complaint (ECF No. 6) for money damages and injunctive relief in which the parties named in the caption matched the parties listed in the text. On December 27, 2012, Magistrate Judge Boyd N. Boland entered an order (ECF No. 12) directing Mr.

Dreismeier to file within thirty days a second amended complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure and alleged the personal participation of each named Defendant. Magistrate Judge Boland warned Mr. Dreismeier that the action would be dismissed without further notice if he failed within the time allowed to file a second amended complaint that complied with the December 27 order. On February 4, 2013, Magistrate Judge Boland granted by minute order (ECF No. 14) Mr. Dreismeier's request for an extension of time in which to file the second amended complaint. The February 4 minute order reminded Mr. Dreismeier that the action would be dismissed if he failed within the time allowed to file a second amended complaint in compliance with the December 27 order.

Mr. Dreismeier has failed to file a second amended complaint as directed in the December 27 order or otherwise communicate with the Court in any way within the time allowed. Therefore, the amended complaint and the action will be dismissed for Mr. Dreismeier's failure to file a second amended complaint as directed within the time allowed and for his failure to prosecute.

Finally, the Court certifies pursuant to § 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. Dreismeier 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 amended Prisoner Complaint (ECF No. 6) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Joseph Jon Dreismeier, within the time allowed, to file a second amended complaint as directed in the order of December 27, 2012 (ECF No. 11), 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 18th day of March, 2013.

BY THE COURT:

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