

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-cv-02029-BNB

WILLIAM ELLER,

Plaintiff,

v.

STEVE HARTLEY,
DARYL VIGIL,
RENEE APODACA,
MR. RICHA, [First] Name Unknown,
MR. POUNDS, [First] Name Unknown,
PENNY SPEARING, and
GLENN CLAUNCH,

Defendants.

ORDER OF DISMISSAL

Plaintiff, William Eller, was a prisoner in the custody of the Colorado Department of Corrections incarcerated at the correctional facility in Sterling, Colorado, when he initiated this action by filing *pro se* a Prisoner Complaint pursuant to 42 U.S.C. § 1983 (ECF No. 1). On August 21, 2013, he filed an identical Prisoner Complaint (ECF No. 9). He asks for money damages and declaratory and injunctive relief. On September 5, 2013, Mr. Eller informed the Court that he no longer is incarcerated. See ECF No. 18. He appears to be on mandatory parole. See ECF No. 7 at 2. Mr. Eller has been granted leave to proceed pursuant to 28 U.S.C. § 1915.

On October 29, 2013, Magistrate Judge Boyd N. Boland entered an order (ECF No. 29) directing Mr. Eller to file within thirty days an amended Prisoner Complaint that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil

Procedure and the formatting requirements of D.C.COLO.LCivR 10.1, and alleged the personal participation of each named Defendant. The October 29 order informed Mr. Eller that his claims for declaratory and injunctive relief were moot due to his release from prison. Magistrate Judge Boland warned Mr. Eller that if he failed to file an amended Prisoner Complaint that complied with October 29 order as directed within the time allowed, some or all claims and Defendants, or the entire action, may be dismissed without further notice. On November 29, 2013, Mr. Eller filed a notice of change of address (ECF No. 24). However, he failed within the time allowed to file an amended Prisoner Complaint as directed.

In the order for an amended Prisoner Complaint, Magistrate Judge Boland pointed out that Mr. Eller's Prisoner Complaint is vague, verbose, and rambling. The complaint asserts seven claims, one against each named Defendant. The claims stem from what Mr. Eller alleged was deliberate indifference under the Eighth Amendment to his serious medical need for treatment for his mental illnesses and disorders (including but not limited to bipolarism and depression) that have caused him to self-mutilate his body and attempt suicide. However, Mr. Eller failed to provide specifics as to what each Defendant did or failed to do to provide him with proper medical care, relying instead on vague and conclusory allegations of supervisory liability. Mr. Eller has made serious general allegations, but no specific factual assertions, of Defendants' actions or inactions that jeopardized his mental health, but he has failed to comply with Rule 8 and state Defendants' personal participation in the asserted constitutional violations. The Prisoner Complaint will be dismissed without prejudice for Mr. Eller's failure to file an amended Prisoner Complaint that complies with Fed. R. Civ. P. 8 as directed within the

time allowed, and for his failure to prosecute. Although Mr. Eller no longer is incarcerated, he may, if he chooses, reassert his claims for money damages in a new and separate action that complies with the October 29 order.

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. Eller files a notice of appeal he also must pay the full \$505.00 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 (ECF No. 1) and the action are dismissed without prejudice pursuant to Rules 8 and 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, William Eller, within the time allowed, to file an amended Prisoner Complaint as directed in the order of October 29, 2013 (ECF No. 23), and for his failure to prosecute. 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 6th day of January, 2014.

BY THE COURT:

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