

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 12-cv-03366-BNB

LEO SIMMONS,

Plaintiff,

v.

TOM CLEMENTS, Executive Director (CDOC),
JAMES FALK, Warden, Sterling Correctional Facility, and
ANDREA WILSON, Time and Release/Tech III,

Defendants.

ORDER OF DISMISSAL

Plaintiff, Leo Simmons, is a *pro se* prisoner litigant currently detained at the Fremont County Detention Center in Cañon City, Colorado. On April 4, 2013, the Court denied Mr. Simmons leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915(g), because he has filed at least three actions that were dismissed as frivolous or for failure to state a claim, and he has failed to set forth specific allegations in this action of ongoing serious physical injury or a pattern of misconduct evidencing the likelihood of imminent serious physical injury. The Court instructed Mr. Simmons to pay the entire filing fee within thirty days if he wished to pursue his claims in this action. Mr. Simmons filed a Notice of Change of Address on May 10, 2013. On May 13, 2013, Mr. Simmons was granted a thirty-day extension of time to pay the fee. The Court again warned Mr. Simmons that if he failed to pay the filing fee within thirty days the Complaint and the action would be dismissed.

The envelope in which the May 13 Order was sent to Mr. Simmons was returned

to the Court on May 30, 2013, marked "Return to Sender." Pursuant to D.C.COLO.LCivR 10.1.M, a plaintiff has five days to notify the Court of a change of address. Mr. Simmons has failed to communicate with the Court regarding any further change of address. He also has not paid the filing fee in full within the time allowed. The Complaint and the action, therefore, will be dismissed.

Finally, the Court certifies that an appeal from this Order is not 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). Mr. Simmons 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 Complaint and the action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) because Mr. Simmons failed to pay the filing fee in full within the time allowed. It is

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

DATED at Denver, Colorado, this 19th day of June, 2013.

BY THE COURT:

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