

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-00935-BNB

KIMBERLY LE,

Plaintiff,

v.

STEVE FORSYTHE, and
JEFFERSON COUNTY DETENTION FACILITY SHERIFF (JOHN DOE)

Defendants.

ORDER OF DISMISSAL

Plaintiff, Kimberly Le, is a prisoner in the custody of the Colorado Department of Corrections who currently is incarcerated at the La Vista Correctional Facility in Pueblo, Colorado. She initiated the instant action by submitting *pro se* a Prisoner Complaint (ECF No. 1) and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 3).

The Court reviewed the documents and determined they were deficient. Therefore, on April 11, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Ms. Le to cure certain enumerated deficiencies in the case within thirty days if she wished to pursue her claims.

The April 11 order pointed out that Ms. Le failed to submit either the \$350.00 filing fee or a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the proper, Court-approved form, i.e., the current form revised October 1, 2012, with an authorization and certificate of prison official, together with a

certified copy of her trust fund account statement for the six-month period immediately preceding this filing obtained from the appropriate prison official. The order directed her to obtain, with the assistance of her case manager or the facility's legal assistant, the current Court-approved form for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. The April 11 order warned Ms. Le that if she failed to cure the designated deficiencies within thirty days, the action would be dismissed without prejudice and without further notice.

On April 29, 2013, Ms. Le submitted a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the current form together with a certified copy of her trust fund account statement for the six-month period immediately preceding this filing obtained from a prison official. However, she failed to complete and sign the authorization allowing the prison facility to calculate and disburse funds from her inmate trust fund account.

Ms. Le has failed to cure all the designated deficiencies within the time allowed. Therefore, the action will be dismissed without prejudice for Ms. Le's failure to cure the designated deficiencies as directed within the time allowed.

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 Ms. Le files a notice of appeal she 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 and action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Kimberly Le, to cure all the deficiencies designated in the order to cure of April 11, 2013, within the time allowed. 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 21st day of May, 2013.

BY THE COURT:

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