

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-00597-GPG

JOHN R. STASZAK,

Plaintiff,

v.

ROBBIE BOLTON,  
DONNA L. GONZALES,  
DANA KRAKOW,  
LEONARD WOODSON III,  
ASTRIA LOMBARD,  
ANTHONY DECESARO, and  
RICK RAEMISCH,

Defendants.

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ORDER DISMISSING CASE

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Plaintiff, John R. Staszak, is in the custody of the Colorado Department of Corrections at the Colorado Territorial Correctional Facility in Canón City, Colorado. He initiated this action by filing a Prisoner Complaint asserting claims under 42 U.S.C. § 1983. Mr. Staszak has been granted leave to proceed *in forma pauperis*.

On April 9, 2015, Magistrate Judge Gordon P. Gallagher reviewed the Prisoner Complaint and determined that it was deficient because Plaintiff failed to allege the personal participation of each named Defendant in a deprivation of his constitutional rights, and also failed to allege facts to show an arguable violation of his First and Eighth Amendment rights. (ECF No. 5). Magistrate Judge Gallagher directed Mr. Staszak to file an Amended Complaint in thirty (30) days to cure the defects in his

original pleading. (*Id.*). Magistrate Judge Gallagher further warned Plaintiff that failure to file an Amended Complaint by the court-ordered deadline may result in dismissal of part or all of this action without further notice. (*Id.*).

On April 23, 2015, Mr. Staszak filed a Letter (ECF No. 6) with the Court in which he stated that he may no longer wish to pursue this action. He also requested that the Court send him a copy of the Prisoner Complaint form.

Magistrate Judge Gallagher issued a minute order on April 27, 2015, informing Plaintiff that if he wished to voluntarily dismiss this action, he should file a motion for voluntary dismissal with the Court. (ECF No. 7). Magistrate Judge Gallagher further directed the Clerk of the Court to mail Plaintiff a copy of the court-approved Prisoner Complaint form. (*Id.*). Mr. Staszak was granted an additional thirty (30) days from the date of the minute order to comply with the April 9, 2015 Order directing him to file an amended complaint. (*Id.*).

On May 1, 2015, Mr. Staszak filed a “Motion to Withdraw Complaint.” (ECF No. 9). In the Motion, he requests that the Court dismiss this action without prejudice. (*Id.*).

Fed. R. Civ. P. 41(a)(1) provides that “the plaintiff may dismiss an action without a court order by filing: (i) a notice of dismissal before the opposing party serves either an answer or a motion for summary judgment . . . .” No answer or motion for summary judgment has been filed by Defendants in this action. Further, a voluntary dismissal under Rule 41(a)(1) is effective immediately upon the filing of a written notice of dismissal, and no subsequent court order is necessary. See J. Moore, *Moore's Federal Practice* ¶ 41.02(2) (2d ed. 1995); *Hyde Constr. Co. v. Koehring Co.*, 388 F.2d 501, 507 (10th Cir. 1968). The motion, therefore, closes the file as of May 1, 2015. See *Hyde*

*Constr. Co.*, 388 F.2d at 507. Accordingly, it is

ORDERED that the action is dismissed pursuant to Fed. R. Civ. P. 41(a)(1). It is  
FURTHER ORDERED that the voluntary dismissal is without prejudice and is  
effective as of May 1, 2015, the date Plaintiff filed the “Motion to Withdraw Complaint.”

DATED May 5, 2015, at Denver, Colorado.

BY THE COURT:

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