

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00899-BNB

PRESTON MICHAEL COUSETT,

Plaintiff,

v.

CORRECTIONAL CORPORATION OF AMERICA, actually named as C.C.A.,

Defendants.

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ORDER DISMISSING CASE

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Plaintiff, Preston Michael Cousett, is a Colorado Department of Corrections prisoner who is incarcerated at the Kit Carson Correctional Facility (KCCC) in Burlington, Colorado. He initiated this action by submitting a "Notice of Intent" complaining about the conditions of his confinement.

On April 9, 2013, Magistrate Judge Boyd N. Boland reviewed the submitted document and determined that it was deficient. Magistrate Judge Boland directed Mr. Cousett to file a Prisoner Complaint on the court-approved form within thirty days of the April 9 Order. (See Doc. # 3). Magistrate Judge Boland further ordered Mr. Cousett to file, within thirty days, a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the court-approved form, or pay the \$350.00 filing fee.

On May 3, 2013, Mr. Cousett filed a "Motion to Withdraw Without Prejudice" (Doc. # 4).

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 Defendants 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 motion, therefore, closes the file as of May 3, 2013. **See Hyde Constr. Co.**, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed 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 May 3, 2013, the date Plaintiff filed the Motion to Withdraw Without Prejudice in this action.

DATED at Denver, Colorado, this 9<sup>th</sup> day of May, 2013.

BY THE COURT:

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