

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00540-GPG

ANTOINE BRUCE,

Plaintiff,

v.

A. CERMAK,
D. BERKEBILE,
S. JULIAN,
P. KLEIN,
B. LAMMER,
S. BEICKER-GALLEGOS,
R. GICONI, and
C. ALVAREZ,

Defendants.

ORDER OF DISMISSAL

Plaintiff Antoine Bruce is in the custody of the Federal Bureau of Prisons and pursuant to information provided to the Court in Case No. 15-cv-00239-GPG, ECF No. 10 at 10, on June 19, 2015, currently is incarcerated at the Medical Center for Federal Prisoners in Springfield, Missouri. Plaintiff initiated this action by filing *pro se* a Prisoner Complaint and a Prisoner's Motion and Affidavit for Leave to Proceed Pursuant to 28 U.S.C. § 1915. On March 17, 2015, Magistrate Judge Gordon P. Gallagher entered an order directing Plaintiff to show cause why he should not be denied leave to proceed pursuant to § 1915 because he is subject to filing restrictions under 28 U.S.C. § 1915(g).

Plaintiff filed a forty-seven page pleading titled, "Emergency Omnibus Motion . . .," ECF No. 5, on April 16, 2015, that Magistrate Gordon P. Gallagher construed as a

Response to the March 17 Order to Show Cause. In the Response, Plaintiff asserts, as he has in other actions, that he is mentally ill. In particular, in the Response, Plaintiff raises the same mental illness issues that he has raised in Case No. 14-cv-03232-RM-NYW, which currently is stayed pending Plaintiff's mental evaluation. See *Bruce v. Alvarez, et al.*, No. 14-cv-03232-RM-NYW, ECF No. 47 (D. Colo Filed Nov. 26, 2014). Plaintiff also seeks in the Response an appointment of counsel, a mental evaluation, and a stay of the case until the evaluation is complete.

On May 18, 2015, the Court entered an order and found that (1) a mental evaluation has been ordered, for which Plaintiff currently is housed at the Springfield Medical Center in Springfield, Missouri; (2) appointment of counsel would not overcome the fact that the claims asserted by Plaintiff in this action do not state named Defendants have placed him in imminent danger of serious physical injury; and (3) staying the case is in direct opposition to any claim that Plaintiff is in imminent danger of serious physical injury. The Court also denied Plaintiff leave to proceed without the payment of the filing fee in full because Plaintiff failed to assert a specific, factual description of his excessive force and sexual harassment claims that would support a finding that he is in imminent danger of serious physical injury.

The Court directed Plaintiff to pay the \$400 filing fee in full within thirty days. Plaintiff now has failed to comply with the May 18, 2015 Order within the time allowed. The Court, therefore, will dismiss this action.

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 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 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 Complaint and action are dismissed without prejudice pursuant to Fed. R. Civ. P. 41(b) because Plaintiff failed to pay the filing fee in full within the time allowed. It is

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

FURTHER ORDERED that the Clerk of the Court is directed to use Plaintiff's current address as noted in Case No. 15-cv-00239-GPG, ECF No. 10 at 10, for the purpose of mailing this Order to Plaintiff.

DATED at Denver, Colorado, this 24th day of June, 2015.

BY THE COURT:

s/Lewis T. Babcock
LEWIS T. BABCOCK, Senior Judge
UNITED STATES DISTRICT COURT