

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02532-BNB

MITCHELL FEINBERG,

Plaintiff,

v.

UNITED STATES GOVERNMENT, served upon U.S. DEPT. OF JUSTICE,

Defendant.

ORDER OF DISMISSAL

On September 12, 2014, Plaintiff, Mitchell Feinberg, filed a Complaint (ECF No. 1) and an Application to Proceed in District Court Without Prepaying Fees or Costs (ECF No. 2). He alleged that he is homeless (ECF No. 2 at 5) and currently resides in Atlanta, Georgia. Mr. Feinberg was granted leave to proceed pursuant to 28 U.S.C. § 1915.

The Court reviewed the Complaint and determined it was deficient. Therefore, on September 17, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 4) directing Mr. Feinberg to file an amended Complaint that sued the proper parties and complied with the pleading requirements of Rule 8 of the Federal Rules of Civil Procedure if he wished to pursue his claims in this action. The September 17 order also directed Mr. Feinberg to submit the amended Complaint on the proper, Court-approved form. The September 17 order instructed Mr. Feinberg to obtain the Court-approved form for filing a Complaint, and to use that form in filing the amended Complaint. The

September 17 order warned Mr. Feinberg that if he failed to file an amended Complaint within thirty days as directed, the Complaint may be dismissed without further notice.

The September 17 order also warned Mr. Feinberg that subsection (e)(2)(B) of § 1915 requires a court to dismiss *sua sponte* an action at any time if the action is frivolous, malicious, or seeks monetary relief against a defendant who is immune from such relief.

On September 30, 2014, the copy of the September 17 order mailed to Mr. Feinberg was returned to the Court as undeliverable because the ZIP code was incorrect. See ECF No. 5. On October 1, 2014, a copy of the September 17 order was remailed to Mr. Feinberg at the correct address. See ECF No. 6.

Mr. Feinberg has failed to file an amended Complaint within the time allowed, or otherwise to communicate with the Court in any way. Therefore, the Complaint and the action will be dismissed without prejudice for Mr. Feinberg's failure to file an amended Complaint as directed within the time allowed, and for his failure to prosecute.

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. Feinberg 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 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, Mitchell Feinberg, within the time allowed to file an amended Complaint as directed that sued the proper parties and complied with the pleading requirements of Fed. R. Civ. P. 8, 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 7th day of November, 2014.

BY THE COURT:

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