

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-00839-BNB

STEVEN McCARY,

Plaintiff,

v.

[NO DEFENDANTS NAMED],

Defendants.

ORDER OF DISMISSAL

Plaintiff, Steven McCary, is a prisoner in the custody of the Colorado Department of Corrections. Mr. McCary initiated this action by filing *pro se* a “Formal Complaint and Affidavit” (ECF No. 1) alleging that he is being denied adequate medical treatment. The instant action was commenced and on March 21, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. McCary to cure certain deficiencies if he wished to pursue any claims in this action. Specifically, Magistrate Judge Boland ordered Mr. McCary to file on the proper form a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file a Prisoner’s Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 along with a certified copy of his inmate trust fund account statement and an authorization to calculate and disburse filing fee payments. Mr. McCary was warned that the action would be dismissed without further notice if he failed to cure the deficiencies within thirty days.

Mr. McCary has failed to cure the deficiencies within the time allowed and he has

failed to respond in any way to Magistrate Judge Boland's March 21 order. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 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 Plaintiff files a notice of appeal he also must pay the full \$505 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 complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Mr. McCary failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 1st day of May, 2014.

BY THE COURT:

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