

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01708-BNB

RONALD DEAN GRAFF,

Plaintiff,

v.

BOBBY BONNER, Warden, KCCC/CCA,

Defendant.

ORDER OF DISMISSAL

Plaintiff, Ronald Dean Graff, is a prisoner in the custody of the Colorado Department of Corrections who was incarcerated at the Kit Carson Correctional Center in Burlington, Colorado, when he initiated the instant action by submitting *pro se* a 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), neither of which was on the Court-approved form. The § 1915 motion and affidavit included a certified copy of his trust fund account statement for the six-month period immediately preceding this filing obtained from the appropriate prison official. Mr. Graff has since informed the Court that he has been transferred to the correctional facility in Sterling, Colorado. See ECF No. 20.

The Court reviewed the documents and determined they were deficient. Therefore, on June 28, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 8) directing Mr. Graff to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The June 28 order pointed out that Mr. Graff failed to submit either the \$400.00 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. The June 28 order did not require him to submit a six-month certified account statement because he previously had done so. The June 28 order also directed him to file an amended Prisoner Complaint on the proper, Court approved form. The order further directed him to obtain, with the assistance of his case manager or the facility's legal assistant, the current Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and Prisoner Complaint. The June 28 order warned Mr. Graff that if he failed to cure the designated deficiencies within thirty days, the action would be dismissed without prejudice and without further notice.

On July 11, 2013, the Court entered an order including a directive that the clerk of the Court mail to Mr. Graff the current, Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and Prisoner Complaint because he alleged he was unable to obtain them. See ECF No. 11 at 2. The July 11 order also granted Mr. Graff an additional thirty days in which to cure the deficiencies designated in the June 28 order.

On July 31, 2013, Mr. Graff submitted an amended Prisoner Complaint (ECF No. 22) on the current, Court-approved form which lists his address as the Kit Carson Correctional Center, the facility from which he notified the Court he had been transferred. Also on July 31 he submitted an amended Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 21). However, the

amended motion and affidavit was not on the current form revised October 1, 2012, and failed to include a signed authorization allowing the prison facility to calculate and disburse funds from his inmate trust fund account.

Mr. Graff has failed to cure all the designated deficiencies within the time allowed. Therefore, the action will be dismissed without prejudice for Mr. Graff'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 Mr. Graff 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. 22) and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Ronald Dean Graff, to cure all the deficiencies designated in the order to cure of June 28, 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. It is

FURTHER ORDERED that the clerk of the Court mail a copy of this order to Mr. Graff at both the Sterling Correctional Facility and the Kit Carson Correctional Facility.

DATED at Denver, Colorado, this 23rd day of August, 2013.

BY THE COURT:

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