

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

THOMAS JAMES CLAUSO,

No. 1:18-cv-12217-NLH-LHG

Plaintiff,

OPINION

v.

WARDEN WILLIE BONDS, et al.,

Defendants.

APPEARANCES:

THOMAS JAMES CLAUSO
59252
SOUTH WOODS STATE PRISON
215 SOUTH BURLINGTON ROAD
BRIDGETON, NJ 08302

Plaintiff appearing pro se.

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and Guard Hansen.*

HILLMAN, District Judge

Presently before the Court is *pro se* Plaintiff Thomas James Clauso's Appeal of Magistrate Judge Lois H. Goodman's May 27, 2020 Order denying his prior motion to appoint pro bono counsel and his request that the Court order Defendant Nurse Williams to

accept service. For the reasons expressed below, the Court will deny Plaintiff's appeal and affirm the Order.

Background

Having previously set forth the facts of this case and Plaintiff's extensive, handwritten Complaint at length in its Opinion dated July 9, 2019, the Court shall recount only those facts that bear directly on the instant appeal. Plaintiff, Thomas James Clauso, is a convicted state prisoner who is currently incarcerated at South Woods State Prison. On August 26, 2018, Plaintiff filed a Complaint, alleging a series of different claims against the warden of his prison, multiple guards, and a nurse who once treated him. (ECF No. 1).

This Court reviewed Plaintiff's Complaint under the Prison Litigation Reform Act, Pub. L. 104-134, §§ 801-810, 110 Stat. 1321-66 to 1321-77 (Apr. 26, 1996) ("PLRA"), which directs district courts to *sua sponte* dismiss any claim that is frivolous, is malicious, fails to state a claim upon which relief may be granted, seeks monetary relief from a defendant who is immune from such relief, or is on its face unexhausted. See 28 U.S.C. §§ 1915(e)(2)(B), 1915A; 42 U.S.C. § 1997e. After its review, the Court issued an Opinion and Order dismissing multiple of Plaintiff's claims, but allowing his claims of conditions of confinement, targeted harassment, denial of

medical care, excessive force, and legal mail to proceed. (ECF No. 3 at 9-10).

On September 16, 2019, Plaintiff filed a letter with the Court, in which he complained at length about his inability to serve Defendant Nurse Williams, and requested that the Court order her to accept service and appoint pro bono counsel. (ECF No. 14). Interpreting this second request as a motion to appoint pro bono counsel, Magistrate Judge Lois H. Goodman issued an Order on April 27, 2020. (ECF No. 32). That Order denied the motion, finding that Plaintiff had failed to meet his burden to demonstrate why he should be appointed pro bono counsel as a civil litigant. The Order further denied his request to order Nurse Williams to accept service, noting that Plaintiff had attempted to serve her at the prison, not Rutgers University Correctional Health Care, where the U.S. Marshals had advised Plaintiff she appeared to be employed. The Order further directed the U.S. Marshals Service to provide Plaintiff with a new Form USM-285, and directed Plaintiff to complete that form requesting the Marshals serve Nurse Williams at Rutgers University Correctional Health Care.

On May 5, 2020, Plaintiff filed another letter to the Court, asserting his desire to appeal the May 27 Order. In the time since then, Defendants have filed a motion for summary judgment, (ECF No. 47), which will be addressed separately and

in due course. The Court, having interpreted Plaintiff's letter as an appeal of the May 27 Order, will assess Plaintiff's appeal under the relevant standards.

Discussion

I. Standard of Review

When a magistrate judge decides a non-dispositive motion, the "district court may modify the magistrate's order only if the district court finds that the magistrate's ruling was clearly erroneous or contrary to law." Cipollone v. Liggett Group, Inc., 785 F.2d 1108, 1120 (3d Cir. 1986); see also L. Civ. R. 72 .1(c) (A) (1) ("A Judge shall consider the appeal ... and set aside any portion of the Magistrate Judge's order found to be clearly erroneous or contrary to law.").

A magistrate judge's ruling is clearly erroneous when "although there may be some evidence to support it, the reviewing court, after considering the entirety of the evidence, is 'left with the definite and firm conviction that a mistake has been committed.'" Kounelis v. Sherrer, 529 F. Supp. 2d 503, 518 (D.N.J. 2008) (quoting Dome Petroleum Ltd. v. Emp'rs Mut. Liab. Ins. Co., 131 F.R.D. 63, 65 (D.N.J. 1990); United States v. U.S. Gypsum Co., 333 U.S. 364, 395 (1948)). A ruling is contrary to law if "the magistrate judge has misinterpreted or misapplied applicable law." Id. The mere fact that the reviewing court "might have decided the matter differently" is

insufficient to justify the reversal of the magistrate judge's decision. Mendez v. Avis Budget Grp., Inc., No. 11-6537, 2018 WL 4676039, at *2 (D.N.J. Sept. 28, 2018) (quoting Wortman v. Beglin, No. 03-495, 2007 WL 2375057, at *2 (D.N.J. Aug. 16, 2007)).

