

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
Senior District Judge Richard P. Matsch

Civil Action No. 14-cv-03059-RPM

THOMAS GRAHAM,

Plaintiff,

v.

TELLER COUNTY, COLORADO,

MIKE ENSMINGER, individually and in his official capacity as Teller County Sheriff,
MICHAEL ROMERO, individually and in his official capacity as Detective, Teller County
Sheriff's Office Deputy and Member of Teller County Emergency Response Team,
JOSH WEATHERILL, individually and in his official capacity as Deputy, Teller County
Sheriff's Office and Member of Teller County Emergency Response Team,
NICK HARTBAUER, individually and in his official capacity ad Deputy of Teller County
Sheriff's Office and Member of Teller County Emergency Response Team, and
JESSE BAKER, individually and in his official capacity a Tactical Medic of the Teller
County Emergency Response Team,

Defendants.

ORDER GRANTING MOTION FOR APPOINTMENT OF COUNSEL

This civil action was initiated by a complaint, filed November 12, 2014, by Thomas Graham, *pro se*. The case was assigned to Magistrate Judge Michael E. Hegarty. Defendant Mike Ensminger, Teller County Sheriff, filed a motion to dismiss on November 19, 2014. In response, the plaintiff filed an amended complaint, *pro se*, on December 8, 2014. Sheriff Ensminger filed a motion to dismiss the amended complaint on December 23, 2014. Mr. Graham filed a notice of related case on January 14, 2015. [Doc. 14]. Mr. Graham, again *pro se*, filed a response to the motion to dismiss the plaintiff's amended complaint on January 16, 2015. Mr. Graham also filed a motion for appointment of counsel and affidavit in support on February 2, 2015. A reply to the motion to dismiss was filed by defendant Sheriff Ensminger on February 3, 2015. On

that same date, Magistrate Judge Hegarty entered an order denying the motion to appoint counsel without prejudice. [Doc. 22]. Because there was no consent filed for jurisdiction of the magistrate judge, the case was reassigned to District Judge William J. Martinez on February 4, 2015. Judge Martinez referred the case to Magistrate Judge Hegarty to conduct ALLMTN proceedings on February 6, 2015, [Doc. 28] and Judge Martinez filed a memorandum regarding the motion to dismiss the amended complaint on February 6, 2015. On February 17, 2015, Judge Martinez reassigned the case to me for all further proceedings. [Doc. 34].

This case is indeed related to Civil Action No. 12-cv-02735-RPM in which Paul Bauman is the plaintiff and some of the defendants in this case are defendants, including Sheriff Ensminger. That case is scheduled for trial on May 8, 2015. The plaintiff in his filings asks that the doctrine of equitable tolling be applied to excuse the untimeliness of the filing of this civil action and he has submitted affidavits of his brother, David Graham, and son, Joshua Graham, attesting to Thomas Graham's mental and emotional disorders. Also submitted is the affidavit of David Veren, a self-described "jailhouse lawyer" who says that he has assisted Thomas Graham in this matter and that Thomas Graham appears to be mentally incompetent and suffers from serious issues.

It is known to the Court that Thomas Graham played an integral role in events that are the subject of Mr. Bauman's case and it is also apparent that Mr. Bauman's counsel should not be expected to represent Mr. Graham because there is an apparent conflict of interest. It is also clear that this matter is of sufficient complexity that Mr. Graham should be represented by an attorney and, possibly, a guardian *ad litem*.

Magistrate Judge Hegarty's order denying appointment of counsel was made without awareness of the factual background of this case and upon reconsideration of that order, it is now

ORDERED that counsel will be appointed pursuant to D.C.COLO.LAttnyR 15. Accordingly, the motion for appointment of counsel is granted.

DATED: February 19th, 2015

BY THE COURT:

s/Richard P. Matsch

Richard P. Matsch, Senior Judge