

09-2922-cv
Leftridge v.
Connecticut
State Trooper

1 UNITED STATES COURT OF APPEALS
2 FOR THE SECOND CIRCUIT

3 - - - - -
4 August Term, 2010

5 (Submitted: October 15, 2010 Decided: May 12, 2011)

6 Docket No. 09-2922-cv

7 _____
8 VERNON J. LEFTRIDGE, Jr.,

9 Plaintiff-Appellant,

10 - v. -

11 CONNECTICUT STATE TROOPER OFFICER #1283, CONNECTICUT
12 DEPARTMENT OF PUBLIC SAFETY, CONNECTICUT STATE
13 POLICE INTERNAL AFFAIRS UNIT, CONNECTICUT STATE
14 POLICE,

15 Defendants-Appellees.
16 _____

17 Before: KEARSE, CALABRESI, and WESLEY, Circuit Judges.

18 Appeal from an order of the United States District Court
19 for the District of Connecticut, Vanessa L. Bryant, Judge,
20 refusing to reopen an administratively closed action because of
21 the pro se plaintiff's failure to retain counsel.

22 Vacated and remanded.

23 VERNON J. LEFTRIDGE, Jr., Hartford, Connecticut,
24 Plaintiff-Appellant pro se.

25 RICHARD BLUMENTHAL, Attorney General of the
26 State of Connecticut, Hartford, Connecticut
27 (Maura Murphy Osborne, Assistant Attorney
28 General, Hartford, Connecticut, of
29 counsel), for Defendants-Appellees.

1 KEARSE, Circuit Judge:

2 Plaintiff pro se Vernon J. Leftridge, Jr., who commenced
3 the present action pursuant to 42 U.S.C. § 1983 and state law
4 against defendants Connecticut State Trooper #1283 ("Trooper 1283"
5 or "the Trooper") and various agencies of the State of Connecticut
6 (the "State"), appeals from a July 2, 2009 order of the United
7 States District Court for the District of Connecticut, Vanessa L.
8 Bryant, Judge, denying Leftridge's motion to reopen his case,
9 which the court had administratively closed, because of
10 Leftridge's failure to obtain counsel. The court, which in
11 February 2009 had imposed a June 29, 2009 deadline for Leftridge
12 to hire counsel, refused to grant an extension of that deadline
13 and refused to reopen the case, stating that Leftridge failed to
14 retain counsel or to establish that the retaining of counsel was
15 imminent. On appeal, Leftridge contends principally that the
16 district court's orders improperly denied him the right to
17 prosecute his case pro se. For the reasons that follow, we agree,
18 and we therefore vacate the July 2, 2009 order and remand for
19 further proceedings.

20

I. BACKGROUND

21 Leftridge, an African-American, commenced the present
22 action in July 2007, alleging that, while driving in Connecticut
23 in October 2005, he had been stopped by Trooper 1283 and charged
24 with a traffic violation. The complaint alleged that that charge

1 was false and that the Trooper's actions were motivated by
2 Leftridge's race, in violation of, inter alia, the Fourteenth
3 Amendment to the United States Constitution.

4 In August 2007, Leftridge moved for the appointment of
5 counsel to represent him. The district court denied the motion,
6 concluding that "the plaintiff's position does not seem likely to
7 be of substance" and that "the legal issues are not complex and
8 the plaintiff has demonstrated in his filings that he is able to
9 investigate the facts of the case and present them to the Court."
10 Order dated October 1, 2007.

11 Defendants moved to dismiss Leftridge's complaint on the
12 grounds, inter alia, that they were entitled to Eleventh Amendment
13 sovereign immunity and/or that the complaint failed to state a
14 claim upon which relief could be granted. Before responding to
15 the motion, Leftridge moved in May 2008 for reconsideration of the
16 district court's denial of his motion for the appointment of
17 counsel. He stated that he lacked knowledge of the law, was not
18 experienced in or competent to understand the litigation process,
19 and was stressed and frustrated with the case. The court denied
20 reconsideration. See Order dated June 10, 2008. In July 2008,
21 the district court granted defendants' motion to dismiss the
22 complaint on Eleventh Amendment grounds insofar as it asserted
23 claims against the State agencies, but denied the motion to
24 dismiss insofar as the complaint asserted claims against Trooper
25 1283 in his individual capacity. See Order dated July 30, 2008.

