

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 13-03074-BNB

(The above civil action number must appear on all future papers sent to the court in this action. Failure to include this number may result in a delay in the consideration of your claims.)

WESLEY-THOMAS HYSELL,

Plaintiff,

v.

LOU ARCHULETA, Warden,
RON WAGER, Associate Warden,
LIEUTENANT RICK LAWSON,
LIEUTENANT JANNA BLUNDELL,
YVETTE BROWN, Law Librarian,
"SERGEANT PATRICK,"
"SERGEANT SIMONEAUX,"
"OFFICER TAFOYA,"
WHITMAN WEST, Case Manager, and
"OFFICER HUGHES,"

Defendants.

ORDER DIRECTING PLAINTIFF TO SUBMIT MOTION
FOR LEAVE TO PROCEED PURSUANT TO 28 U.S.C. § 1915

At the time Plaintiff, Wesley-Thomas Hysell, initiated the instant action, he was incarcerated at the Fremont Correctional Facility in Canón City, Colorado. The copy of the order to cure (ECF No. 5) that the clerk of the Court mailed to Plaintiff was returned to the Court as undeliverable on November 25, 2013. On December 10, 2013, Plaintiff filed a notice of change of address that indicates that he has been released from the custody of the Colorado Department of Corrections and resides in O'Neill, Nebraska.

Plaintiff's continuing obligation to pay the filing fee is to be determined, like any

nonprisoner, solely on the basis of whether he qualifies for *in forma pauperis* status. See *Whitney v. New Mexico*, 113 F.3d 1170, 1171 n.1 (10th Cir. 1997); see also *McGore v. Wrigglesworth*, 114 F.3d 601, 612-13 (6th Cir. 1997); *In re Prison Litigation Reform Act*, 105 F.3d 1131, 1138-39 (6th Cir. 1997); *McGann v. Commissioner, Soc. Sec. Admin.*, 96 F.3d 28, 29-30 (2d Cir. 1996). Therefore, Plaintiff will be ordered to submit a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C.

§ 1915. Alternatively, Plaintiff may elect to pay the \$350.00 filing fee to pursue his claims in this action. Accordingly, it is

ORDERED that within thirty days from the date of this Order Plaintiff submit to the Court a Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 **used by nonprisoners**. Alternatively, Plaintiff may elect to pay the \$350.00 filing fee to pursue his claims in this action. It is

FURTHER ORDERED that Plaintiff shall obtain the Court-approved form used in filing a nonprisoner 28 U.S.C. § 1915 Motion and Affidavit, along with the applicable instructions, at www.cod.uscourts.gov. It is

FURTHER ORDERED that if Plaintiff fails to comply with the instant Order, within thirty days of the date of this Order, the Complaint and action will be dismissed without further notice.

DATED December 11, 2013, at Denver, Colorado.

BY THE COURT:

s/Boyd N. Boland
United States Magistrate Judge