

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00369-BNB

SHANE MCMILLAN,
ELLIS MOSHER, and
CHARLES HIPPS,

Applicants,

v.

DAVID BERKEBILE,

Respondent.

ORDER DISMISSING APPLICANT

Applicant Ellis Mosher and two others filed an Application for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2241 on February 11, 2013. On February 12, 2013, Magistrate Judge Boyd N. Boland ordered the Applicants to cure certain enumerated deficiencies in this action within thirty days.

On February 26, 2013, the Court entered an Order Dismissing Applicant Charles Hipps, pursuant to Rule 41(a)(1) of the Federal Rules of Civil Procedure.

On March 4, 2013, Applicant Ellis Mosher filed a Letter with the Court (ECF No. 13), requesting that this action “be immediately expunged from all court and computer records, as it was filed fraudulently, without my consent.” (*Id.*). The Court liberally construes the letter as a notice of voluntary dismissal pursuant to Fed. R. Civ. P. 41(a)(1).

Fed. R. Civ. P. 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either

an answer or a motion for summary judgment” No answer or motion for summary judgment has been filed by the Respondent in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. See J. Moore, Moore's Federal Practice ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The Letter, which the Court construes liberally as a notice of voluntary dismissal, therefore, is effective on March 4, 2013. Accordingly, it is

ORDERED that Applicant Ellis Mosher is dismissed as a party to this action pursuant to Fed. R. Civ. P. 41(a)(1). It is

FURTHER ORDERED that the voluntary dismissal is without prejudice and is effective as of March 4, 2013, the date Mr. Mosher filed ECF No. 13, which the Court construes liberally as a notice of voluntary dismissal.

DATED at Denver, Colorado, this 6th day of March, 2013.

BY THE COURT:

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