

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01645-GPG

RICHARD "NIKKI" RODGERS, a.k.a. RACHAEL B. RODGERS,

Plaintiff,

v.

DR. BEATLE, Mental Health,
ELIZABETH HOGAN, M.D. Chief Psychiatrist,
MRS. BOYD, Nurse of C.S.P. Clinical Services, and
TRAVIS TRANI, Warden of C.S.P.,

Defendants.

ORDER OF DISMISSAL

Plaintiff Richard "Nikki" Rodgers, a.k.a. Rachael B. Rodgers, is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Colorado State Penitentiary in Cañon City, Colorado. Plaintiff, a *pro se* litigant, initiated this action by filing a Complaint Pursuant to C.R.C.P. Rule 106.5, ECF No. 1, and an Inmate Motion Requesting to File Without Prepayment of Filing/Service Fees Pursuant to § 13-17.5-103, ECF No. 2. Magistrate Judge Gordon P. Gallagher found the filings deficient and ordered Plaintiff to cure the deficiencies if she desired to proceed with this action. Plaintiff cured, and on August 22, 2015, she was granted leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915.

Upon review of the Complaint, Magistrate Judge Gallagher determined that Plaintiff's claims are identical to the claims she raises in *Rodgers v. Sinker, et al.*, No. 15-cv-00174-CMA-NYW (D. Colo. Filed Jan. 26, 2015). Magistrate Judge Gallagher also found that on August 20, 2015, Plaintiff submitted a supplemental complaint in this

case and in Case No. 15-cv-00174-CMA-NYW that asserts the same claims and names the same defendants. The Court further finds that Plaintiff has been appointed pro bono counsel in Case No. 15-cv-00174-CMA-NYW. See *Rodgers*, No. 15-cv-00174-CMA-NYW at ECF No. 62.

Magistrate Judge Gallagher entered an Order to Show Cause on August 24, 2015, directing Plaintiff to respond and show cause why this action should not be dismissed as repetitious of Case No. 15-cv-00174-CMA-NYW. Plaintiff was warned that if she failed to show cause within the time allowed the Court would dismiss the action as repetitious.

Plaintiff now has failed to respond within the time allowed. The Court, therefore, will dismiss the action as repetitious and legally frivolous pursuant to *Bailey v. Johnson*, 846 F.2d 1019, 1021 (5th Cir. 1988); *Van Meter v. Morgan*, 518 F.2d 366, 368 (8th Cir. 1975) (per curiam).

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 she 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 repetitious and are dismissed without prejudice as legally frivolous pursuant to 28 U.S.C. § 1915(e)(2)(B)(i). It is

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

FURTHER ORDERED that all pending motions are denied as moot.

DATED at Denver, Colorado, this 30th day of September, 2015.

BY THE COURT:

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