

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-01902-GPG

LEROY W. BAKER,

Plaintiff,

v.

(A.I.C.) LT. BERNADETTE SCOTT,  
(P.A.) NICOLE WILSON, Employee, Sterling Corr. Fac.,  
LT. FRANK OFFICER, Ster. Corr. Fac.,  
DR. FARMER, Dentist, Employee, Sterling Corr. Fac., and  
ALL OTHERS RESPONSIBLE BUT UNKNOWN,

Defendants.

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ORDER OF DISMISSAL

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Plaintiff Leroy W. Baker is in the custody of the Colorado Department of Corrections and currently is incarcerated at the Sterling Correctional Facility, in Sterling, Colorado. 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 September 3, 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).

This Court reviewed the Reply Plaintiff filed on October 16, 2015, that appears to be a response to the September 3 Order to Show Cause, and determined that the Reply is nonresponsive to the Order. Plaintiff did not acknowledge or counter Magistrate Judge Gallagher's findings in the September 3 Order. Nor did Plaintiff state a specific

factual description that would support a finding that he is in imminent danger of serious physical injury. On October 30, 2015, the Court, therefore, directed Plaintiff to pay the \$400 filing fee in full within thirty days because he had failed to assert imminent danger of serious physical injury.

Plaintiff was instructed that the only proper filing at this time is the payment of the \$400 filing fee and that no other filings would be considered. Rather than pay the fee, Plaintiff filed a pleading on November 30, 2015, titled, "Response Objecting to the Denial of the Right to Proceed, Pursuant to 28 U.S.C. § 1915," ECF No. 9. The November 30 Response, like the October 16 Reply, is nonresponsive and fails to assert specific factual description that would support a finding that he is in imminent danger of serious physical injury. Nonetheless, the November 30 Response is improperly filed and will not be considered by the Court.

Because Plaintiff has failed to comply with the October 30, 2015 Order to pay the \$400 filing fee within the time allowed the Court 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.

DATED at Denver, Colorado, this 8<sup>th</sup> day of December, 2015.

BY THE COURT:

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