

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 14-cv-03166-GPG

PAUL MICHAEL SUTTON,

Plaintiff,

v.

JIM SCHLEGEL (Doctor),
CORIZON (Health Service), and
ADAMS COUNTY DETENTION FACILITY (Jail),

Defendants.

ORDER OF DISMISSAL

Plaintiff, Paul Michael Sutton, is a prisoner in the custody of the Colorado Department of Corrections. Mr. Sutton initiated this action by filing *pro se* a "Prisoner Complaint" (ECF No. 1), a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2), and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 4). On December 2, 2014, Magistrate Judge Gordon P. Gallagher entered an order (ECF No. 5) directing Mr. Sutton to cure certain deficiencies if he wishes to pursue his claims in this action. Magistrate Judge Gallagher specifically directed Mr. Sutton to file an amended Prisoner Complaint that is legible and to submit a current and certified copy of his inmate trust fund account statement for the six-month period immediately preceding the filing of this action. Mr. Sutton was warned that the action would be dismissed without further notice if he failed to cure these deficiencies within thirty days.

On December 30, 2014, Mr. Sutton filed a Motion for Appointment of Counsel (ECF No. 6) that is supported by a current and certified copy of his inmate trust fund account statement. On January 5, 2015, Magistrate Judge Gallagher entered a Second Order Directing Plaintiff to Cure Deficiency (ECF No. 7) denying the motion for appointment of counsel as premature and reminding Mr. Sutton that he still must file an amended Prisoner Complaint that is legible. Magistrate Judge Gallagher directed Mr. Sutton to cure the remaining deficiency within thirty days and warned him that the action would be dismissed without further notice if he failed to cure the remaining deficiency within the time allowed.

Mr. Sutton has not filed an amended Prisoner Complaint that is legible within the time allowed. Therefore, the action will be dismissed without prejudice for failure to cure all of the deficiencies.

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. Sutton failed to cure all of 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. It is

FURTHER ORDERED that the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 (ECF No. 2) and the Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915 in a Habeas Corpus Action (ECF No. 4) are denied as moot.

DATED at Denver, Colorado, this 11th day of February, 2015.

BY THE COURT:

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