II. Analysis

The Court finds that the May 27 Order was not clearly erroneous or contrary to law, and will affirm the Order. The Court first notes that Plaintiff has not actually specified which aspects of the Order he wishes to appeal. To the extent that Plaintiff intended to appeal the Court's denial of his request to order Nurse Williams to accept service, Plaintiff has put forth no argument or explanation for how that denial was erroneous or contrary to law, and the Court finds that it was clearly not. The Magistrate Judge simply informed Plaintiff that it was his duty to ensure proper service, and that he needed to complete a new form to serve Nurse Williams at her actual place of employment, not the prison at which she had treated him.

To the extent that Plaintiff intended to appeal the Order's denial of his motion to appoint pro bono counsel, the Court again finds that the Order was not clearly erroneous or contrary to law. Here, Plaintiff again has failed to put forth almost any argument whatsoever as to what basis he has for appealing

the Order; instead, the vast majority of his letter is devoted to insulting this Court and its judges. The Court, not for the first time in this action, cautions Plaintiff against the use of language and insults that are not appropriate for court filings.

To the extent that Plaintiff intended his reference to "mental health conditions" and the fact that he has "\$145,000" in debt to serve as a basis for his appeal, the Court finds that these arguments are insufficient to demonstrate any errors in the May 27 Order. Civil litigants do not have a constitutional right to counsel, and a court assessing whether to appoint pro bono counsel for a civil litigant such as Plaintiff must apply the set of factors previously outlined by the Third Circuit. Houser v. Folino, 927 F.3d 693, 697 (3d Cir. 2019). Those factors are: "(1) the plaintiff's ability to present his or her own case; (2) the complexity of the legal issues; (3) the degree to which factual investigation will be necessary and the ability of the plaintiff to pursue such investigation; (4) the amount a case is likely to turn on credibility determinations; (5) whether the case will require the testimony of expert witnesses; [and] (6) whether the plaintiff can attain and afford counsel on his own behalf." Parham v. Johnson, 126 F.3d 454, 457 (3d Cir. 1997) (citing Tabron v. Grace, 6 F.3d 147, 155-56, 157 n.5 (3d Cir. 1993)).

Here, the Magistrate Judge appropriately applied these factors. Plaintiff's reference to his "mental health conditions," at best, relates only to the first factor, which analyzes the plaintiff's ability to present his own case. However, Plaintiff failed to put forth this argument to the Magistrate Judge in his motion to appoint pro bono counsel, and the Magistrate Judge noted that he had not raised any issues regarding his ability to present his case at any other point in the proceeding. Further, Plaintiff fails to provide any further detail regarding his conditions or how they would prevent him from presenting his own case.

Nor has Plaintiff provided any reason for the Court to find that the May 27 Order was clearly erroneous in its determinations regarding any of the other factors. As to those factors, the Magistrate Judge found that Plaintiff's claims were "fairly straightforward," that the facts underlying his claims were similarly straightforward and Plaintiff had provided no argument that he needed specific documents that would be difficult to obtain on his own, that Plaintiff had never presented the Court any reason to believe this case would turn mostly on any credibility determinations, and that Plaintiff had paid the filing fee in this case and had never been found be *in forma pauperis*. Plaintiff has put forth no new arguments

regarding the first three of these findings, and the Court sees no basis on which to find them clearly erroneous.

As to the final factor, whether Plaintiff can attain and afford counsel on his own, Plaintiff does now assert that he has \$145,000 in debt; however, Plaintiff did not present this fact or any argument regarding it to the Magistrate Judge at the time of his motion. See Harris v. Holmes, No. 1:14-cv-00460-NLH-JS, 2017 WL 477692, at *2 (D.N.J. Feb. 6, 2017) ("In his appeal, Plaintiff provides several pages of argument as to why he should be appointed counsel. Because none of this argument was presented to the Magistrate Judge, however, this Court cannot find that the Magistrate Judge's decision was clearly erroneous."). Even were the Court to find that this factor does weigh in Plaintiff's favor, the appointment of pro bono counsel is discretionary, and the Court finds that this one factor is not sufficient to demonstrate that the May 27 Order was clearly erroneous. With no further argument from Plaintiff regarding the specifics of why he believes the Order should be overruled, and no additional facts before it, the Court finds that the Order was not clearly erroneous or contrary to law.

Conclusion

For the reasons expressed above, Plaintiff's Appeal (ECF No. 35) will be denied, and the Magistrate Judge's Order (ECF No. 32), dated May 27, 2020, will be affirmed in all respects.

An appropriate Order will be entered.

Date: December 15, 2020
At Camden, New Jersey

/s Noel L. Hillman
NOEL L. HILLMAN, U.S.D.J.