1 Leftridge immediately renewed his motion for appointment
2 of counsel. He stated that he was undergoing stress and that he
3 was not competent to proceed because of his lack of experience and
4 legal knowledge. The court denied the motion, stating that
5 Leftridge "ha[d] not provided any basis upon which the Court
6 should reconsider its previous orders." Order dated August 8,
7 2008. Leftridge, despite having indicated that he could not
8 litigate his claims without the assistance of counsel, proceeded
9 with the case pro se, making numerous motions with respect to,
10 inter alia, discovery matters, his desire to amend the complaint,
11 and a potential default judgment against the Trooper.

12 In February 2009, Leftridge again moved for the
13 appointment of counsel, stating that he had an anxiety and stress
14 disorder and that his doctor had advised that he should not be
15 representing himself. The district court promptly denied the
16 motion, stating that "the Court's earlier ruling . . . remains in
17 effect," and directing Leftridge to follow instructions previously
18 given by the court as to the time by which and the manner in which
19 pretrial discovery was to be completed, so that motions for
20 summary judgment could be filed. Order dated February 10, 2009.
21 Leftridge then submitted a February 11, 2009 letter to the court
22 from his psychologist, who stated in pertinent part as follows:

23 . . . I have been treating [Vernon Leftridge] since
24 October 2006. I have advised Mr. Leftridge on
25 multiple occasions that his serving as his own
26 attorney has been causing him inordinate anxiety and
27 stress. Consequently, I have recommended to him that
28 he pursue hiring an attorney. He has informed me
29 that you need my verification of such, in order to

1 appoint him counsel or to grant him the time to seek
2 legal counsel.

3 Following its receipt of this letter, the district court entered a
4 further order stating as follows:

5 The plaintiff filed an exhibit . . . in which his
6 psychologist confirms that the plaintiff is
7 experiencing anxiety and stress as a result of
8 representing himself in this case. The Court has
9 previously declined to appoint counsel for the
10 plaintiff because his position does not seem likely
11 to be of substance. That ruling remains in effect,
12 but it does not prevent the plaintiff from hiring
13 counsel on his own. If the plaintiff wishes to
14 pursue this case, he may attempt to hire counsel by
15 6/29/09, and that attorney may then pursue the
16 plaintiff's claims. Given the present circumstances,
17 the case should be administratively closed without
18 prejudice to reopening by an attorney for the
19 plaintiff. . . . The Clerk is directed to
20 administratively CLOSE this file.

21 Order dated February 13, 2009 ("February 13 Order") (emphases
22 added). The February 13 Order also "terminated" other motions by
23 Leftridge that had been pending. Id.

24 On June 22, 2009, as the June 29 court-imposed deadline
25 for him to retain counsel approached, Leftridge moved for, inter
26 alia, an extension of time in order to enable him to raise funds
27 to be able to retain a (specified) attorney. The court "den[ied
28 the] Motion for Extension of Time, as the plaintiff has failed to
29 establish that an attorney is on the verge of filing an appearance
30 for him." Order dated June 29, 2009 ("June 29 Order").

31 In the meantime, on June 25, 2009, Leftridge also filed a
32 motion to reopen the case notwithstanding his not having retained
33 counsel. He also indicated that he would continue to attempt to
34 raise the money needed to retain counsel. The district court

1 denied the motion to reopen, stating that "the Court already ruled
2 on the issue in [the June 29 Order denying an extension of time to
3 obtain counsel]." Order dated July 2, 2009 ("July 2 Order").

4 Leftridge filed a notice of appeal, contending that the
5 "judgment entered on July 2, 2009 den[ied him] the right to reopen
6 his case as a pro se/plaintiff." He thereafter filed additional
7 motions in the district court, again asking the district court to
8 reopen his case or extend his time to retain an attorney. Those
9 motions were denied on the ground that they provided no new
10 information. See Order dated July 9, 2009; Order dated July 15,
11 2009 ("July 15 Order"). The latter order also noted that
12 Leftridge had "already filed a notice of appeal as to the Court's
13 decision not to reopen the case." July 15 Order.

