

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT BLUEFIELD

VIRGINIA ARLENE GOFORTH,

Plaintiff,

v.

CIVIL ACTION NO. 1:09-0003

UNITED STATES OF AMERICA, et al.,

Defendants.

MEMORANDUM OPINION AND ORDER

On December 27, 2011, plaintiff filed objections to certain orders dated July 14, 2011, in which Magistrate Judge VanDervort denied Goforth's motion to appoint counsel and granted the motion to stay of the United States. For reasons expressed more fully below, plaintiff's objections are OVERRULED.

Under Rule 72 of the Federal Rules of Civil Procedure, a district judge is to consider any objections to an order of the magistrate judge on a nondispositive matter and shall "modify or set aside any part of the order that is clearly erroneous or is contrary to law." The clearly erroneous standard is a deferential standard. Clark v. Milam, 847 F. Supp. 424, 425 (S.D.W. Va. 1994). "A finding is 'clearly erroneous' when although there is evidence to support it, the reviewing court on the entire evidence is left with the definite and firm conviction

that a mistake has been committed." Id. (citing United States v. United States Gypsum, 333 U.S. 364, 395 (1948)).

Goforth's motion to appoint counsel, as a nondispositive matter, is reviewed under this clearly erroneous standard. Hatfield v. Fox, Civ. Action No. 2:01-0594, 2002 WL 32366024, *1 (S.D.W. Va. Sept. 25, 2002). A court abuses its discretion if it fails to appoint counsel when exceptional circumstances exist. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984). The existence of exceptional circumstances depends on the complexity of the case and the ability of the prisoner to present it. See id.

As Magistrate Judge VanDervort noted, the factual and legal issues presented in this case are not complex. He further found that plaintiff was capable of presenting her case to the court, at least through dispositive motions. The court agrees with the magistrate judge and finds that there are no exceptional circumstances which would justify the appointment of counsel. Accordingly, because Magistrate Judge VanDervort's order is not clearly erroneous or contrary to law, plaintiff's objections are OVERRULED.


As to the stay of proceedings pending resolution of plaintiff's appeal, that issue is moot given that the appeal has been dismissed and the stay has been lifted. In any event, the

court concludes that Magistrate Judge VanDervort's order granting a stay was not clearly erroneous or contrary to law.

The Clerk is directed to forward a copy of this Memorandum Opinion and Order to plaintiff, pro se, and counsel of record.

IT IS SO ORDERED this 2nd day of May, 2012.

ENTER:



David A. Faber

Senior United States District Judge