

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03039-GPG

STEVEN McCARY,

Plaintiff,

v.

[NO DEFENDANTS NAMED],

Defendants.

ORDER OF DISMISSAL

Plaintiff, Steven McCary, is a prisoner in the custody of the Colorado Department of Corrections. Mr. McCary initiated this action by filing *pro se* a “Formal Complaint and Affidavit” (ECF No. 1) complaining that prison officials have violated his constitutional rights. The instant action was commenced and, on November 12, 2014, Magistrate Judge Boyd N. Boland entered an order directing Mr. McCary to cure certain deficiencies if he wished to pursue his claims. Specifically, Magistrate Judge Boland directed Mr. McCary to file a Prisoner Complaint and either to pay filing and administrative fees totaling \$400.00 or to file 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. McCary was warned that the action would be dismissed without further notice if he failed to cure these deficiencies within thirty days.

On December 3, 2014, Mr. McCary filed an amended "Formal Complaint and Affidavit" (ECF No. 6). On December 9, 2014, he filed a letter (ECF No. 7) requesting appointment of counsel, a court order directing prison officials to return his property and stop locking him down, and an extension of time to cure the deficiencies. On December 10, 2014, Magistrate Judge Gordon P. Gallagher entered a minute order (ECF No. 8) granting Mr. McCary an extension of time until January 12, 2015, to cure the deficiencies and denying the other requests.

On January 5, 2015, Mr. McCary filed a copy of his inmate trust fund account statement (ECF No. 9). On January 15, 2015, he filed a Motion for Counsel and Extension of Time to Supplement Complaint (ECF No. 10). On January 16, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 11) denying the request for appointment of counsel and granting Mr. McCary an extension of time until February 13, 2015, to cure the deficiencies. Magistrate Judge Gallagher reiterated the deficiencies that Mr. McCary must cure and he reminded Mr. McCary that the action would be dismissed without further notice if he failed to cure all of the deficiencies within the time allowed.

On January 28, 2015, Mr. McCary filed a letter (ECF No. 12) requesting the forms necessary to cure the deficiencies. On February 2, 2015, he filed another copy of his inmate trust fund account statement (ECF No. 13). On February 17, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 14) granting the request for forms and directing the clerk of the Court to mail to Mr. McCary blank copies of the necessary forms. Magistrate Judge Gallagher also extended the time to cure the deficiencies until March 13, 2015, and he again reiterated the deficiencies that Mr.

McCary must cure and reminded Mr. McCary that the action would be dismissed without further notice if he failed to cure all of the deficiencies within the time allowed.

Also on February 17, 2015, Mr. McCary filed a letter (ECF No. 16) requesting an extension of time, alleging he needs ten additional working days to complete his complaint. On February 19, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 17) denying the request for extension of time both as moot and because the request did not comply with Rule 7 of the Federal Rules of Civil Procedure.

On March 16, 2015, Mr. McCary filed a Motion for Extension of Time (ECF No. 18) requesting an extension of time until March 30, 2015, due to medical issues involving a heart operation, chemotherapy, and a bone marrow transplant. On March 17, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 19) granting the request for extension of time until March 30. Magistrate Judge Gallagher again reiterated the deficiencies Mr. McCary must cure and he reminded Mr. McCary that the action would be dismissed without further notice if he failed to cure all of the deficiencies within the time allowed.

On April 1, 2015, Mr. McCary filed a Motion for Extension of Time (ECF No. 20) requesting another extension because of a hospital trip and an infection in his arm. On April 2, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 21) granting an extension of time until April 20, 2015, to cure the deficiencies. Magistrate Judge Gallagher again reiterated the deficiencies Mr. McCary must cure and reminded him that the action would be dismissed without further notice if he failed to cure all of the deficiencies within the time allowed.

On April 22, 2015, Mr. McCary filed a Motion for Extension (ECF No. 22)

requesting one last extension of time until April 30. On April 23, 2015, Magistrate Judge Gallagher entered a minute order (ECF No. 23) granting the motion and extending the time to cure the deficiencies until April 30, 2015. Magistrate Judge Gallagher again reiterated the deficiencies Mr. McCary must cure and reminded him that the action would be dismissed without further notice if he failed to cure all of the deficiencies within the time allowed.

Mr. McCary has not filed a Prisoner Complaint and he has failed either to pay the required filing and administrative fees or to file a properly supported Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. Therefore, the action will be dismissed without prejudice for failure to cure the deficiencies within the time allowed.

Furthermore, the Court certifies pursuant to 28 U.S.C. § 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 Plaintiff files a notice of appeal he also must pay the full \$505 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 because Mr. McCary failed to cure the deficiencies as directed. It is

FURTHER ORDERED that leave to proceed *in forma pauperis* on appeal is denied without prejudice to the filing of a motion seeking leave to proceed *in forma pauperis* on appeal in the United States Court of Appeals for the Tenth Circuit.

DATED at Denver, Colorado, this 8th day of May, 2015.

BY THE COURT:

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