

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Judge Philip A. Brimmer

Criminal Case No. 14-cv-03037-PAB-CBS

NICK RAUL MEDINA,

Plaintiff,

v.

DENVER CITY & COUNTY OF DENVER (Denver Parole Office),
P.O. JULIE DAVID,
P.O. GENIE CANNAHAN, and
SUPERVISOR P.O. MATTHEW GOLDBERG,

Defendants.

ORDER

This matter is before the Court on the Prisoners Motion of “Objection” Pursuant to 28 USC. § 1983 Complaint [Docket No. 33] filed by plaintiff Nick Raul Medina. In light of plaintiff’s pro se status, the Court reviews his filings liberally. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972); *Hall v. Bellmon*, 935 F.2d 1106, 1110 n. 3 (10th Cir. 1991).

The subject of plaintiff’s objection is the magistrate judge’s Order [Docket No. 31] denying plaintiff’s Motion of Application for Court Appointed Counsel [Docket No. 28]. After reciting the appropriate legal standard for determining whether to appoint counsel for a pro se civil litigant, the magistrate judge concluded that plaintiff had, thus far, adequately presented his claims and that plaintiff’s request was premature because it was not yet clear “that the merits of Mr. Medina’s claims are sufficient for the court to request that counsel volunteer to represent him.” Docket No. 31 at 2.

Plaintiff objects to the magistrate judge's ruling on a nondispositive matter. District courts review magistrate judges' orders regarding nondispositive motions under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a). Under this standard of review, a magistrate judge's finding should not be rejected merely because the Court would have decided the matter differently. See *Anderson v. City of Bessemer City*, 470 U.S. 564, 573 (1985). A district court must affirm a magistrate judge's decision unless "on the entire evidence[, the district court] is left with the definite and firm conviction that a mistake has been committed." *Ocelot Oil Corp. v. Sparrow Indus.*, 847 F.2d 1458, 1464 (10th Cir. 1988) (quoting *United States v. U.S. Gypsum Co.*, 333 U.S. 364, 395 (1948)).

Plaintiff argues that he should be appointed counsel because he has mental health issues and because this is the first civil case he has litigated as a pro se party. Docket No. 33 at 1. Upon review of plaintiff's filings in this case, the Court finds no clear error in the magistrate judge's conclusion that plaintiff has adequately presented his claims in this litigation. Moreover, the magistrate judge appropriately concluded that it is not yet possible to ascertain the relative merit of plaintiff's claims so as to determine whether the appointment of counsel is warranted. See *Hill v. Smithkline Beecham Corp.*, 393 F.3d 1111, 1115 (10th Cir. 2004). Thus, plaintiff does not provide a sufficient basis upon which to conclude that the magistrate judge exceeded his discretion in denying plaintiff's motion to appoint counsel. See *Toevs v. Reid*, 685 F.3d 903, 916 (10th Cir. 2012). It is therefore

ORDERED that plaintiff's Prisoners Motion of "Objection" Pursuant to 28 USC.

§ 1983 Complaint [Docket No. 33] is **OVERRULED**.

DATED June 1, 2015.

BY THE COURT:

s/Philip A. Brimmer
PHILIP A. BRIMMER
United States District Judge