

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-01987-BNB

DAVID LEE COLLINS,

Plaintiff,

v.

[NO NAMED DEFENDANT],

Defendant.

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ORDER DISMISSING CASE

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Plaintiff, David Lee Collins, is a prisoner in the custody of the Colorado Department of Corrections at the Arkansas Valley Correctional Facility in Ordway, Colorado. On July 17, 2014, Mr. Collins attempted to initiate this action by filing with the Court *pro se* a letter titled “Payment” (ECF No. 1) that was unintelligible. The Court opened this case under 42 U.S.C. § 1983 because Mr. Collins is a state prisoner and did not appear to be asserting a challenge to the fact or duration of his conviction or sentence.

On July 18, 2014, Magistrate Judge Craig B. Shaffer entered an order (ECF No. 3) directing Mr. Collins to cure certain deficiencies and file a Prisoner Complaint. Specifically, Mr. Collins was directed within thirty days either to pay the \$400.00 filing fee 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, together with a certified copy of his trust fund account statement for the six-month period immediately preceding this filing. He also

was directed to file a Prisoner Complaint on the proper, Court-approved form that complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure. Instead of complying with the July 18 order by curing the designated deficiencies and filing a Prisoner Complaint that complied with Fed. R. Civ. P. 8, Mr. Collins on July 25, 2014, filed an objection titled “Appeal of Order, Due to Fraud in the Incomprehensible Order Dates: 07/18/14 (ECF No. 4), objecting to what he termed the “unintelligible [sic] action” of this Court to direct him to cure deficiencies and file a Prisoner Complaint. See ECF No. 4 at 1. On July 30, 2014, the Court overruled the objection. See ECF No. 6.

On August 5, 2014, Mr. Collins filed a letter to the clerk of the Court titled “Closure of Case(s)” (ECF No. 7) asking that all his open cases be closed immediately because he allegedly did not consent to opening any actions in this Court. However, he only cited to the instant action and, therefore, the letter was filed in the instant action only. Therefore, the letter will be addressed in this action only.

The Court must construe liberally Mr. Collins’ letter because he is not represented by an attorney. See *Haines v. Kerner*, 404 U.S. 519, 520-21 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 (10th Cir. 1991). However, the Court should not be an advocate for a *pro se* litigant. See *Hall*, 935 F.2d at 1110. For the reasons stated below, the letter will be treated as a notice of voluntary dismissal.

Pursuant to Rule 41(a)(1)(A) of the Federal Rules of Civil Procedure, Mr. Collins “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 the unnamed Defendant in this action. Pursuant to Fed. R.

Civ. P. 41(a)(1)(B), the dismissal is without prejudice, unless otherwise stated. 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 instant action is dismissed without prejudice pursuant to the notice of voluntary dismissal (ECF No. 7) that Plaintiff, David Lee Collins, filed *pro se* on August 5, 2014. It is

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

FURTHER ORDERED that any pending motions are denied as moot.

DATED at Denver, Colorado, this 8<sup>th</sup> day of August, 2014.

BY THE COURT:

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