

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLORADO

Civil Action No. 15-cv-02673-GPG

MICHELLE M. KURZ,

Plaintiff,

v.

COLORADO DEPARTMENT OF CORRECTIONS,  
H.S.A. ZADE, R.N.,  
CHRISTINE WALKER, R.N., N.P.,  
JANE DOE, Medical Staff @ LCVF, and  
JOHN DOE, Medical Staff @ LCVF,

Defendants.

---

ORDER OF DISMISSAL

---

Plaintiff, Michelle M. Kurz, initiated this action by filing *pro se* a Prisoner Complaint (ECF No. 1) 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. 2). Ms. Kurz was a prisoner in the custody of the Colorado Department of Corrections when she initiated the action. On December 11, 2015, Magistrate Judge Gordon P. Gallagher ordered Ms. Kurz to cure certain deficiencies if she wishes to pursue her claims. Ms. Kurz specifically was directed to file an amended motion seeking leave to proceed *in forma pauperis* pursuant to 28 U.S.C. § 1915 on the proper form and to submit a signed authorization to calculate and disburse filing fee payments. Ms. Kurz was warned that the action would be dismissed without further notice if she failed to cure the deficiencies within thirty days.

On December 21, 2015, the copy of Magistrate Judge Gallagher's December 11

order that was mailed to Ms. Kurz at the prison address she provided was returned to the Court undelivered and the returned envelope indicates she had been released from custody. (See ECF No. 5.) On January 14, 2016, Magistrate Judge Gallagher entered a minute order directing the clerk of the Court to mail a copy of the December 11 order to Ms. Kurz at an alternative address that she also had listed in the Prisoner Complaint.

On February 2, 2016, the copy of Magistrate Judge Gallagher's January 14 minute order that was mailed to Ms. Kurz at the alternative address she provided was returned to the Court undelivered. The returned envelope bears a stamp or sticker that reads "RETURN TO SENDER, NOT DELIVERABLE AS ADDRESSED, UNABLE TO FORWARD." (See ECF No. 7.)

Ms. Kurz has not cured the deficiencies in this action as directed and she has failed to respond in any way to Magistrate Judge Gallagher's December 11 order. She also has failed to file a notice of change of address within five days of any change of address as required by the Court's local rules. See D.C.COLO.LCivR 5.1(c). Therefore, the action will be dismissed without prejudice for failure to prosecute and comply with the Court's local rules. 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 she 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 Prisoner Complaint and the action are dismissed without prejudice pursuant to Rule 41(b) of the Federal Rules of Civil Procedure because Plaintiff failed to prosecute and comply with the Court's local rules. It is

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

DATED at Denver, Colorado, this 18<sup>th</sup> day of February, 2016.

BY THE COURT:

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