

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-01759-BNB

JOHN BIRD TAYLOR,

Plaintiff,

v.

BOBBY BONNER, Warden KCCC/CCA,

Defendant.

ORDER OF DISMISSAL

Plaintiff, John Bird Taylor, is a prisoner in the custody of the Colorado Department of Corrections (DOC) who currently is incarcerated at the Kit Carson Correctional Center in Burlington, Colorado. 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.

The Court reviewed the documents and determined they were deficient. Therefore, on July 3, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 9) directing Mr. Taylor to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The July 3 order pointed out that Mr. Taylor 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 July 3 order did not require him to submit a six-month certified account statement because he previously had done so. The July 3 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 July 3 order warned Mr. Taylor 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 31, 2013, Mr. Taylor submitted an amended Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 12). 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. Also on July 31 he submitted on the proper form an amended Prisoner Complaint (ECF No. 17). On August 16, 2013, Mr. Taylor submitted an objection (ECF No. 18) to the reference in the July 3 order to cure that he is in DOC custody.

The objection will be overruled. Whether or not he considers himself to be in DOC custody, Mr. Taylor still is required to cure all the designated deficiencies within the time allowed, and has failed to do so. Therefore, the action will be dismissed

without prejudice for Mr. Taylor'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. Taylor 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. 17) and action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, John Bird Taylor, to cure all the deficiencies designated in the order to cure of July 3, 2013, within the time allowed. It is

FURTHER ORDERED that the objection (ECF No. 18) is overruled. 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 23rd day of August, 2013.

BY THE COURT:

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