14 II. DISCUSSION

15 On appeal, Leftridge argues principally that the district
16 court abused its discretion by denying his motion to reopen his
17 case to allow him to proceed pro se when he could not afford to
18 retain an attorney. He also contends that the court abused its
19 discretion in denying several of his other motions. Defendants,
20 while noting that the district court did not enter a judgment in
21 this case, urge us to affirm the closure of the case on the
22 ground that it was properly dismissed for lack of prosecution or
23 for failure to comply with court orders.

1 For the reasons that follow, we conclude that despite the
2 lack of a "judgment," we have jurisdiction to entertain this
3 appeal pursuant to 28 U.S.C. § 1291; and we conclude that the
4 district court's refusal to reopen the case because of Leftridge's
5 failure to retain an attorney constituted an abuse of discretion.

6 A. Appellate Jurisdiction

7 Section 1291 of Title 28 provides, in pertinent part, that
8 the federal courts of appeals "shall have jurisdiction of appeals
9 from all final decisions of the district courts of the United
10 States." 28 U.S.C. § 1291. When a decision of the district court
11 does not pertain to an interlocutory injunction, a receivership,
12 or a case in admiralty, see id. § 1292(a), and is not an order
13 that the district court has certified for a potential immediate
14 appeal pursuant to 28 U.S.C. § 1292(b), this Court lacks
15 jurisdiction to hear the appeal unless the decision is "final"
16 within the meaning of § 1291.

17 "A 'final decision' generally is one which ends the
18 litigation on the merits and leaves nothing for the court to do
19 but execute the judgment." Catlin v. United States, 324 U.S. 229,
20 233 (1945) (emphasis ours); see, e.g., Coopers & Lybrand v.
21 Livesay, 437 U.S. 463, 467 (1978). In determining whether a
22 decision is "final" within the meaning of § 1291, we are to give
23 that section a "practical rather than a technical construction,"
24 Cohen v. Beneficial Industrial Loan Corp., 337 U.S. 541, 546
25 (1949); and a decision "by which a district court disassociates

1 itself from a case" is deemed to be final, Swint v. Chambers
2 County Commission, 514 U.S. 35, 42 (1995); see, e.g., Bankers
3 Trust Co. v. Mallis, 435 U.S. 381, 385 n.6 (1978) ("courts of
4 appeals must . . . determine whether the district court intended
5 the judgment to represent the final decision in the case").

6 In the present case, it appears that the district court
7 intended its July 2 Order, although not addressing the merits of
8 the case or any issue in it, to be its final decision in
9 Leftridge's case. As described in Part I above, the court in
10 February 2009 had ordered that the case be "administratively
11 closed"; that order closed the case only conditionally, as it was
12 entered "without prejudice to reopening by an attorney for
13 [Leftridge]" if Leftridge obtained counsel "by 6/29/09."
14 February 13 Order. In its June 29 Order, however, the court
15 refused to extend that deadline, and in its July 2 Order the
16 court refused to reopen the case. Thus, the administrative
17 closure of the case, conditional when first ordered in February,
18 became unconditional. The district court, which thereafter
19 referred to the July 2 Order as "the Court's decision not to
20 reopen the case," July 15 Order, therefore appears to have
21 intended its July 2 Order to be its final action in the case.

22 Even if that were not the court's intent, the July 2 Order
23 plainly ended Leftridge's case in the district court as a
24 practical matter. The court's June 29 Order had refused to give
25 Leftridge additional time to retain counsel, thereby precluding
26 him from having an attorney come in to represent him. When the

1 court also refused, in its July 2 Order, to reopen the case to
2 allow Leftridge to pursue his case without an attorney, it ended
3 his ability to pursue his case by any means.

4 Accordingly, we view the July 2 Order as a final decision
5 within the meaning of § 1291. We cannot, as a matter of sound
6 jurisprudence, conclude that an aggrieved party has no right to
7 appellate review of a district court order that "administratively"
8 unconditionally ends the case.

