

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01151-BNB

DAVID K. JENNER,

Plaintiff,

v.

SGT. WEST, C.C.F., individual capacity, and
UNKNOWN JOHN/JANE DOE DEFENDANTS, from Centennial Correctional Facility
and Colorado Department of Corrections Offender Services, all in individual
capacity,

Defendants.

ORDER DISMISSING CASE

Plaintiff, David K. Jenner, is a prisoner in the custody of the Colorado Department of Corrections. On April 23, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. Jenner to file an amended complaint and either to pay filing and administrative fees totaling \$400.00 or to file on the court-approved form 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. Jenner has not filed an amended complaint and has not cured the deficiencies as directed. Instead, on May 5, 2014, he filed a Motion to Dismiss Case Without Prejudice (ECF No. 4). Mr. Jenner states that he lacks sufficient funds to pay the required fees and that he will refile the action when the funds become available.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Jenner

“may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment.” No response has been filed by any opposing party in this action. A voluntary dismissal pursuant to Rule 41(a)(1)(A) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. See J. Moore, *Moore’s Federal Practice* ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The notice closes the file. See *Hyde Constr. Co.*, 388 F.2d at 507.

Accordingly, it is

ORDERED that the Motion to Dismiss Case Without Prejudice (ECF No. 4) is GRANTED and the action is dismissed without prejudice. It is

FURTHER ORDERED that the voluntary dismissal is effective as of May 5, 2014, the date the notice of voluntary dismissal was filed in this action.

DATED at Denver, Colorado, this 7th day of May, 2014.

BY THE COURT:

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