

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 16-cv-00620-GPG

KENNETH-WILLIAM LEWIS,

Plaintiff,

v.

KENNETH WILLIAM LEWIS, et al.,

Defendant(s).

ORDER DISMISSING CASE

Plaintiff, Kenneth-William Lewis, is currently living in Colorado Springs, Colorado. He initiated this action on March 16, 2016, by filing *pro se* a “Notice of and Bill of Demand for Declaratory Relief and Preliminary Injunction by Special Term” (ECF No. 1) and a “Declaration by Affidavit for Waiver of Court Fees” (ECF No. 3). On March 17, 2016, Magistrate Judge Gordon P. Gallagher ordered Plaintiff to cure certain designated deficiencies in his documents if he wished to pursue his claims in this action. In response, Plaintiff filed an Application to Proceed in District Court Without Prepaying Fees or Costs (Long Form) (ECF No. 5) and an Amended Complaint (ECF No. 6). He has been granted leave to proceed *in forma pauperis*. (ECF No. 7).

On April 11, 2016, Magistrate Judge Gallagher directed Plaintiff to file an Amended Complaint that complies with Rule 8 of the Federal Rules of Civil Procedure. (ECF No. 8). In response, on April 25, 2016, Plaintiff filed a “Notice of Voluntary Dismissal Pursuant to F.R.C.P. 41(a)(1)(A)(i).” (ECF No. 10). Rule 41(a)(1) of the Federal Rules of Civil Procedure 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” In this case, no responsive pleading has been filed by the Defendant. 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). Plaintiff's Notice of Voluntary Dismissal, therefore, closes the file as of April 25, 2016. 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 April 25, 2016, the date Plaintiff filed his Notice of Voluntary Dismissal (ECF No. 10).

DATED at Denver, Colorado, this 27th day of April, 2016.

BY THE COURT:

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