9 We turn, therefore, to the question of whether the
10 district court's July 2 Order, refusing to reopen the case because
11 Leftridge failed to retain counsel, constituted an abuse of
12 discretion.

13 B. The Propriety of the Administrative Closure and Refusal
14 To Reopen

15 "A district court . . . necessarily abuse[s] its
16 discretion if it base[s] its ruling on an erroneous view of the
17 law or on a clearly erroneous assessment of the evidence," Cooter
18 & Gell v. Hartmarx Corp., 496 U.S. 384, 405 (1990), or if "its
19 decision--though not necessarily the product of a legal error or a
20 clearly erroneous factual finding--cannot be located within the
21 range of permissible decisions," Slupinski v. First Unum Life
22 Insurance Co., 554 F.3d 38, 47 (2d Cir. 2009) (quoting Zervos v.
23 Verizon New York, Inc., 252 F.3d 163, 169 (2d Cir. 2001)).

24 As a general matter of federal law, an individual
25 proceeding in federal court has the right to present his case pro
26 se: "In all courts of the United States the parties may plead and

1 conduct their own cases personally." 28 U.S.C. § 1654. See
2 generally Eagle Associates v. Bank of Montreal, 926 F.2d 1305,
3 1308-10 (2d Cir. 1991) (§ 1654 grants the right of self-
4 representation to natural persons, not to corporations or other
5 artificial entities). If an adult individual wishes to conduct
6 his case pro se, an order requiring him instead to retain counsel
7 to represent him violates § 1654. An order dismissing the action
8 of such a pro se plaintiff for failure to retain counsel is a
9 legal error and cannot be located within the range of permissible
10 decisions. Accordingly, in the present case, the district court's
11 July 2 Order refusing to reopen the case solely because Leftridge
12 had not obtained counsel, thereby precluding him from pursuing his
13 case pro se, constituted an abuse of discretion.

14 Defendants argue that the July 2 Order was essentially a
15 dismissal of Leftridge's case "'[f]or failure of the plaintiff to
16 prosecute or to comply with the [Federal Rules of Civil Procedure]
17 or any order of court.'" (Defendants' brief on appeal at 5
18 (quoting Fed. R. Civ. P. 41(b) (2006)).) They urge that the July 2
19 Order "be affirmed and [that] this case remain closed"
20 (Defendants' brief on appeal at 8), stating principally that
21 Leftridge did not begin discovery during the court-ordered time
22 for discovery "from July 2008 to March 2009" (id. at 6; see id.
23 at 6-7) and that the court "simply complied with plaintiff's
24 request that he not be required to litigate this case without
25 legal representation" (id. at 7). We are unpersuaded by these
26 arguments and characterizations. The record does not indicate

1 that defendants ever moved pursuant to Rule 41(b) for an order of
2 dismissal for failure to prosecute, or that the district court
3 conducted the analysis that would have been required had
4 defendants made such a motion, see generally Martens v. Thomann,
5 273 F.3d 159, 180 (2d Cir. 2001). Nor is it at all clear that,
6 upon such an analysis, the record would have warranted dismissal.
7 It does not appear that there was a failure to prosecute; indeed,
8 defendants complain in their brief on appeal that they were
9 required to respond to motion practice by Leftridge that was
10 "voluminous" (Defendants' brief on appeal at 7). Nor do the
11 district court docket entries support defendants' suggestion that
12 Leftridge was derelict for failing to make any attempt to conduct
13 discovery during the period July 2008 to March 2009. Those
14 entries indicate, inter alia, that during the early part of that
15 period Leftridge was attempting to have defendants produce
16 videotapes of his traffic arrest--production that the district
17 court had ordered but that was delayed by several defense motions
18 for extensions of time that Leftridge opposed--and that in
19 December 2008 Leftridge moved for permission to take the
20 deposition of Trooper 1283. And, of course, the February 13
21 Order administratively closed the case nearly a month before the
22 discovery period was scheduled to end.

