

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

COLUMBUS ALLEN, JR.,

No. 1:13-cv-00012-DAD-SAB (PC)

Plaintiff.

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STANISLAUS COUNTY, et al.,

**ORDER DENYING PLAINTIFF'S MOTION
FOR RECONSIDERATION AND
DISMISSING PLAINTIFF'S MOTION TO
STAY AS MOOT**

Defendants

(Doc. Nos. 87, 90)

Plaintiff Columbus Allen, Jr. is appearing pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (Doc. Nos. 1, 4.) A telephonic trial confirmation hearing is currently set for July 31, 2017 and jury trial is scheduled to commence on September 19, 2017. (Doc. No. 84.) On May 16, 2017, the assigned magistrate judge denied plaintiff's third motion to appoint counsel. (Doc. No. 86.) Plaintiff filed on May 30, 2017 a motion for reconsideration of that order (Doc. No. 87) and on June 21, 2017 a motion to stay the proceedings pending disposition of the motion for reconsideration. (Doc. No. 90.) Defendants filed an opposition to the motion for reconsideration on June 14, 2017. (Doc. No. 88.) For the following reasons, the motion for reconsideration will be denied and the motion to stay will be dismissed as having been rendered moot by this order. Nevertheless, the court is currently attempting to determine whether pro bono counsel may be available for appointment on plaintiff's behalf.

Legal Standard

2 Federal Rule of Civil Procedure 72(a) provides that non-dispositive pretrial matters may
3 be referred to and decided by a magistrate judge, subject to review by the assigned district judge.
4 See also Local Rule 303(c).¹ The district judge shall modify or set aside any part of the
5 magistrate judge’s order which is “found to be clearly erroneous or contrary to law.” Local Rule
6 303(f). See also 28 U.S.C. § 636(b)(1)(A). Nothing defendants seek reconsideration of here is
7 dispositive. On a motion to reconsider a magistrate judge’s non-dispositive order, the magistrate
8 judge’s factual determinations are reviewed for clear error, and the magistrate judge’s legal
9 conclusions are reviewed to determine whether they are contrary to law. *United States v.*
10 *McConney*, 728 F.2d 1195, 1200–01 (9th Cir. 1984), *overruled on other grounds by Estate of*
11 *Merchant v. CIR*, 947 F.2d 1390 (9th Cir. 1991). “A magistrate judge’s decision is ‘contrary to
12 law’ if it applies an incorrect legal standard, fails to consider an element of [an] applicable
13 standard, or fails to apply or misapplies relevant statutes, case law, or rules of procedure.” *Martin*
14 *v. Loadholt*, No. 1:10-cv-00156-LJO-MJS, 2014 WL 3563312, at *1 (E.D. Cal. July 18, 2014)
15 (internal quotations and citations omitted).

16 In reviewing pretrial orders of a magistrate, the district court “may not simply substitute
17 its judgment for that of the deciding court.” *Grimes v. City & County of San Francisco*, 951 F.2d
18 236, 241 (9th Cir.1991). Accordingly, “[t]o succeed [on a motion for reconsideration], a party
19 must set forth facts or law of a strongly convincing nature to induce the court to reverse its prior
20 decision.” *Enriquez v. City of Fresno*, No. 1:10-cv-00581-AWI-DLB, 2011 WL 1087149, at *1
21 (E.D. Cal. Mar. 23, 2011).

Analysis

²⁷ 1 Counsel for defendants is familiar with these standards, having previously objected to another
28 order of the magistrate judge in this same case. (See Doc. Nos. 21, 27.)

1 2011).² In *Wright*, the Ninth Circuit noted that in deciding whether to appoint counsel, the district
2 court must evaluate both (1) the likelihood of success on the merits and (2) the ability of the
3 plaintiff to articulate his claims pro se in light of the complexity of the legal issues involved. *Id.*
4 (citing *Terrell v. Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991)). However, neither of the two
5 factors is dispositive and the court should consider both in making a determination. *Terrell*, 935
6 F.2d at 1017.

7 Plaintiff's motion for reconsideration lacks merit. The magistrate judge properly
8 considered the evidence submitted by plaintiff along with the record in this case and determined
9 exceptional circumstances were not demonstrated to warrant appointment of counsel in this case,
10 at this time. Indeed, the record in this case demonstrates that plaintiff is adequately able to
11 articulate and litigate his claims in light of any complexity in the case. *See Palmer v. Valdez*, 560
12 F.3d 965, 970 (9th Cir. 2009) (where a pro se civil rights plaintiff demonstrates a good handling
13 of the general litigation procedure and has articulated his claims adequately, exceptional
14 circumstances are not shown to warrant appointment of counsel). Plaintiff's mere disagreement
15 with the ruling does not suffice. *United States v. Westlands Water Dist.*, 134 F. Supp. 2d 1111, 1131
16 (E.D. Cal. 2001). Accordingly, plaintiff's motion for reconsideration is denied.

17 Nevertheless, the undersigned believes that a jury trial in this case would be facilitated if
18 plaintiff were represented by counsel. The court is therefore attempting to determine whether pro
19 bono counsel may be available for appointment on plaintiff's behalf. Plaintiff will be notified if
20 such efforts are successful.

21 Based upon the foregoing,

22 1) Plaintiff's motion for reconsideration (Doc. No. 87) is denied;
23 2) Plaintiff's motion to stay (Doc. No. 90) is dismissed as having been rendered moot by
24 this order;

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² Citation to this unpublished Ninth Circuit opinion is appropriate pursuant to Ninth Circuit Rule
28 36-3(b).

- 3) The telephonic trial confirmation hearing set for July 31, 2017 and any filing dates in connection with it are vacated pending the court's efforts to identify pro bono counsel and will be rescheduled when those efforts are completed; and
- 4) The trial date remains set for September 19, 2017, but may be rescheduled if the court is successful in locating pro bono counsel willing to undertake plaintiff's representation.

IT IS SO ORDERED.

Dated: June 30, 2017

Dale A. Troyd
UNITED STATES DISTRICT JUDGE