

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-02805-GPG

ELMER L. CROSS, JR.,

Plaintiff,

v.

DR. CRUM,  
THE NURSE RHONDA, and  
THE NURSE MARK LONGALE,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff, Elmer J. Cross, Jr., currently resides in Denver, Colorado. When he initiated this action on October 14, 2014 by submitting *pro se* a Prisoner Complaint (ECF No. 1) pursuant to 28 U.S.C. § 1333 and 42 U.S.C. § 1983, he was an inmate detained at the Denver County Jail. He has been granted leave to proceed pursuant to § 1915.

On October 15, 2014, Magistrate Judge Boyd N. Boland reviewed the Complaint and determined that it was deficient. Judge Boland instructed Mr. Cross to file an amended prisoner complaint if he wished to pursue his claims in this action. (See ECF No. 7). In the October 15 Order, Magistrate Judge Boland determined that the Complaint was deficient for the following reasons: (1) Plaintiff's allegations were vague, conclusory, and rambling; (2) allegations of medical malpractice were insufficient to state a cognizable claim for deliberate indifference; and (3) the Complaint failed to comply with the pleading requirements of Rule 8 of the Federal Rules of Civil

Procedure. Magistrate Judge Boland warned Plaintiff that if he failed to comply with the October 15 Order within the time allowed the Court may dismiss the action without further notice.

After being granted two extensions of time, Plaintiff's third request for an extension of time was granted, which allowed Plaintiff up to and including February 10, 2015 to comply with the Court's October 15 Order by filing an amended prisoner complaint. (See ECF No. 42). Plaintiff now has failed to comply with the January 7, 2015 minute order and the October 15, 2014 order to amend within the time allowed. The Court finds that Magistrate Judge Boland correctly required Plaintiff to amend the Complaint and to assert well-pleaded factual contentions that support a cognizable deliberate indifference claim in compliance with Rule 8 of the Federal Rules of Civil Procedure. The Court, therefore, will dismiss the action for failure to comply with Court orders and failure to prosecute.

The Court also certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order is not taken in good faith, and, therefore, *in forma paupers* status is denied for the purpose of appeal. See *Coppedge v. United States*, 369 U.S. 438 (1962). If Plaintiff files a notice of appeal he must also pay the full \$505 appellate filing fee or file a motion to proceed *in forma paupers* in the Tenth Circuit within thirty days in accordance with Fed. R. App. P. 24. Accordingly, it is

ORDERED that the Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) for failure to file an amended complaint and for failure to prosecute. It is

FURTHER ORDERED that leave to proceed *in forma paupers* on appeal is denied. It is

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 18<sup>th</sup> day of February, 2015.

BY THE COURT:

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