23 Finally, we are not persuaded by defendants' argument that
24 the court simply granted Leftridge's own wish to proceed only with
25 the assistance of counsel. His repeated requests for appointment
26 of counsel did not necessarily mean that Leftridge would choose

1 not to proceed pro se if that choice would result in dismissal.
2 He had in fact proceeded pro se for some 18 months despite the
3 denial of counsel and his complaints that he was not well equipped
4 to proceed on his own. That said, we note that we are not
5 inclined to view the district court's February 13 Order itself,
6 which conditionally closed the case without prejudice to its
7 reopening if Leftridge obtained counsel by June 29, as an abuse of
8 discretion. That order was entered, without objection by
9 Leftridge, only after Leftridge submitted the letter from his
10 psychologist indicating that Leftridge's serving as his own
11 attorney was detrimental to his health. Clearly the court did not
12 abuse its discretion by giving Leftridge time to retain counsel,
13 although it would have been preferable for the court to have said
14 that the action was stayed, rather than closed; and the court
15 should have specified that if Leftridge did not retain counsel (by
16 such deadline as the court imposed) he nonetheless had the option
17 of proceeding pro se. And once Leftridge was unable to retain
18 counsel before the June 29 deadline and asked that the case be
19 reopened in order to allow him to proceed pro se, he should have
20 been allowed to proceed pro se. The inability of an individual
21 litigant to obtain counsel is not a basis for denying him his
22 statutory right to pursue his case pro se.

23 C. Leftridge's Other Contentions

24 Leftridge also contends, with little specificity, that the
25 district court "abuse[d] its discretion when it denied several" of

1 his other motions. (Leftridge brief on appeal at 4.) To the
2 extent that Leftridge means to challenge the district court's
3 orders denying his repeated motions for the appointment of
4 counsel, he provides no basis for overturning those orders. A
5 party has no constitutionally guaranteed right to the assistance
6 of counsel in a civil case. See, e.g., United States v. Coven,
7 662 F.2d 162, 176 (2d Cir. 1981), cert. denied, 456 U.S. 916
8 (1982). A district court's decision not to "request an attorney
9 to represent" an indigent civil plaintiff pursuant to 28 U.S.C.
10 § 1915(e)(1) is reviewable only for abuse of discretion. See,
11 e.g., Pena v. Choo, 826 F.2d 168, 168 (2d Cir. 1987); Hodge v.
12 Police Officers, 802 F.2d 58, 60 (2d Cir. 1986); Miller v.
13 Pleasure, 296 F.2d 283, 284-85 (2d Cir. 1961), cert. denied, 370
14 U.S. 964 (1962). The court properly denies the plaintiff's motion
15 for counsel if it concludes that his chances of success are highly
16 dubious. See, e.g., Pena v. Choo, 826 F.2d at 169; Miller v.
17 Pleasure, 296 F.2d at 285.

18 Here, in denying Leftridge's initial motion for
19 appointment of counsel, the court stated, inter alia, that his
20 case appeared to lack substance. In addressing several of
21 Leftridge's renewed requests for counsel, the court again noted
22 that Leftridge's case appeared to be weak and/or stated that
23 Leftridge had not provided any new information to alter the
24 court's initial assessment. In the circumstances, and on the
25 record before us, we see no abuse of discretion in the district

1 court's denial of Leftridge's requests for the appointment of
2 counsel.

3 To the extent that Leftridge seeks to challenge other
4 rulings of the district court on such matters as his desire to
5 amend his complaint or his requests relating to discovery, we
6 decline to address those matters, which will more properly be
7 dealt with on an appeal, if any, from a final judgment that in
8 some manner resolves Leftridge's case on substantive or procedural
9 grounds, rather than closing it administratively.

10

CONCLUSION

11 We have considered all of defendants' arguments in support
12 of the district court's refusal to reopen Leftridge's case and
13 have found them to be without merit. For the reasons discussed
14 above, the July 2, 2009 order is vacated, and the matter is
15 remanded for proceedings not inconsistent with this opinion.
16 Leftridge must be allowed, if he wishes, to pursue his action pro
17 se. We of course express no view as to the merits of his claims.

18 No costs are awarded at this time. In the event that
19 Leftridge ultimately prevails on the merits of any of his claims,
20 the district court should award him the costs of the present
21 appeal.