

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02536-BNB

JASON C. GIANETTA,

Plaintiff,

v.

[NO NAMED DEFENDANT],

Defendant.

ORDER OF DISMISSAL

Plaintiff, Jason C. Gianetta, is a prisoner in the custody of the Federal Bureau of Prisons who currently is incarcerated at the United States Penitentiary in Coleman, Florida. He attempted to initiate the instant action by submitting *pro se* a letter (ECF No. 1) to the Honorable Richard P. Matsch, Senior District Judge, complaining about the conditions of his confinement. The Court reviewed the letter and determined it was deficient. Therefore, on September 17, 2014, Magistrate Judge Boyd N. Boland entered an order (ECF No. 3) directing Mr. Gianetta to cure certain enumerated deficiencies in the case within thirty days if he wished to pursue his claims.

The September 17 order pointed out that Mr. Gianetta failed to submit either the \$400.00 filing fee or a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 on the proper, Court-approved form, i.e., the current form revised October 1, 2012, with an authorization and certificate of prison official, together with a certified copy of his trust fund account statement for the six-month period immediately

preceding this filing obtained from the appropriate prison official. The September 17 order also pointed out that Mr. Gianetta failed to submit 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. The September 17 order directed Mr. Gianetta to obtain, with the assistance of his case manager or the facility's legal assistant, the Court-approved forms for filing a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 and a Prisoner Complaint. The September 17 order warned him that if he failed within thirty days to cure the designated deficiencies, including to file a Prisoner Complaint that complies with Fed. R. Civ. P. 8, the action would be dismissed without prejudice and without further notice.

Mr. Gianetta has failed to cure the designated deficiencies, file a Prisoner Complaint that complies with Fed. R. Civ. P. 8, or otherwise communicate with the Court in any way within the time allowed. Therefore, the action will be dismissed without prejudice for Mr. Gianetta's failure to cure the designated deficiencies and file a Prisoner Complaint that complies with Fed. R. Civ. P. 8 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. Gianetta 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 action is dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure for the failure of Plaintiff, Jason C. Gianetta, to cure the deficiencies designated in the order to cure of September 17, 2014, within the time allowed, including to file a Prisoner Complaint that complies with Rule 8 of the Federal Rules of Civil Procedure, 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 29th day of October, 2014.

BY THE COURT:

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